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Thursday, June 18, 2020

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RIN 3209–AA52

Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations

AGENCY: Office of Government Ethics.

ACTION: Final rule; technical amendments.

SUMMARY: The U.S. Office of Government Ethics (OGE) is updating its executive branch regulation on financial disclosure to reflect the retroactive statutory increase of the reporting thresholds for gifts and travel reimbursements. OGE is also updating the executive branchwide standards of ethical conduct regulation to raise the widely attended gatherings nonsponsor gifts exception dollar ceiling tied to these thresholds. This change is not retroactive.

DATES:

Effective date: This final rule is effective June 18, 2020.

Applicability date: The amendments to 5 CFR 2634.304 and 2634.907 are applicable as of January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick J. Lightfoot, Assistant Counsel, or Christie Chung, Assistant Counsel; Telephone: 202–482–9300.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Office of Government Ethics (OGE) is amending pertinent sections of its executive branchwide ethics regulations on financial disclosure and standards of ethical conduct, as codified at 5 CFR parts 2634 and 2635, in order to update the thresholds for gifts and travel reimbursements, as well as the widely attended gatherings nonsponsor gifts exception dollar ceiling.

Increased Gifts and Travel Reimbursements Reporting Thresholds

First, OGE is revising its executive branch financial disclosure regulation at 5 CFR part 2634 to reflect the increased reporting thresholds for gifts, reimbursements, and travel expenses for both the public and confidential executive branch financial disclosure systems. The increased thresholds are applicable as of January 1, 2020. These increases conform to the statutorily mandated public disclosure reporting thresholds under section 102(a)(2)(A) and (B) of the Ethics in Government Act as amended, 5 U.S.C. app. 102(a)(2)(A) and (B), (Ethics Act) and are extended to confidential disclosure reporting by OGE's regulation. Under the Ethics Act, the gifts and travel reimbursements reporting thresholds are tied to the dollar amount for the ''minimal value'' threshold for foreign gifts as the General Services Administration (GSA) periodically redefines it.

GSA raised the ''minimal value'' amount under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to $415 for the three-year period 2020–2022 (from the prior level of $390) in a March 10, 2020, Federal Management Regulation Bulletin. See Gen. Servs. Admin., FMR B–50, Foreign Gift and Decoration Minimal Value (2020) (revising retroactively to January 1, 2020, the foreign gifts minimal value definition as codified at 41 CFR 102–42.10).

Accordingly, applicable as of that same date, OGE is increasing the thresholds for reporting of gifts and travel reimbursements from any one source in 5 CFR 2634.304 and 2634.907(g). The thresholds have been raised to ''more than $415'' for the gifts and travel reimbursements aggregation thresholds and ''$166 or less'' for the de minimis exception for gifts and travel reimbursements that do not have to be aggregated. As noted, these regulatory increases implement the underlying statutory increases effective January 1, 2020. OGE is also updating the examples following those sections, including appropriate adjustments to gift values.

OGE will continue to adjust the gifts and travel reimbursements reporting thresholds in its part 2634 regulation in the future as needed in light of GSA's redefinition of ''minimal value'' every three years for foreign gifts purposes. See OGE's prior three-year adjustment of those regulatory reporting thresholds, as published at 82 FR 22735 (May 18, 2017) (for 2017–2019, the aggregate reporting thresholds were more than $390, with a $156 or less de minimis exception).

Increased Dollar Ceiling for the Exception for Nonsponsor Gifts of Free Attendance at Widely Attended Gatherings

OGE is also increasing the exception ceiling for nonsponsor gifts of free attendance at widely attended gatherings from $390 to $415 in the executive branch standards of ethical conduct regulation, as codified at 5 CFR 2635.204(g)(3) (and as illustrated in the examples following paragraph (g)). This separate regulatory change is effective upon publication in the **Federal Register**, on June 18, 2020. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is tied to the financial disclosure gifts reporting threshold. See 60 FR 31415 (June 15, 1995) and 61 FR 42965 (Aug. 20, 1996). Thus, OGE is again increasing the nonsponsor gift ceiling to match the further increase in the gifts and travel reimbursements reporting thresholds described above. The nonsponsor gift ceiling was last raised May 2017. See 82 FR 22735 (May 18, 2017). The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments concern matters of agency organization, procedure and practice. It is also in the public interest that the accurate and up-to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements is based on a statutory formula and lessens the reporting burden. Therefore, that regulatory revision is retroactively applicable as of January 1, 2020, when the change became effective under the Ethics Act.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this final rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including 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. In promulgating this rulemaking, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. The rule has not been reviewed by the Office of Management and Budget because it is not a significant regulatory action for the purposes of Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: May 19, 2020.

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR parts 2634 and 2635 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114–74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Amend § 2634.304 as follows:
■ a. Revise the Note to paragraph (a);
■ b. In paragraphs (a) and (b), remove the dollar amount ''$390'' and add in its place ''$415'' wherever it appears;
■ c. In example 1 following paragraph (d), remove the dollar amount ''$220'' following ''Gift 1-Print'' and add in its place ''$240'' and remove the dollar amount ''$390'' in the sentence following ''Gift 3'' and add in its place ''$415'';
■ d. In paragraph (d) and examples 1 and 2, remove the dollar amount ''$156'' and add in its place ''$166'' wherever it appears; and
■ e. In examples 2 and 3 following paragraph (d), remove the year ''2017'' and add in its place ''2020''.

The revision reads as follows:

§ 2634.304 Gifts and reimbursements.

(a) * * *

Note to paragraph (a): Under sections 102(a)(2)(A) and (B) of the Ethics in Government Act, the reporting thresholds for gifts, reimbursements, and travel expenses are tied to the dollar amount for the ''minimal value'' threshold for foreign gifts established by the Foreign Gifts and Decoration Act, 5 U.S.C. 7342(a)(5). The General Services Administration (GSA), in consultation with the Secretary of State, redefines the value every 3 years. In 2020, the amount was set at $415. In subsection (d), the Office of Government Ethics sets the aggregation exception amount and redefines the value every 3 years. In 2020, the amount was set at $166. The Office of Government Ethics will update this part in 2023 and every three years thereafter to reflect the new amounts.

* * * * *

■ 3. Amend § 2634.907 as follows:
■ a. In paragraph (g)(1), remove the dollar amount of ''$390'' and add in its place ''$415'';
■ b. In paragraph (g)(2) introductory text, remove the dollar amount ''$156'' and add in its place ''$166'';
■ c. Revise the Note to paragraph (g)(2);
■ d. In the last sentence of the example following paragraph (g)(5), remove the dollar amount of ''$390'' and add in its place ''$415'' and remove the dollar amount ''$156'' and add in its place ''$166''.

The revision reads as follows:

§ 2634.907 Report contents.

* * * * *

(g) * * *

(2) * * *

Note to paragraph (g)(2): The Office of Government Ethics sets these amounts every 3 years using the same disclosure thresholds as those for public financial disclosure filers. In 2020, the reporting thresholds were set at $415 and the aggregation threshold was set at $166. The Office of Government Ethics will update this part in 2023 and every three years thereafter to reflect the new amount.

* * * * *

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

■ 4. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of

1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2635.204 [Amended]

■ 5. In § 2635.204, in paragraph (g)(3)(iv) and examples 1 and 4 following paragraph (g)(6), remove the dollar amount ''$390'' and add in its place ''$415'' wherever it occurs.

[FR Doc. 2020–12357 Filed 6–17–20; 8:45 am]

BILLING CODE 6345–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA–2020–0036]

RIN 3245–AH50

Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to First Interim Final Rule

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the **Federal Register** on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Subsequently, SBA issued a number of interim final rules implementing the Paycheck Protection Program. This interim final rule revises SBA's interim final rule published in the **Federal Register** on April 15, 2020 by changing the eligibility requirement related to felony convictions of applicants or owners of the applicant.

DATES:

Effective date: The provisions in this interim final rule are effective June 16, 2020.

Comment date: Comments must be received on or before July 20, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0036, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, have been implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program.

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116–142).

II. Comments and Immediate Effective Date

This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the grounds that that it would be contrary to the public interest. Specifically, advance public notice and comment would defeat the purpose of this interim final rule given that SBA's authority to guarantee PPP loans expires on June 30, 2020. These same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Although this interim final rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before July 20. 2020. The SBA will consider these comments, comments received on the interim final rule posted on SBA's website April 2, 2020 (the First Interim Final Rule) and published in the **Federal Register** on April 15, 2020, and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program—Additional Revisions to First Interim Final Rule (85 FR 20811)

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the ''Paycheck Protection Program.'' Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The purpose of this interim final rule is to make changes to the First Interim Final Rule, posted on SBA's website on April 2, 2020, and published in the **Federal Register** on April 15, 2020 (85 FR 20811). The First Interim Final Rule, as amended, should be interpreted consistent with the frequently asked questions (FAQs) regarding the PPP that are posted on SBA's website[1] and the other interim final rules issued regarding the PPP.[2]

1. Changes to the First Interim Final Rule

Eligibility Requirements

The First Interim Final Rule provided, among other things, that a PPP loan will not be approved if an owner of 20 percent or more of the equity of the applicant has been convicted of a felony within the last five years. After further consideration, the Administrator, in consultation with the Secretary of the Treasury (the Secretary), has determined that a shorter timeframe for felonies that do not involve fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance is more consistent with Congressional intent to provide relief to small businesses and also promotes the important policies underlying the First Step Act of 2018 (Pub. L. 115–391). Therefore, Part III.2.b.iii. of the First Interim Final Rule (85 FR 20811, 20812) is revised to read as follows:

b. Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

* * * * *

iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year; or

* * * * *

2. Additional Information

SBA may provide further guidance, if needed, through SBA notices which will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

[1] *See https://www.sba.gov/document/support—faq-lenders-borrowers.*

[2] *See https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement Sections 1102 and 1106 of the CARES Act and the Flexibility Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive effect but does have a limited retroactive effect consistent with section 3(d) of the Flexibility Act.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will require modification to the existing PPP information collection that is approved under OMB Control Number 3245–0407 as an emergency request until October 31, 2020. As discussed above, this rule amends the PPP eligibility requirements regarding certain felony charges. As a result of these amendments, conforming changes will be made to Question 6 of Form 2483, *Borrower Application Form,* and Section H of Form 2484, *Lender Application Form.* SBA will submit the revisions to these forms to the Office of Management and Budget for approval.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business Administration's Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.1. p.9.* Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, Section 1114.

Jovita Carranza,

Administrator.

[FR Doc. 2020–13130 Filed 6–16–20; 2:00 pm]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 772

[Docket No. 200611–0158]

RIN 0694–AI06

Release of "Technology" to Certain Entities on the Entity List in the Context of Standards Organizations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: Huawei Technologies Co., Ltd. (Huawei) and 114 of its foreign affiliates were added to the Entity List by the Bureau of Industry and Security (BIS) in 2019, but continue to participate in many important international standards organizations in which U.S. companies also participate. As international standards serve as the building blocks for product development and help ensure functionality, interoperability, and safety of the products, it is important to U.S. technological leadership that U.S. companies be able to work in these bodies in order to ensure that U.S. standards proposals are fully considered. Since Huawei's addition to the Entity List, organizations have consequently sought clarity about U.S. industry participation in standards development. BIS is amending the Export Administration Regulations (EAR) to authorize the release of certain technology to Huawei and its affiliates on the Entity List without a license if such release is made for the purpose of contributing to the revision or development of a "standard" in a "standards organization." For the purpose of this interim final rule, a "standard" is as defined in Office of Management and Budget (OMB) Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, and a "standards organization," is the equivalent of a "voluntary consensus standards body" as defined in Office of Management and Budget (OMB) Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities. This interim final rule does not change the assessment of whether "technology" is subject to the EAR. BIS is requesting comments on the impact of these revisions.

DATES: This rule is effective June 18, 2020. Submit comments on or before August 17, 2020.

ADDRESSES: You may submit comments, identified by docket number BIS 2020–0017 or RIN 0694–AI06, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referencing the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC." Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. The corresponding non-confidential version of those comments must be clearly marked "PUBLIC." The file name of the non-confidential version should begin with the character "P." The "BC" and "P" should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a "BC" or "P" will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Kramer, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce. Phone: (202) 482–2440; Fax (202) 482–3355; Email: *Susan.Kramer@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) has continued to receive questions regarding the applicability of the Export Administration Regulations (15 CFR 730–774) (EAR) in the context of standards setting or development in light of the addition of Huawei Technologies Co., Ltd. (Huawei) and its 114 non-U.S. affiliates to the Entity List (Supplement No. 4 to part 744 of the EAR) (see 84 FR 22961 (May 21, 2019) and 84 FR 43493 (August 21, 2019)) and the Temporary General License (TGL). The TGL was published on May 22, 2019 (84 FR 23468), extended and amended through a final rule published on August 21, 2019 (84 FR 43487), and is currently extended through August 13, 2020 in a final rule published on May 18, 2020 (85 FR 29610). On August 19, 2019, BIS posted a "General Advisory Opinion Concerning Prohibited Activities in the Standards Setting or Development Context When a Listed Entity Is Involved" to the BIS website that addressed the applicability of § 734.7 of the EAR (Published) (15 CFR 734.7) to certain types of releases. With publication of this rule, that advisory opinion is rescinded, and BIS has removed the guidance from its website. This rule removes certain license requirements imposed by the original listing, removing the need to determine the application of controls to those releases.

The assessment of whether "technology" is subject to the EAR is the same regardless of whether a person on the Entity List is a member of, or participates in, the standards setting or development group or body. Because of the importance of U.S. participation and leadership in standards organizations, and in view of the consistent concerns expressed with Huawei's participation therein, this rule revises the Entity List to authorize certain releases of technology without a license. Specifically, technology subject to the EAR that is designated as EAR99 or controlled on the Commerce Control List only for anti-terrorism (AT) reasons may be released to members of a standards organization without a license, including Huawei, if released for the purpose of contributing to the revision or development of a standard. This interim final rule adopts in § 772.1 (Definitions) the definitions of "standard" and "standards organization" from the Office of Management and Budget (OMB) Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity

Assessment Activities (81 FR 4673 (January 27, 2016), available at *https://www.nist.gov/system/files/revised_circular_a-119_as_of_01-22-2016.pdf.*

To implement these changes, this interim final rule revises ninety-three entries, which list Huawei and its 114 non-U.S. affiliates, on the Entity List. Specifically, BIS is modifying the existing ninety-three entries for Huawei and its 114 non-U.S. affiliates by changing the text in the Licensing Requirement column for these entries from ''For all Items subject to the EAR (See § 744.11 of the EAR)'' to ''For all items subject to the EAR (see § 744.11 of the EAR), EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).'' This interim final rule also adds definitions of ''standard'' and ''standards organization'' to § 772.1 of the EAR (Definitions). Note that even when this license requirement does not apply, items that are ''subject to the EAR'' are still subject to recordkeeping or other applicable EAR requirements (see, *e.g.,* § 762.1 of the EAR).

Request for Comments

BIS welcomes comments on the impact of these changes. Instructions for the submission of comments, including comments that contain business confidential information, are found in the **ADDRESSES** section of this interim final rule.

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 (previously, 50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or 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 interim final rule has been designated as not significant for purposes of Executive Order 12866. Since the rule is non-significant per Executive Order 12866, it is not subject to the requirements of Executive Order 13771.

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 interim final rule involves the collection currently approved by OMB under the BIS control number: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications. The information collection under control number 0694–0088, carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. 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.

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 ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements, including prior notice and the opportunity for public comment.

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

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 772

Exports.

Accordingly, parts 744 and 772 of the Export Administration Regulations (15 CFR parts 730 through 774) are 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 in the table by revising:
■ a. The Argentina entity, ''Huawei Tech Investment Co., Ltd. Argentina''.
■ b. The Australia entity, ''Huawei Technologies (Australia) Pty Ltd.''.
■ c. The Bahrain entity, ''Huawei Technologies Bahrain''.
■ d. The Belarus entity, ''Bel Huawei Technologies LLC''.
■ e. The Belgium entity, ''Huawei Technologies Research & Development Belgium NV''.
■ f. The Bolivia entity, ''Huawei Technologies (Bolivia) S.R.L.''.
■ g. The Brazil entity, ''Huawei do Brasil Telecomunicacoes Ltda''.
■ h. The Burma entity, ''Huawei Technologies (Yangon) Co., Ltd.''.
■ i. The Canada entity, ''Huawei Technologies Canada Co., Ltd''.
■ j. The Chile entity, ''Huawei Chile S.A.''.
■ k. The China entities, ''Beijing Huawei Digital Technologies Co., Ltd.'', ''Chengdu Huawei High-Tech Investment Co., Ltd.'', ''Chengdu Huawei Technologies Co., Ltd.'', ''Dongguan Huawei Service Co., Ltd.'', ''Dongguan Lvyuan Industry Investment

Co., Ltd.'', ''Gui'an New District Huawei Investment Co., Ltd.'', ''Hangzhou Huawei Digital Technology Co., Ltd.'', ''HiSilicon Optoelectronics Co., Ltd.'', ''HiSilicon Technologies Co., Ltd (HiSilicon)'', ''HiSilicon Tech (Suzhou) Co., Ltd.'', ''Huawei Device Co., Ltd.'', ''Huawei Device (Dongguan) Co., Ltd.'', ''Huawei Device (Shenzhen) Co., Ltd.'', ''Huawei Machine Co., Ltd.'', ''Huawei Software Technologies Co., Ltd.'', ''Huawei Technical Service Co., Ltd.'', ''Huawei Technologies Co., Ltd.'', ''Huawei Technologies Service Co., Ltd.'', ''Huawei Training (Dongguan) Co., Ltd.'', ''Huayi internet Information Service Co., Ltd.'', ''Hui Tong Business Ltd.,'', ''North Huawei Communication Technology Co., Ltd.'', ''Shanghai Haisi Technology Co., Ltd.'', ''Shanghai HiSilicon Technologies Co., Ltd.,'', ''Shanghai Mossel Trade Co., Ltd.'', ''Shenzhen HiSilicon Technologies Co., Electrical Research Center'', ''Shenzhen Huawei Technical Services Co., Ltd.'', ''Shenzhen Huawei Terminal Commercial Co., Ltd.'', ''Shenzhen Huawei Training School Co., Ltd.'', ''Shenzhen Huayi Loan Small Loan Co., Ltd.'', ''Shenzhen Legrit Technology Co., Ltd.'', ''Shenzhen Smartcom Business Co., Ltd.'', ''Suzhou Huawei Investment Co., Ltd.'', ''Wuhan Huawei Investment Co., Ltd.'', ''Xi'an Huawei Technologies Co., Ltd.'', and ''Xi'an Ruixin Investment Co., Ltd.''.

■ l. The Costa Rica entity, ''Huawei Technologies Costa Rica SA''.

■ m. The Cuba entity, ''Huawei Cuba''.

■ n. The Denmark entity, ''Huawei Denmark''.

■ o. The Egypt entity, ''Huawei Technology''.

■ p. The France entity, ''Huawei France''.

■ q. The Germany entity, ''Huawei Technologies Deutschland GmbH''.

■ r. The Hong Kong entities, ''Hua Ying Management Co. Limited'', ''Huawei Device (Hong Kong) Co., Limited'', ''Huawei International Co., Limited'', ''Huawei Tech. Investment Co., Limited'', ''Huawei Technologies Co. Ltd.'', and ''Smartcom (Hong Kong) Co., Limited''.

■ s. The India entity, ''Huawei Technologies India Private Limited''.

■ t. The Indonesia entity, ''Huawei Tech Investment, PT''.

■ u. The Italy entities, ''Huawei Italia'', and ''Huawei Milan Research Institute''.

■ v. The Jamaica entity, ''Huawei Technologies Jamaica Company Limited''.

■ w. The Japan entity, ''Huawei Technologies Japan K.K.''.

■ x. The Jordan entity, ''Huawei Technologies Investment Co. Ltd.''.

■ y. The Kazakhstan entity, ''Huawei Technologies LLC Kazakhstan''.

■ z. The Lebanon entity, ''Huawei Technologies Lebanon''.

■ aa. The Madagascar entity, ''Huawei Technologies Madagascar Sarl''.

■ bb. The Mexico entity, ''Huawei Technologies De Mexico S.A.''.

■ cc. The Netherlands entity, ''Huawei Technologies Coöperatief U.A.''.

■ dd. The New Zealand entity, ''Huawei Technologies (New Zealand) Company Limited''.

■ ee. The Oman entity, ''Huawei Tech Investment Oman LLC''.

■ ff. The Pakistan entity, ''Huawei Technologies Pakistan (Private) Limited''.

■ gg. The Panama entity, ''Huawei Technologies Cr Panama S.A''.

■ hh. The Paraguay entity, ''Huawei Technologies Paraguay S.A.''.

■ ii. The Portugal entity, ''Huawei Technology Portugal''.

■ jj. The Qatar entity, ''Huawei Tech Investment Limited''.

■ kk. The Romania entity, ''Huawei Technologies Romania Co., Ltd.''.

■ ll. The Russia entity, ''Huawei Russia''.

■ mm. The Singapore entity, ''Huawei International Pte. Ltd.''.

■ nn. The South Africa entity, ''Huawei Technologies South Africa Pty Ltd.''.

■ oo. The Sri Lanka entity, ''Huawei Technologies Lanka Company (Private) Limited''.

■ pp. The Sweden entity, ''Huawei Sweden''.

■ qq. The Switzerland entity, ''Huawei Technologies Switzerland AG''.

■ rr. The Taiwan entity, ''Xunwei Technologies Co., Ltd.''

■ ss. The Thailand entity, ''Huawei Technologies (Thailand) Co.''.

■ tt. The United Kingdom entities, ''Centre for Integrated Photonics Ltd.'', ''Huawei Global Finance (UK) Limited'', ''Huawei Technologies (UK) Co., Ltd.'', ''Proven Glory'', and ''Proven Honour''.

■ uu. The Vietnam entities, ''Huawei Technologies (Vietnam) Company Limited'' and ''Huawei Technology Co. Ltd.''.

The revisions read as follows:

Supplement No. 4 to Part 744—Entity List

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Country	Entity	License requirement	License review policy	**Federal Register** citation
* *	*	* *	*	* *
ARGENTINA	Huawei Tech Investment Co., Ltd. Argentina, Av. Leandro N. Alem 815, C1054 CABA, Argentina.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	* *	*	* *
AUSTRALIA	Huawei Technologies (Australia) Pty Ltd., L6 799 Pacific Hwy., Chatswood, New South Wales, 2067, Australia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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BAHRAIN	Huawei Technologies Bahrain, Building 647 2811 Road 2811, Block 428, Muharraq, Bahrain.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	*	* *	*	* *
BELARUS	Bel Huawei Technologies LLC, a.k.a., the following one alias, —BellHuawei Technologies LLC. 5 Dzerzhinsky Ave., Minsk, 220036, Belarus.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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BELGIUM	Huawei Technologies Research & Development Belgium NV, Technologiepark 19, 9052 Zwijnaarde Belgium.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	Federal Register citation
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*	*	* *	* *	* *
BOLIVIA	Huawei Technologies (Bolivia) S.R.L., La Paz, Bolivia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
BRAZIL	Huawei do Brasil Telecomunicacões Ltda, Av James Clerk Maxwell, 400 Cond. Techno Park, Campinas 13069380, Brazil.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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BURMA	Huawei Technologies (Yangon) Co., Ltd., Yangon, Burma.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
CANADA	*	* *	* *	*
	Huawei Technologies Canada Co., Ltd., Markham, ON, Canada.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
CHILE	Huawei Chile S.A., Santiago, Chile.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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CHINA, PEOPLE'S REPUBLIC OF.				
	Beijing Huawei Digital Technologies Co., Ltd., Beijing, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Chengdu Huawei High-Tech Investment Co., Ltd., Chengdu, Sichuan, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Chengdu Huawei Technologies Co., Ltd., Chengdu, Sichuan, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	*	* *	*	* *

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Dongguan Huawei Service Co., Ltd.,Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Dongguan Lvyuan Industry Investment Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
*	* *	*	*	*
	Gui'an New District Huawei Investment Co., Ltd., Guiyang, Guizhou, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Hangzhou Huawei Digital Technology Co., Ltd., Hangzhou, Zhejiang, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	HiSilicon Optoelectronics Co., Ltd., Wuhan, Hubei, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	HiSilicon Technologies Co., Ltd (HiSilicon), Bantian Longgang District, Shenzhen, 518129, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	HiSilicon Tech (Suzhou) Co., Ltd., Suzhou, Jiangsu, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Device Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Device (Dongguan) Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Device (Shenzhen) Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Machine Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Software Technologies Co., Ltd., Nanjing, Jiangsu, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Technical Service Co., Ltd., China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Technologies Co., Ltd., a.k.a., the following one alias, —Shenzhen Huawei Technologies, and to include the following addresses and the following 22 affiliated entities: Addresses for Huawei Technologies Co., Ltd.: Bantian Huawei Base, Longgang District, Shenzhen, 518129, China; *and* No. 1899 Xi Yuan Road, High-Tech West District, Chengdu, 611731; *and* C1, Wuhan Future City, No. 999 Gaoxin Ave., Wuhan, Hebei Province; *and* Banxuegang Industrial Park, Buji Longgang, Shenzhen, Guangdong, 518129, China; *and* R&D Center, No. 2222, Golden Bridge Road, Pu Dong District, Shanghai, China. Affiliated entities: *Beijing Huawei Longshine Information Technology Co., Ltd.,* a.k.a., the following one alias: —Beijing Huawei Longshine, to include the following subordinate. Q80–3–25R, 3rd Floor, No. 3, Shangdi Information Road, Haidian District, Beijing, China. *Hangzhou New Longshine Information Technology Co., Ltd.,* Room 605, No. 21, Xinba, Xiachang District, Hangzhou, China. *Hangzhou Huawei Communication Technology Co., Ltd.,* Building 1, No. 410, Jianghong Road, Changhe Street, Binjiang District, Hangzhou, Zhejiang, China. *Hangzhou Huawei Enterprises,* No. 410 Jianghong Road, Building 1, Hangzhou, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi)[1], and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Digital Technologies (Suzhou) Co., Ltd., No. 328 Xinhu Street, Building A3, Suzhou (Huawei R&D Center, Building A3, Creative Industrial Park, No. 328, Xinghu Street, Suzhou), Suzhou, Jiangsu, China.			
	Huawei Marine Networks Co., Ltd., a.k.a., the following one alias: —Huawei Marine. Building R4, No. 2 City Avenue, Songshan Lake Science & Tech Industry Park, Dongguan, 523808, *and* No. 62, Second Ave., 5/F–6/F, TEDA, MSD–B2 Area, Tianjin Economic and Technological Development Zone, Tianjin, 300457, China.			
	Huawei Mobile Technology Ltd., Huawei Base, Building 2, District B, Shenzhen, China.			
	Huawei Tech. Investment Co., U1 Building, No. 1899 Xiyuan Avenue, West Gaoxin District, Chengdu City, 611731, China.			
	Huawei Technology Co., Ltd. Chengdu Research Institute, No. 1899, Xiyuan Ave., Hi-Tech Western District, Chengdu, Sichuan Province, 610041, China.			
	Huawei Technology Co., Ltd. Hangzhou Research Institute, No. 410, Jianghong Rd., Building 4, Changhe St., Binjiang District, Hangzhou, Zhejiang Province, 310007, China.			
	Huawei Technologies Co., Ltd. Beijing Research Institute, No. 3, Xinxi Rd., Huawei Building, ShangDi Information Industrial Base, Haidian District, Beijing, 100095, China; *and* No. 18, Muhe Rd., Building 1–4, Haidian District, Beijing, China.			
	Huawei Technologies Co., Ltd. Material Characterization Lab, Huawei Base, Bantian, Shenzhen, 518129, China.			
	Huawei Technologies Co., Ltd. Xi'an Research Institute, National Development Bank Building (Zhicheng Building), No. 2, Gaoxin 1st Road, Xi'an High-tech Zone, Xi'an, China.			
	Huawei Terminal (Shenzhen) Co., Ltd., Huawei Base, B1, Shenzhen, China.			

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Nanchang Huawei Communication Technology, No. 188 Huoju Street, F10–11, Nanchang, China.			
	Ningbo Huawei Computer & Net Co., Ltd., No. 48 Daliang Street, Ningbo, China.			
	Shanghai Huawei Technologies Co., Ltd., R&D Center, No. 2222, Golden Bridge Road, Pu Dong District, Shanghai, 286305 Shanghai, China, China.			
	Shenzhen Huawei Anjiexin Electricity Co., Ltd., a.k.a., the following one alias: —Shenzhen Huawei Agisson Electric Co., Ltd. Building 2, Area B, Putian Huawei Base, Longgang District, Shenzhen, China; *and* Huawei Base, Building 2, District B, Shenzhen, China.			
	Shenzhen Huawei New Technology Co., Ltd., Huawei Production Center, Gangtou Village, Buji Town, Longgang District, Shenzhen, China.			
	Shenzhen Huawei Technology Service, Huawei Base, Building 2, District B, Shenzhen, China.			
	Shenzhen Huawei Technologies Software, Huawei Base, Building 2, District B, Shenzhen, China.			
	Zhejiang Huawei Communications Technology Co., Ltd., No. 360 Jiangshu Road, Building 5, Hangzhou, Zhejiang, China.			
	Huawei Technologies Service Co., Ltd., Langfang, Hebei, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Training (Dongguan) Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huayi Internet Information Service Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Hui Tong Business Ltd., Huawei Base, Electrical Research Center, Shenzhen, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	North Huawei Communication Technology Co., Ltd., Beijing, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Shanghai Haisi Technology Co., Ltd., Shanghai, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Shanghai HiSilicon Technologies Co., Ltd., Room 101, No. 318, Shuixiu Road, Jinze Town (Xiqi), Qingpu District, Shanghai, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Shanghai Mossel Trade Co., Ltd., Shanghai, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Shenzhen HiSilicon Technologies Co., Electrical Research Center, Huawei Base, Shenzhen, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Shenzhen Huawei Technical Services Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Shenzhen Huawei Terminal Commercial Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Shenzhen Huawei Training School Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Shenzhen Huayi Loan Small Loan Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Shenzhen Legrit Technology Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Shenzhen Smartcom Business Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Suzhou Huawei Investment Co., Ltd., Suzhou, Jiangsu, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Wuhan Huawei Investment Co., Ltd., Wuhan, Hubei, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Xi'an Huawei Technologies Co., Ltd., Xi'an, Shaanxi, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Xi'an Ruixin Investment Co., Ltd., Xi'an, Shaanxi, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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COSTA RICA	Huawei Technologies Costa Rica SA, a.k.a., the following one alias: —Huawei Technologies Costa Rica Sociedad Anonima. S.J, Sabana Norte, Detras De Burger King, Edif Gru, Po Nueva, San Jose, Costa Rica.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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CUBA	Huawei Cuba, Cuba.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
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DENMARK	Huawei Denmark, Vestre Teglgade 9, Kobenhavn Sv, Hovedstaden, 2450, Denmark.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
EGYPT	* * * * * *			
	Huawei Technology, Cairo, Egypt.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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FRANCE	* * * * * *			
	Huawei France, a.k.a., the following one alias: —Huawei Technologies France SASU. 36–38, quai du Point du Jour, 92659 Boulogne-Billancourt cedex, France.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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GERMANY	* * * * * *			

Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei Technologies Deutschland GmbH, Germany.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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HONG KONG ...	* * * * * * *			
	Hua Ying Management Co. Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Device (Hong Kong) Co., Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei International Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Tech. Investment Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Technologies Co. Ltd., Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Smartcom (Hong Kong) Co., Limited, Sheung Wan, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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INDIA	*	* *	*	* *
	Huawei Technologies India Private Limited, a.k.a., the following one alias: —Huawei Technologies India Pvt., Ltd. Level-¾, Leela Galleria, The Leela Palace, No. 23, Airport Road, Bengaluru, 560008, India; *and* SYNO 37, 46,45/3,45/4 ETC KNO 1540, Kundalahalli Village Bengaluru Bangalore KA 560037 India.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
INDONESIA	Huawei Tech Investment, PT, Bri Ii Building 20Th Floor, Suite 2005 , Jl. Jend., Sudirman Kav. 44–46, Jakarta, 10210, Indonesia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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ITALY	Huawei Italia, Via Lorenteggio, 240, Tower A, 20147 Milan, Italy.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Milan Research Institute, Milan, Italy.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
JAMAICA	Huawei Technologies Jamaica Company Limited, Kingston, Jamaica.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
JAPAN	Huawei Technologies Japan K.K., Japan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
JORDAN	Huawei Technologies Investment Co. Ltd., Amman, Jordan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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KAZAKHSTAN	* * *	* * *	* * *	* * *
	Huawei Technologies LLC Kazakhstan, 191 Zheltoksan St., 5th floor, 050013, Bostandyk, District of Almaty, Republic of Kazakhstan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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LEBANON	* * *	* * *	* * *	* * *
	Huawei Technologies Lebanon, Beirut, Lebanon.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
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MADAGASCAR	Huawei Technologies Madagascar Sarl, Antananarivo, Madagascar.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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MEXICO	Huawei Technologies De Mexico S.A., Avenida Santa Fé No. 440, Torre Century Plaza Piso 15, Colonia Santa Fe, Delegación Cuajimalpa de Morelos, C.P. 05348, Distrito Federal, CDMX, Mexico; *and* Laza Carso, Torre Falcón, Lago Zurich No. 245, Piso 18, Colonia Ampliacion Granda, Delegación Miguel Hidalgo, CDMX, Mexico.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
NETHERLANDS	*	* *	*	* *
	Huawei Technologies Coöperatief U.A., Netherlands.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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NEW ZEALAND	Huawei Technologies (New Zealand) Company Limited, 80 Queen Street, Auckland Central, Auckland, 1010, New Zealand.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
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OMAN	Huawei Tech Investment Oman LLC, Muscat, Oman.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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PAKISTAN	*	* *	*	* *
	Huawei Technologies Pakistan (Private) Limited, Islamabad, Pakistan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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PANAMA	Huawei Technologies Cr Panama S.A, Ave. Paseo del Mar, Costa del Este Torre MMG, Piso 17 Ciudad de Panamá, Panama.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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PARAGUAY	Huawei Technologies Paraguay S.A., Asuncion, Paraguay.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
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PORTUGAL	Huawei Technology Portugal, Avenida Dom João II, 51B—11°.A 1990–085 Lisboa, Portugal.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
QATAR	Huawei Tech Investment Limited, Doha, Qatar.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
ROMANIA	Huawei Technologies Romania Co., Ltd., Ion Mihalache Blvd, No. 15–17,1st District, 9th Floor of Bucharest Tower center, Bucharest, Romania.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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RUSSIA	*	* *	*	* *
	Huawei Russia, Business-Park "Krylatsky Hills", 17 bldg. 2, Krylatskaya Str., Moscow 121614, Russia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
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SINGAPORE	*	* *	*	* *
	Huawei International Pte. Ltd., Singapore.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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SOUTH AFRICA	*	* *	*	* *
	Huawei Technologies South Africa Pty Ltd., 128 Peter St Block 7 Grayston Office Park, Sandton, Gauteng, 1682, South Africa.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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SRI LANKA	Huawei Technologies Lanka Company (Private) Limited, Colombo, Sri Lanka.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
SWEDEN	*	* *	*	* *

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Sweden, Skalholtsgatan 9–11 Kista, 164 40 Stockholm, Sweden.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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SWITZERLAND				
	Huawei Technologies Switzerland AG, Liebefeld, Bern, Switzerland.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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TAIWAN	* * * * * * *			
	Xunwei Technologies Co., Ltd., Taipei, Taiwan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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THAILAND	* * * * * * *			

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Technologies (Thailand) Co., 87/1 Wireless Road, 19th Floor, Capital Tower, All Seasons Place, Pathumwan, Bangkok, 10330, Thailand.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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UNITED KINGDOM.	* * * * * * *			
	Centre for Integrated Photonics Ltd., B55 Adastral Park, Pheonix House, Martlesham Heath, Ipswich, IP5 3RE United Kingdom.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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	Huawei Global Finance (UK) Limited, Great Britain.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Technologies (UK) Co., Ltd., a.k.a., the following one alias: —Huawei Software Technologies Co. Ltd. 300 South Oak Way, Green Park, Reading, RG2 6UF; *and* 6 Mitre Passage, SE 10 0ER, United Kingdom.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

Country	Entity	License requirement	License review policy	**Federal Register** citation
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	Proven Glory, British Virgin Islands	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Proven Honour, British Virgin Islands.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
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VIETNAM	Huawei Technologies (Vietnam) Company Limited, Hanoi, Vietnam.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.
	Huawei Technology Co. Ltd., Hanoi, Vietnam.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR [INSERT FR PAGE NUMBER], 6/18/20.

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PART 772—[AMENDED]

■ 3. The authority citation for part 772 is revised 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Section 772.1 is amended by adding the definitions of ''Standard'' and ''Standards organization'' in alphabetical order to read as follows:

§ 772.1 Definitions of Terms As Used In the Export Administration Regulations (EAR).

* * * * *

Standard. This term is equivalent to ''standard'' or ''technical standard'' as defined in Office of Management and Budget Circular A–119 (Rev. 2016) (81 FR 4673 (Jan. 27, 2016)), ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'' section 2.a, available at *https://www.nist.gov/system/files/revised_circular_a-119_as_of_01-22-2016.pdf.*

Standards organization. This term is equivalent to ''voluntary consensus standards body,'' as defined in Office of Management and Budget Circular A–119 (Rev. 2016) (81 FR 4673 (Jan. 27, 2016)), ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'' section 2.e, available at *https://www.nist.gov/system/files/revised_circular_a-119_as_of_01-22-2016.pdf.*

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Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020–13093 Filed 6–16–20; 11:15 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2019–0399; FRL–10009–52–Region 2]

Approval of Air Quality Implementation Plans; New Jersey; Gasoline Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New Jersey State Implementation Plan (SIP) for the ozone National Ambient Air Quality Standards which includes regulatory amendment revisions relevant to the New Jersey Department of Environmental Protection's requirements for Stage I and Stage II vapor recovery systems at gasoline dispensing facilities. New Jersey's comprehensive submittal also included changes in amendments for its air permitting program and t-butyl acetate emission reporting requirements, however, the EPA will be acting on these amendments under a separate action.

DATES: The final rule is effective on July 20, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2019–0399. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Longo, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3565, or by email at *longo.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The EPA is approving a revision to the State of New Jersey's (the State) SIP for attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS). On November 26, 2019 (84 FR 65063), the EPA proposed to approve the State's November 29, 2017, SIP revision, which consists of amendments to the New Jersey Administrative Code (N.J.A.C.) 7:27–16.3, ''Gasoline Transfer Operations'' (the Rule). Under these amendments, certain gasoline dispensing facilities (GDFs) must make upgrades to Stage I gasoline vapor controls and decommission Stage II gasoline vapor systems. Under the Rule, Stage I controls are required for tank breathing and refueling systems, with some exceptions for single-point vapor balance systems and rotatable adapters. The Rule allows GDFs with Stage I controls one year to install a California Air Resources Board-certified Stage I enhanced vapor recovery pressure/vacuum relief vent valve and seven years to comply with the remaining equipment requirements. The Rule requires GDFs with existing Stage II systems that are incompatible with onboard refueling vapor recovery (ORVR) systems to be decommissioned on or before December 23, 2020, with a demonstration that such removal is consistent with the Clean Air Act and the EPA Guidance.

Under Clean Air Act (CAA) section 202(a)(6), Congress provided authority to the EPA to allow states to remove (*e.g.,* decommission) Stage II vapor recovery programs from their SIPs, through a SIP revision, after the EPA finds that ORVR systems are in widespread use throughout the motor vehicle fleet nationwide. On May 16, 2012, the EPA determined that ORVR systems are in widespread use nationwide for control of gasoline emissions during refueling of vehicles at GDFs. *See* 77 FR 28772 (May 16, 2012) (Widespread Use Rule). On August 7, 2012, EPA issued policy and technical guidance, *Guidance on Removing Stage II Gasoline Refueling Vapor Recovery from State Implementation Plans and Assessing Comparable Measures,* to provide information and tools for states to use to develop Stage II program phase-out plans and to address the separate ''comparable measures'' requirement in CAA section 184(b)(2) that applies to states located in the Ozone Transport Region (OTR), such as New Jersey (EPA Guidance).[1]

The Widespread Use Rule allowed, but did not require, states to discontinue Stage II vapor recovery programs. States are free to allow GDFs to continue to use existing ORVR-compatible Stage II systems and encouraged to ensure that facilities maintain the Stage II systems, including compliance with required testing, to ensure proper working order. New Jersey's Rule implements this recommendation and requires the installation of enhanced conventional dripless nozzles and low permeation

[1] EPA. 2012. ''Guidance on Removing Stage II Gasoline Refueling Vapor Recovery Programs from State Implementation Plans and Assessing Comparable Measures,'' (''EPA Guidance''). See *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20120807_page_stage2_removal_guidance.pdf.*

hoses as part of decommissioning or as maintenance of existing Stage II systems.

II. The EPA's Evaluation of New Jersey's Submittals

The EPA's approval is based on the conclusion that the State's November 29, 2017, SIP revision conforms with the EPA Guidance by demonstrating widespread use of the ORVR-equipped vehicles in the State's vehicle fleet and that the Rule would reduce emissions of gasoline vapors thereby reducing emissions of volatile organic compounds (VOC). The EPA has determined the following: (1) The State has demonstrated that decommissioning Stage II systems would not lead to an increase in vehicle refueling emissions and would be consistent with non-interference requirements under CAA section 110(l); (2) any temporary emissions increase that may result from phasing out Stage II controls during the years 2017 to 2021 would be *de minimis* thus, the Rule satisfies the ''comparable measures'' requirement under CAA section 184(b)(2); and (3) the compliance date for the requirement to decommission Stage II Systems and remove the Stage II program from the SIP is well within the *de minimis* crossover period, satisfying the anti-backsliding requirements under CAA section 193. In this case, the State's analysis showed that the widespread use crossover period is the period between mid-2017 and mid-2021; this timeframe coincides with the Rule's compliance date for decommissioning Stage II systems of ''on or about December 23, 2020.'' For a detailed explanation and evaluation of the SIP revision, refer to the proposed rulemaking. *See* 84 FR 65063, November 26, 2019.

III. Comments Received in Response to the EPA's Proposed Action

In response to the EPA's November 26, 2019, proposed approval of the revisions to the New Jersey SIP for the ozone NAAQS, which consists of amendments to N.J.A.C. 7:27–16.3, ''Gasoline Transfer Operations,'' the EPA received two public comments from two anonymous commenters during the 30-day public comment period. The EPA has evaluated the comments, as discussed below, and has determined that New Jersey's SIP revision addressing the ozone NAAQS is consistent with the CAA and, therefore, the EPA is approving New Jersey's SIP revision. Following is a summary of the comments and the EPA's response. The full text of the comments may also be viewed under Docket ID Number EPA–R02–OAR–2019–0399 on the *http://www.regulations.gov* website.

Comment: Although I agree with the action the EPA is taking here more should be done to explain why New Jersey only evaluated five of the 21 counties in the state. If New Jersey were to evaluate all 21 counties what changes would occur to the cross-over period? EPA should evaluate all counties not just a small sample of the state. This is especially important because the entire state of New Jersey is one giant non-attainment area and has been for decades. Knowing when exactly the cross-over period happens in the entire state would maximize the benefits of the remaining stage II GDFs while allowing the state to remove the program responsibly.

Response: The EPA appreciates that the commenter does not object to the EPA's proposed action to approve New Jersey's SIP. By approving the current SIP revision, the EPA concludes that the State's use of a representative sample of five counties (*i.e.,* Essex, Middlesex, Camden, Ocean, and Salem), instead of the total twenty-one counties that make up the State of New Jersey, in its widespread use analysis is consistent with the EPA Guidance which did not specify the quantity of state-wide data needed to determine widespread use. The EPA believes the State's estimate of the cross-over period (*i.e.,* the time period over which the benefits of the Stage II controls are outweighed by its incompatibility with ORVR systems) would not meaningfully change if New Jersey included any additional counties or all of the State's 21 counties in the analysis. For the reasons outlined below, the State's selection of the five counties used in the analysis sufficiently supports the State's proposed revisions to remove Stage II control requirements from the State Implementation Plan.

As discussed in the proposed rulemaking, New Jersey's selection is partially based on the results of the State-administered statewide survey of GDF in 2014 that found the five counties to be representative and cover a wide geographic cross-section of the State. The New Jersey Department of Environmental Protection (NJDEP) analyzed vehicle refueling data ''for the years 2014 and 2018, for the five counties, which represent urban and rural areas of NJ, in both of New Jersey's ozone nonattainment areas. The various vehicle mixes in these counties cover the range of ORVR-equipped vehicle fractions in the New Jersey fleet.'' [2] The State deemed the five counties used in the analysis to cover vehicle use patterns for restricted and unrestricted access road types (*e.g.,* express roadways and side roads) within the State. They also span rural, suburban, and urban ozone non-attainment areas; coastal and inland areas; and the major directional regions of the State.

The NJDEP found that ''. . . in Appendix A, the variation in the crossover dates between the five counties is only 8–10 months, while the variation in the crossover dates between the range of percentage of vacuum assist throughput is over 3 years. Therefore, the variation due to differences between counties is small compared to the variation due to percentage of gasoline dispensed via vacuum assist versus balanced systems. Extension of the analysis to additional counties would not increase overall accuracy of the crossover date estimates because crossover date accuracy is being driven by other inputs such as the percentage of gasoline dispensed via vacuum assist versus balanced systems.'' *See,* footnote 2. EPA is not aware of, and the commenter did not assert or provide, any information suggesting that the State's selection of the counties used in the analysis omits any area types or any significant vehicle use patterns occurring in New Jersey. Consequently, the EPA finds that the State's analysis is consistent with EPA guidance and is acceptable.

As stated above, the State's widespread use analysis reveals that the county-specific ORVR system-equipped vehicle turnover rates (*i.e.,* the rate at which ORVR system-equipped vehicles are deployed) have very little influence on the estimate of the cross-over period (on the order of 2–4 months in this analysis).[3] On the other hand, the State's analysis shows that other factors of Equation 1 in the EPA Guidance, which EPA suggests should be used to derive the cross-over period, have a much greater effect on the cross-over period estimate. One such factor is the difference between the gasoline throughput attributable to ORVR vehicles versus that attributable to non-ORVR vehicles. The EPA Guidance recommends that states use either of two vacuum-assist Stage II in-use control efficiency (*i.e.,* gasoline

[2] Email correspondence from NJDEP dated Jan. 8, 2020, on file with EPA.

[3] New Jersey Department of Environmental Protection, Appendix A Phase II SIP Equations 7–3–17, Crossover Summary tab.

throughput) scenarios [4] in the widespread use analysis. For New Jersey, depending on the scenario used, the cross-over period could vary as much as 39–43 months, a level of variability that dwarfs the influence of any variability due to the county-specific ORVR turnover rate (in this case, 2–4 months). Despite the influence of in-use control efficiency on the calculation of the cross-over period, the State's ability to derive this information is limited. As long as such high uncertainty remains for this factor, and other factors that contribute more to the cross-over estimate, adding more counties to the vehicle turnover analysis would not be insightful. Indeed, EPA recognizes the difficulty in achieving accuracy of the in-use control efficiency derivation, and the EPA Guidance's suggested methodology provides the flexibility for states to account for this uncertainty.

Ultimately, under the widespread use determination, the EPA reviews SIP revisions on a case-by-case basis for compliance with the criteria set forth in the CAA sections 110(l), 193 and 184(b)(2), with due consideration of the submitting state's support for the values used in its calculations and any related emissions inventory and/or air quality analyses it presents. Here, the State has shown that its estimate of the cross over period accords with the methods outlined in the EPA Guidance and satisfies the referenced statutory requirements.

Comment: To encourage entities to both participate and follow the proposed guidelines, a potential tax credit, or some form or credit for the entity may want to be considered. If such an approach were to be implemented, it would likely encourage the entities to participate in the program as well as assist in their continuing to follow the guidelines put forth by the proposed regulation.

Response: The EPA appreciates the suggestion of additional incentives aimed at achieving higher compliance rates; however, the actions proposed are outside the scope of the current rulemaking or EPA's authority, which is to ensure that the State has the authority to implement and enforce the rule proposed. Economic incentives are matters for the State to consider if it chooses to do so. New Jersey entities subject to the Rule, as approved into the SIP, are required to comply with the provisions outlined therein regardless of whether financial or other economic incentives exist. EPA believes that GDFs are sufficiently motivated to comply with the Rule, because the State has an inspection program and violations would result in penalty assessments.

The State inspection program has stringent requirements to ensure compliance under which only a licensed contractor is authorized to decommission a Stage II system. Moreover, owners and operators of GDFs must notify the State of any decommissioning activity 14 days prior to a site's initiating any such activity.[5] Additionally, within 14-days after completion of the decommissioning, the GDF must provide the State with an email notification of the completion of such work; the completion notification is required to document the post-decommissioning testing and demonstration of compliance with the Petroleum Equipment Institute checklist. With the notification system, State inspectors would have prior knowledge of when decommissioning projects would take place in an area and would, therefore, also have the opportunity to inspect the facility during any such decommissioning activity to ensure compliance with the Rule. Roughly half of the facilities in New Jersey have decommissioned their Stage II systems to date. The deadline for decommissioning vacuum-assist Stage II is December 23, 2020. GDF owners and operators have additional incentive to complete decommissioning by the State's deadline, because it overlaps the deadline for EMV chip requirements.[6] The concurrent deadlines allow many GDFs to reap the economic benefit of coordinating dispenser replacements with other equipment upgrades necessary to meet with the EMV chip requirements.

IV. Summary of the EPA Final Action

The EPA is approving the State of New Jersey's SIP revision dated November 29, 2017, which includes the State's revised New Jersey Administrative Code (N.J.A.C.) 7:27–16.3, ''Gasoline Transfer Operations'', effective November 20, 2017. The EPA is approving this SIP revision because it meets all applicable requirements of the CAA and the EPA Guidance, and it will not interfere with any applicable requirement concerning attainment of the NAAQS and reasonable further progress or with any other applicable requirement of the CAA. As stated in the proposed rulemaking (84 FR 65063, November 26, 2019), the EPA finds that the State has demonstrated, through application of the Incremental Equation 1, that removing Stage II will meet rate of progress and reasonable further progress requirements and assist in attainment demonstration and transportation conformity impacts related to removing Stage II. The State's November 29, 2017, SIP revision is approvable under CAA section 110(l) because VOC emissions increase that may have occurred between the years 2017 to 2021 are too small to interfere with attainment and rate of progress and reasonable further progress towards attainment of ozone NAAQS. The State's SIP submission also demonstrates that continuing a Stage II vapor recovery program would have resulted in an increase in refueling emissions due to excess emissions resulting from incompatibility between the ORVR and Stage II systems. Preventing an increase in refueling emissions is consistent with non-interference requirements of the CAA section 110(l).

The revision to the SIP also satisfies the ''comparable measures'' requirement of CAA section 184(b)(2), which requires OTR states proposing to remove Stage II control programs to implement measures that would achieve ''comparable,'' and not ''equivalent,'' reductions to existing Stage II programs. As stated in the EPA Guidance, ''the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis,* incremental loss of area-wide emission control.'' [7] In this case, the State has demonstrated that any temporary emissions increase resulting from phasing out of Stage II controls during the years 2017 to 2021 would be *de minimis.*

Finally, the State has satisfied the anti-backsliding requirements of the

[4] New Jersey's analysis using the two Stage II in-use control efficiency scenarios are outlined in the SIP revision Appendix A Phase II SIP Equations 7–3–17 Cross-Over Summary, which is included in the docket for this action. Although the EPA Guidance suggests a 60–75 percent Stage II in-use control efficiency when estimating the ORVR-equipped fueling at Stage II pumps, the State chose a range of 30–70 percent, which would give a more conservative estimate of the cross-over period. That is, when 29 and 71 percent of the GDFs are fueling ORVR-equipped vehicles.

[5] The owner or operator of the GDF must provide the State with an email notification of any decommissioning activity.

[6] The Europay, MasterCard, Visa (EMV) is a global standard for chip-based debit and credit card transactions. *See e.g., https://usa.visa.com/visa-everywhere/security/emv-at-the-pump.html* (last accessed 02/20/2019). The financial services corporations Visa and Mastercard set a deadline by which automated fuel dispenser/pump merchants processing payments through debit and credit cards with the Mastercard and Visa brands would need to implement systems necessary to read debit and credit cards equipped with EMV chips.

[7] EPA Guidance, above, p. 6.

CAA section 193. The compliance date of on or about December 23, 2020, for decommissioning Stage II systems and removal of the Stage II program from the New Jersey SIP is well within the crossover period of mid-2017 and mid-2021 timeframe.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are incorporating by reference N.J.A.C. 7:27–16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds'', regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[8]

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, 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 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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 publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 22, 2020.

Peter Lopez,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. In § 52.1570, the table in paragraph (c) is amended by revising the entry ''Title 7, Chapter 27, Subchapter 16'' to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

[8] 62 FR 27968 (May 22, 1997).

EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * * * *				
Title 7, Chapter 27, Subchapter 16.	Control and Prohibition of Air Pollution by Volatile Organic Compounds.	November 20, 2017	June 18, 2020, EPA approval finalized at [insert **Federal Register** citation].	
* * * * * * *				

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[FR Doc. 2020–11712 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0152; FRL–10007–74]

Fulvic Acid; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of fulvic acid when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest. Nutri Ag Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of fulvic acid when used in accordance with the terms of the exemption.

DATES: This regulation is effective June 18, 2020. Objections and requests for hearings must be received on or before August 17, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0152, is available at *http://www.regulations.gov* or by one of the follow methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7505PM), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0152 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 17, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0152, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of May 18, 2018 (83 FR 23247) (FRL–9976–87), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11102) by Nutri Ag Inc., 4740 N. Interstate 35 E, Waxahachie, TX 75165. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of fulvic acid (CAS Reg. No. 479–66–3) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest. That document referenced a summary of the petition prepared by OMC AG CONSULTING, INC., the petitioner, which is available in the docket, *http://www.regulations.gov.* No relevant comments were received on the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA can determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fulvic acid including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with fulvic acid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by fulvic acid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Fulvic acid is a humic substance; other humic substances include humic acid and humin. Humic substances are present wherever organic matter is being decomposed and can be defined as ''. . . a general category of naturally occurring, biogenic, heterogeneous organic substances that can generally be characterized as being yellow to black in color and of high molecular weight''. Humic acids are found in soils, waters, sewage, compost heaps, marine and lake sediments, peat bogs, carbonaceous shales, lignites, and brown coals. Due to their properties, humic substances play a major role in soil fertilization. Many products of different origins (peat, compost, leonardite) are commonly used in agriculture to develop organic fertilization methods. For several years, various products containing humic acids have been commercialized for use on grass, horticultural plants or crop production.

In acute studies, exposure to fulvic acid resulted in no observable or minimal toxicity. The acute oral LD_{50} in rats is >5,000 mg/kg. Minimal eye irritation was observed with New Zealand Albino rabbits. Minimal dermal irritation was observed in an acute dermal study with New Zealand Albino rabbits. No indications of sensitization have been observed in hypersensitivity studies. A 7-day dermal study was conducted with female mice in which no adverse effects were noted. A 6-month oral toxicity study with female rats fed by gavage a dose of 100 mg/kg/day suggested that the product was nontoxic with regards to liver and kidney function in rats. No other adverse effects were observed at the study's conclusion.

In a developmental toxicity study with rats, no adverse effects were noted.

Mutagenic activity was determined by the Ames test procedures using *Salmonella typhimurium* TA100 and TA98. Humic acid, which is the precursor to fulvic acids and used as a surrogate, was not found to be mutagenic, nor did it decrease spontaneous mutations.

B. Toxicological Points of Departure/Levels of Concern

Based on available information on the fulvic acid and similar compounds such as humic acid and humin, no toxicological endpoint of concern was identified, and a quantitative risk assessment is not required for these compounds.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fulvic acid, EPA considered exposure under the proposed exemption from the requirement of a tolerance.

EPA assessed dietary exposures from fulvic acid in food as follows:

Dietary exposure (food and drinking water) to fulvic acid may occur following ingestion of foods with residues from treated crops. However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment purposes was not identified.

2. *Dietary exposure from drinking water.* Since a hazard endpoint of concern was not identified for the acute and chronic dietary assessment, a quantitative dietary exposure risk assessment for drinking water was not conducted, although exposures may be expected from use on food crops.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Fulvic acid may be used in pesticide products and non-pesticide products that may be used in and around the home. Based on the discussion above, a quantitative residential exposure assessment for fulvic acid was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found fulvic acid to share a common mechanism of toxicity with any other substances, and fulvic acid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fulvic acid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Based on the lack of threshold effects, EPA has not identified any toxicological endpoints of concern and is conducting a qualitative assessment of fulvic acid. That qualitative assessment does not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children. Based on an assessment of fulvic acid, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on fulvic acid, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to fulvic acid under reasonably foreseeable circumstances. Although there may be exposure to residues of fulvic acid from use of this pesticide (as well as other non-occupational exposures), the lack of toxicity supports a finding of no harm. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 for residues of fulvic acid when used as an inert ingredient in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest, is safe under FFDCA section 408.

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for fulvic acid (CAS Reg. No. 479–66–3) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA 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 publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 15, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, add alphabetically the inert ingredient ''Fulvic acid (CAS Reg. No. 479–66–3)'' to table 1 to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *		
Fulvic acid (CAS Reg. No. 479–66–3)	....	Carrier
* * * * *		

[FR Doc. 2020–12375 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0386; FRL–10009–14]

Fenpyroximate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes and amends tolerances for residues of fenpyroximate in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 18, 2020. Objections and requests for hearings must be received on or before August 17, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0386, is available online at *http://www.regulations.gov* or 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 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.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0386 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before August 17, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0386, online through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

Please note, that due to the public health emergency, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, and there is a temporary suspension of mail delivery to EPA (including hand deliveries). Our Docket Center staff will continue to provide customer service via email, phone, and webform. For further information on EPA Docket Center services, docket contact information and the current status of the EPA Docket Center and Reading Room, please visit *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 11, 2020 (85 FR 7708) (FRL–10005–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8766) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested to establish tolerances for residues of fenpyroximate, including its metabolites and degradates, in or on the raw agricultural commodities peanut at 0.04 parts per million (ppm); peanut, hay at 30 ppm; and tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B, except banana at 0.6 ppm. Additionally, the petition requested to amend 40 CFR 180.566 by removing the established tolerances for residues of fenpyroximate in or on the raw agricultural commodities avocado at 0.15 ppm; canistel at 0.15 ppm; mango at 0.15 ppm; papaya at 0.15 ppm; sapote, black at 0.15 ppm; and star apple at 0.15 ppm. That document referenced a summary of the petition prepared by Nichino America, the registrant, which is available in the docket, *http://www.regulations.gov.* No comments were received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what was requested. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fenpyroximate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenpyroximate follows.

On December 5, 2019, EPA published in the **Federal Register** a final rule establishing tolerances for residues of fenpyroximate in or on multiple agricultural commodities based on the Agency's conclusion that aggregate exposure to fenpyroximate is safe for the general population, including infants and children. *See* (84 FR 66620) (FRL–10002–00). That document contains a summary of the toxicological profile and points of departure, assumptions for exposure assessment, cumulative risk, and the Agency's determination regarding the children's safety factor, which have not changed.

EPA's dietary exposure assessments have been updated to include the additional exposure from the new uses of fenpyroximate on peanuts, peanut hay, and the tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B, except banana, including increased residues in livestock resulting from these uses. The assessment relies on tolerance-level residues for all crops for the acute and chronic dietary assessments and assumes 100 percent crop treated (PCT) for the acute assessment and utilizes percent crop treated estimates for some commodities for the chronic assessment. EPA's aggregate exposure assessment incorporated this additional assumed dietary exposure, as well as exposure in drinking water, although this latter exposure is not impacted by the new tolerances and thus have not changed since the last assessment. Further information about EPA's risk assessment and determination of safety supporting the tolerances established in the December 5, 2019 **Federal Register** action as well as these new fenpyroximate tolerances can be found at *http://www.regulations.gov* in the document titled ''Fenpyroximate: Human Health Risk Assessment for Registration Review and a Petition to Establish Tolerances for Residues in/on the Banana; Leaf Petiole Vegetable Subgroup 22B; Caneberry Subgroup 13–07A; Bushberry Subgroup 13–07B; Squash/Cucumber Subgroup 9B; and Succulent Shelled Beans; and Crop Group Conversions for Nut, Tree, Group 14–12; and Cottonseed Subgroup 20C,'' dated September 12, 2019 in docket ID EPA–HQ–OPP–2018–0162 and the document titled ''Fenpyroximate: Human Health Risk Assessment to Support the Petition for Tolerance for Residues in/on Peanuts and Tropical and Subtropical, Medium to Large Fruit, Smooth, Inedible Peel, Subgroup 24B, Except Banana,'' dated March 15, 2020 in docket ID number EPA–HQ–OPP–2019–0386.

Acute dietary (food and water) risks are below the Agency's level of concern of 100% of the acute population adjusted dose (aPAD): 8.6% of the aPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate. Chronic dietary risks are below the Agency's level of concern of 100% of the chronic population adjusted dose (cPAD): 62% of the cPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate. There are no residential uses for fenpyroximate; therefore, no short- or intermediate-term assessment was necessary. Aggregate risk is comprised solely of the dietary exposures, which are all below EPA's levels of concern.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fenpyroximate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography method with nitrogen/phosphorus detection (GC/NPD), Method S19) is available to enforce the tolerance expression. A data-gathering liquid chromatography/mass spectroscopy/mass spectroscopy (LC/MS/MS) method is also available.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no established Codex MRLs for residues of fenpyroximate in peanut or peanut hay. A Codex MRL is established for residues of fenpyroximate (parent compound only) in avocados at a lower level (0.15 ppm) than the new U.S. tolerance on the tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B, except banana, of which avocados is a part (0.6 ppm). Harmonization with the Codex MRL is not possible because the U.S. tolerance expression includes the parent compound and an additional isomer and because the U.S. use patterns require higher numerical values for the crop subgroup in order to avoid potential tolerance exceedances when label directions are followed.

C. Revisions to Petitioned-For Tolerances

As part of the review of the petition, a revised maximum reasonable dietary burden (MRDB), including the potential contribution of peanut hay was evaluated. As indicated in EPA's regulation, 40 CFR 180.6, when finite pesticide chemical residues will be found in livestock commodities as a result of the use of a pesticide in or on animal feedstuffs, EPA will establish tolerances in livestock commodities to accommodate those residues. The additional uses of fenpyroximate on peanut (and residues on peanut, hay) result in an increase in the MRDB for beef and dairy cattle and consequently necessitate increasing tolerances for fenpyroximate residues in ruminant commodities. New tolerance levels in ruminant commodities were determined using the Langmuir model, and based on that analysis, EPA is increasing existing cattle, goat, horse, and sheep tolerances as follows: Fat 0.03 ppm to 0.1 ppm, liver 0.25 ppm to 0.7 ppm, and kidney 0.25 ppm to 0.5 ppm.

V. Conclusion

Therefore, tolerances are established for residues of fenpyroximate, including its metabolites and degradates, in or on peanut, hay at 30 ppm; peanut, at 0.04 ppm; and the tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B, except banana at 0.6 ppm.

Additionally, the following existing tolerances are increased as follows: Cattle, fat from 0.03 ppm to 0.1 ppm; cattle, kidney from 0.25 ppm to 0.5 ppm; cattle, liver from 0.25 ppm to 0.7 ppm; goat, fat from 0.03 ppm to 0.1 ppm; goat, kidney from 0.25 ppm to 0.5 ppm; goat, liver from 0.25 ppm to 0.7 ppm; horse, fat from 0.03 ppm to 0.1 ppm; horse, kidney from 0.25 ppm to 0.5 ppm; horse, liver from 0.25 ppm to 0.7 ppm; sheep, fat from 0.03 ppm to 0.1 ppm; sheep, kidney from 0.25 ppm to 0.5 ppm; and sheep, liver from 0.25 ppm to 0.7 ppm.

Also, the following tolerances are removed as unnecessary due to the establishment of the above tolerances: Avocado; canistel; mango; papaya; sapote, black; and star apple.

Lastly, EPA is removing, as a housekeeping measure, an expired section 18 tolerance on honey since it expired on December 31, 2013 and is no longer valid.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA 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 publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 11, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.566:
■ a. In paragraph (a)(1):
■ i. Add a heading for the table.
■ ii. Remove the entries for ''Avocado''; ''Canistel''; ''Mango''; and ''Papaya''.
■ iii. Add alphabetically the entries ''Peanut'' and ''Peanut, hay''.
■ iv. Remove the entries for ''Sapote, black'' and ''Star, apple''.
■ v. Add alphabetically the entry for ''Tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B, except banana''.
■ b. In paragraph (a)(2):
■ i. Add a heading for the table.
■ ii. Revise the entries for ''Cattle, fat''; ''Goat, fat''; ''Horse, fat''; and ''Sheep, fat''.
■ c. In paragraph (a)(3), revise the table.
■ d. Remove and reserve paragraph (b).

The additions and revisions read as follows:

§ 180.566 Fenpyroximate; tolerances for residues.

(a) * * *
(1) * * *

TABLE 1 OF PARAGRAPH (a)(1)

Commodity	Parts per million
* * * *	*
Peanut	0.04
Peanut, hay	30
* * * *	*
Tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B, except banana	0.6
* * * *	*

* * * * *
(2) * * *

TABLE 2 OF PARAGRAPH (a)(2)

Commodity	Parts per million
Cattle, fat	0.1
* * * *	*
Goat, fat	0.1
* * * *	*
Horse, fat	0.1
* * * *	*
Sheep, fat	0.1
* * * *	*

(3) * * *

TABLE 3 OF PARAGRAPH (a)(3)

Commodity	Parts per million
Cattle, kidney	0.5
Cattle, liver	0.7
Goat, kidney	0.5
Goat, liver	0.7
Horse, kidney	0.5
Horse, liver	0.7
Sheep, kidney	0.5
Sheep, liver	0.7

* * * * *

[FR Doc. 2020–11516 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[AU Docket No. 20–34; WC Docket No. 10–90; WC Docket No. 19–126; FCC 20–77; FRS 16853]

Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes procedures for the Rural Digital Opportunity Fund Phase I Auction (Auction 904). The *Auction 904 Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements governing participation in Auction 904 by providing details regarding the procedures, terms, conditions, dates, and deadlines, as well as an overview of the post-auction application processes.

DATES: Applications to participate in Auction 904 must be submitted prior to 6 p.m. Eastern Time (ET) on July 15, 2020. Bidding in Auction 904 is scheduled to begin on October 29, 2020.

FOR FURTHER INFORMATION CONTACT: For further information regarding this proceeding, contact Mark Montano in the Auctions Division of the Office of Economics and Analytics at (202) 418–0660 or Heidi Lankau in the Telecommunications Access and Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice (*Auction 904 Procedures Public Notice*), AU Docket No. 20–34; WC Docket No. 10–90; WC Docket No. 19–126; FCC 20–77, adopted on June 9, 2020, and released on June 11, 2020. The complete text of the document, including attachments and any related documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554, except when Commission Headquarters is otherwise closed to visitors. *See* Public Notice, Restrictions on Visitors to FCC Facilities, March 12, 2020. The complete text is also available on the Commission's website at *https://www.fcc.gov/auction/904* or by using the search function for AU Docket No. 20–34 on the Commission's ECFS web page at *www.fcc.gov/ecfs/.* Alternative formats (braille, large print, electronic files, audio format) are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Introduction

1. By the *Auction 904 Procedures Public Notice,* the Commission establishes procedures for Phase I of the Rural Digital Opportunity Fund auction (Auction 904). The auction will award up to $16 billion over 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks. Bidding in the auction is scheduled to begin on October 29, 2020.

2. Auction 904 will be the Commission's second auction to award ongoing high-cost universal service support through competitive bidding in a multiple-round, reverse auction and follows the successful Connect America Fund Phase II auction (Auction 903) in

2018. The bidding procedures will be implemented through the Auction 904 bidding system, which will enable a bidder to express in a simple and orderly way the amount of support it needs to provide a specified level of service to a specified set of eligible areas.

3. Prospective applicants should review carefully the Commission's orders and public notices relating to the Rural Digital Opportunity Fund, including the *Rural Digital Opportunity Fund Order,* 85 FR 13773 (Mar. 10, 2020). Prospective applicants should also familiarize themselves with the Commission's general universal service rules, contained in 47 CFR part 54, including §§ 54.313, 54.316, and 54.320; the rules for the Rural Digital Opportunity Fund specifically, contained in 47 CFR 54.801–54.806; and the competitive bidding rules for universal service support contained in 47 CFR 1.21000–1.21004. Additionally, prospective Auction 904 bidders may find it helpful to familiarize themselves with the Commission's generally applicable competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees and authorization holders.

4. The terms contained in the Commission's rules, relevant orders, and public notices are generally applicable to all bidders. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental information to interested parties. The Office of Economics and Analytics (OEA) and the Wireline Competition Bureau (Bureau) may establish further procedures during the course of this auction. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

II. Auction Specifics

5. *Auction Title and Start Date.* The auction will be referred to as Auction 904—Rural Digital Opportunity Fund Phase I. Bidding in Auction 904 will begin on October 29, 2020. The initial schedule for bidding rounds will be announced by public notice approximately one week before the start of the auction.

6. *Auction Dates and Deadlines.* The Auction Application Tutorial will be available via the internet by June 15, 2020. The Short-Form Application (FCC Form 183) filing window opens July 1, 2020 at 12:00 noon ET. The Short-Form Application (FCC Form 183) filing window deadline is July 15, 2020 at 6:00 p.m. ET. The Auction Bidding Tutorial will be available via the internet by October 14, 2020. The mock auction begins October 26, 2020. The auction bidding begins on October 29, 2020.

7. *Requirements for Participation.* Those wishing to participate in this auction must submit a short-form application (FCC Form 183) electronically prior to 6:00 p.m. ET, July 15, 2020, following the electronic filing procedures that will be provided in a public notice to be released in advance of the opening of the short-form application filing window and comply with all provisions outlined in the document and applicable Commission rules.

III. Public Interest Obligations

8. Each long-form applicant that is authorized to receive Rural Digital Opportunity Fund support after the close of the auction will be required to offer voice and broadband services meeting the relevant performance requirements to fixed locations in exchange for receiving monthly payments of support over the 10-year support term. It must make these services available to the required number of locations associated with the eligible census blocks covered by its winning bids along with certain other newly built locations upon reasonable request. The initial number of locations that a support recipient is required to serve in the eligible census blocks is aggregated to the census block group (CBG) level. In the auction, the Commission will accept bids for service at one of four performance tiers, each with its own minimum download and upload speed and usage allowance, and for either high or low latency service. Long-form applicants that become authorized to receive Rural Digital Opportunity Fund support must deploy broadband service that meets the performance tier and latency requirements associated with their winning bids. Support recipients must also test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on the performance of high-cost support recipients' service.

Performance tier	Speed	Monthly usage allowance	Weight
Minimum	≥25/3 Mbps	≥250 GB or U.S. median, whichever is higher.	50
Baseline	≥50/5 Mbps	≥250 GB or U.S. median, whichever is higher.	35
Above Baseline	≥100/20 Mbps	≥2 terabytes (TB)	20
Gigabit	≥1 Gbps/500 Mbps	≥2 TB	0

Latency	Requirement	Weight
Low Latency	≤100 ms	0
High Latency	≤750 ms & MOS ≥4	40

9. Rural Digital Opportunity Fund support recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier and latency requirements, and these plans must be offered at rates that are reasonably comparable to rates offered in urban areas. For voice service, a support recipient will be required to certify that the pricing of its service is no more than the applicable reasonably comparable rate benchmark that the Bureau releases each year. For broadband services, a support recipient will be required to certify that the pricing of a service that meets the required performance tier and latency performance requirements is no more than the applicable reasonably comparable rate benchmark, or that it is no more than the non-promotional price the support recipient charges for a

comparable fixed wireline broadband service in urban areas in the state or U.S. territory where the eligible telecommunications carrier (ETC) receives support.

10. The Commission has adopted specific service milestones that require each long-form applicant authorized to receive Rural Digital Opportunity Fund support to offer service to a portion of the number of locations associated with the eligible census blocks included in its authorized winning bids in a state. Each support recipient must begin commercially offering service to 40 percent of the CAM-calculated number of locations covered by authorized winning bids in a state by the end of the third full calendar year following the funding authorization, and to an additional 20 percent each year thereafter. A support recipient is deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request. All ETCs must advertise the availability of their voice services throughout their service areas, and support recipients must also advertise the availability of their broadband services within their service areas.

11. The Commission directed the Bureau to publish revised location counts before the end of service milestone year six. In areas where the revised location total is higher than the number of CAM-calculated locations, support recipients will be required to have begun commercially offering service to 100 percent of the CAM-calculated location count by the end of the sixth calendar year. Such support recipients must then offer service to 100 percent of the revised location count by the end of the eighth calendar year. In areas where there are fewer locations than calculated by the CAM, support recipients must notify the Bureau no later than March 1 following the fifth year of deployment. Upon confirmation by the Bureau, such a support recipient will be required to reach 100 percent of the new number by the end of the sixth calendar year. All support recipients must also offer service on reasonable request to locations built subsequently to the revised location count announced by the Bureau but prior to the end of service milestone year eight.

12. Compliance with service milestones will be determined at the state level. The Commission will verify that the support recipient offers the required service to the total number of locations across all the eligible census blocks included in all of the support recipient's authorized bid areas (*i.e.,* CBGs) in a state. If a support recipient is authorized to receive support in a state for different performance tier and latency combinations, it will be required to demonstrate that it is offering service meeting the relevant performance requirements to the required number of locations for each performance tier and latency combination within that state.

13. The Commission adopted reporting requirements for support recipients in the *Rural Digital Opportunity Fund Order.* These include reporting a list of geocoded locations each year to which the support recipient is offering the required voice and broadband services, making a certification when the support recipient has met service milestones, and submitting the annual FCC Form 481 report. A support recipient that fails to offer service to the required number of locations by a service milestone will be subject to non-compliance measures. A support recipient will also be subject to any non-compliance measures that have been adopted in conjunction with the methodology for high-cost support recipients to measure and report network performance.

14. All Auction 904 support recipients will be subject to the Commission's National Security Supply Chain proceeding, including the rule that ''no universal service support may be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain.'' The prohibition on using universal service funds applies ''to upgrades and maintenance of existing equipment and services.''

IV. Eligible Areas

15. The Commission will use CBGs containing one or more eligible census blocks as the minimum biddable area in the auction. The Bureau released an initial list of eligible census blocks for Auction 904 on March 17, 2020, based on June 30, 2019 FCC Form 477 data. The list includes just under 65,000 CBGs containing eligible census blocks and just over 33,000 census tracts containing eligible census blocks based on FCC Form 477 data as of June 30, 2019.

16. The Commission will round the reserve price for each CBG to the nearest dollar consistent with the rounding approach for the CAF II auction. In the *Rural Digital Opportunity Fund Order,* the Commission adopted a methodology for calculating area-specific reserve prices. Because auction participants will place bids for annual support amounts, the Commission will multiply the monthly reserve price for a CBG by 12 and round that figure to the nearest dollar. Thus, any CBG that has an annual reserve price of less than $0.50 would be rounded down to $0 and will be ineligible for Auction 904.

17. Prior to the short-form application deadline, the Bureau will release a list and map of eligible census blocks based on the most recent publicly available FCC Form 477 data and incorporating comments received during the limited challenge process. The list will include the reserve price for each CBG containing eligible census blocks and the number of locations associated with each CBG as determined by the CAM.

18. The U.S. Department of Agriculture (USDA) announced that April 15, 2020 was the application deadline for Round 2 of its ReConnect Program. The Commission directs the Bureau to remove from that list any areas that will be substantially overlapped by an announced ReConnect Program awardee and to publish a final list of eligible areas at least 14 days prior to the October 29 auction start date.

V. Applying To Participate in Auction 904

19. *General Information Regarding Short-Form Applications.* An application to participate in Auction 904, referred to as a short-form application or FCC Form 183, provides information used to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for universal service support. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, eligibility to participate in the auction is based on an applicant's short-form application and certifications. A potential applicant must take seriously its duties and responsibilities and carefully determine before filing a short-form application that it is able to meet the public interest obligations associated with Rural Digital Opportunity Fund support if it ultimately becomes a winning bidder in the auction. The Commission's determination that an applicant is qualified to participate in Auction 904 does not guarantee that the applicant will also be deemed qualified to receive support if it becomes a winning bidder. In the second phase of the process, each winning bidder (or its designee) must file a more comprehensive long-form application (FCC Form 683), which the Commission will review to determine if

the applicant should be authorized to receive support for the winning bids.

20. An entity seeking to participate in Auction 904 must file a short-form application electronically via the Auction Application System prior to 6:00 p.m. ET on July 15, 2020, following the procedures prescribed in the FCC Form 183 Instructions. An applicant must submit operational and financial information demonstrating that it can meet the public interest obligations associated with the performance tier and latency combination(s) for which it intends to bid. An applicant that files a short-form application is subject to the Commission's rule prohibiting certain communications beginning at the deadline for filing short-form applications—6:00 p.m. ET on July 15, 2020.

21. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. An applicant should consult the Commission's rules to ensure that, in addition to the materials described in the document, all required information is included in its short-form application. To the extent the information in the document does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auction 904 and/or use the contact information provided in the document to consult with Commission staff well in advance of the application deadline.

22. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 183 related to the information provided in its application and its participation in the auction, and each applicant must confirm that it is legally, technically, financially, and otherwise qualified to receive Rural Digital Opportunity Fund support. If an Auction 904 applicant fails to make the required certifications in its FCC Form 183 by the filing deadline, its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

23. An applicant should note that submitting a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, the forfeiture of universal service support, license forfeitures, ineligibility to participate in future auctions, and criminal prosecution.

24. The same entity may not bid based on more than one auction application, *i.e.,* as more than one applicant. Therefore, an entity should not submit more than one short-form application for Auction 904. If an entity submits multiple short-form applications, only one application may be the basis for that entity to become qualified to bid. Similarly, the filing of applications in Auction 904 by multiple entities controlled by the same individual or set of individuals will not be permitted.

25. Commission staff will review all timely submitted applications to determine whether each application complies with the application requirements and contains all required information concerning the applicant's qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete. This public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. After the review of resubmitted applications is complete, a public notice will be released identifying the applicants that are qualified to bid in the auction.

26. *Disclosure of Agreements and Bidding Arrangements.* An applicant must identify in its short-form application all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding for Rural Digital Opportunity Fund support. This disclosure requirement applies to any arrangements with parties that are applying to participate in Auction 904 as well as parties that are not. An applicant that discloses any such agreement(s) must provide in its short-form application a brief description of each agreement.

27. An applicant must certify under penalty of perjury in its short-form application that it has disclosed all real parties-in-interest to any agreements involving the applicant's participation in Auction 904. An applicant must also certify under penalty of perjury that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through Auction 904, other than those disclosed in its application.

28. If parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 183, even if the agreement has not been reduced to writing.

29. *Ownership Disclosure Requirements.* Each applicant must comply with the ownership disclosure requirements in §§ 1.2112(a) and 54.804(a)(1) of the Commission's rules. An applicant must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. Each applicant is responsible for ensuring that ownership information submitted in its short-form application is complete and accurate.

30. An applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an application for a previous auction in which the applicant disclosed ownership information. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FRN the applicant is using to submit its FCC Form 183 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 183 if such information is in an electronic format compatible with FCC Form 183. Each applicant must carefully review any ownership information automatically entered into its FCC Form 183, including any ownership attachments, to confirm that all information supplied on FCC Form 183 is complete and accurate as of the application filing deadline for Auction 904. Any information that needs to be corrected or updated must be changed directly in FCC Form 183.

31. *Specific Universal Service Certifications.* An applicant must certify that it is in compliance with all statutory and regulatory requirements for receiving the universal service support it seeks. Alternatively, an applicant may certify that it acknowledges that it must be in compliance with such requirements before being authorized to receive Rural Digital Opportunity Fund support.

32. An applicant must certify that it will make any default payment that may be required pursuant to § 1.21004, and that it is aware that if its application is shown to be defective, the application

may be dismissed without further consideration and penalties may apply.

33. *Specific Auction 904 Eligibility Requirements and Certifications. Applicants and State Selections.* Each applicant must identify in its short-form application each state in which it intends to bid for support in Auction 904. An applicant will be able to place bids for eligible areas only in the states identified in its application. An applicant should take appropriate steps to ensure that the state(s) it selects fully reflect its bidding intentions because an applicant may not select any additional states in which to bid after the initial short-form application filing window closes.

34. The submission of more than one application by commonly controlled entities for Auction 904 is prohibited. A ''controlling interest'' for purposes of the auction is an individual or entity with positive or negative *de jure* or *de facto* control of the applicant.

35. A Divide Winning Bids process will be available to allow a winning bidder to assign some or all of its winning bids to related entities or individual members of a consortium.

36. If Commission staff identifies separate applicants that are commonly controlled, all such applications would be deemed incomplete on initial review. The applicants would be informed of the issue, and at most one of the commonly controlled applicants would ultimately be deemed qualified to bid, assuming that there were no remaining issues with its application. Commonly controlled entities should coordinate on the submission of one application before the short-form application deadline.

37. Furthermore, parties submitting separate applications are prohibited from entering into joint bidding arrangements for Auction 904. ''Joint bidding arrangements'' are arrangements between or among applicants that (1) relate to any eligible area in Auction 904, and (2) address or communicate bids or bidding strategies, including arrangements regarding Rural Digital Opportunity Fund support levels (*i.e.,* price point percentages) and specific areas on which to bid, as well as any arrangements relating to the post-auction market structure in an eligible area. If two or more applicants are parties to an agreement that falls within this definition, they would be prohibited from bidding in Auction 904.

38. Joint ventures and bidding consortia that do not involve two or more entities that are individual applicants (or control or are controlled by an applicant) are permitted for Auction 904. Only joint bidding arrangements where the parties include two or more individual auction applicants are prohibited. The Commission cautions non-applicant entities that any joint venture, consortium, or other arrangement into which they enter must be consistent with the antitrust laws and must not be otherwise prohibited by law.

39. Each winning bidder is required to submit in its long-form application any updated information regarding the agreements, arrangements, or understandings related to its Auction 904 support disclosed in its short-form application. A winning bidder may also be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement into which it has entered and the agreement itself.

40. *Operational History and Submission of Financial Statements.* There are two pathways for an applicant to demonstrate its operational experience and financial qualifications to participate in Auction 904. These pathways vary depending on whether the applicant has at least two years of operational experience in the provision of voice, broadband, and/or electric distribution or transmission services.

41. *First Eligibility Pathway.* An applicant can certify, if applicable, on its FCC Form 183 that it has provided voice, broadband, and/or electric distribution or transmission services for at least two years prior to the short-form application filing deadline (or that the applicant is the wholly owned subsidiary of an entity that has done so), specify the number of years it has been operating, and identify the services it has provided. An applicant will be deemed to have started providing a service on the date it began commercially offering that service to end users.

42. If an applicant certifies that it has been providing voice and/or broadband services for at least two years, it must certify that it (or its parent company, if it is a wholly owned subsidiary) has filed FCC Form 477s as required during that time period. And it must identify the FRNs it (or its parent company) used to file the FCC Form 477s for the relevant filing periods. The relevant FCC Form 477 filing periods include data as of December 31, 2019; June 30, 2019; and December 31, 2018.

43. If the applicant certifies that it has been providing only electric distribution or transmission services for at least two years (*i.e.,* it has not also been providing voice or broadband service for at least two years), it must submit with its short-form application qualified operating or financial reports that it (or its parent company, if it is a wholly owned subsidiary) filed with the relevant financial institution (*i.e.,* the Rural Utilities Service (RUS), the National Rural Utilities Cooperative Finance Corporation (CFC), or CoBank) in 2018 and 2019 that demonstrate that the applicant (or its parent company) has been operating for at least two years. The applicant must also submit a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution. The Commission will accept the RUS Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the CFC Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; the CoBank Form 7; or the functional replacement of one of these reports.

44. If an applicant meets the foregoing requirements and it (or its parent company) is audited in the ordinary course of business, the applicant must also submit its (or its parent company's) financial statements from the prior fiscal year, including balance sheets, net income, and cash flow, along with an opinion letter from an independent certified public accountant and the accompanying notes. An applicant must submit its (or its parent company's) 2018 audited financial statements. However, an applicant may submit its fiscal year-end 2019 audited financial statements if they are finalized before the short-form application deadline.

45. If an applicant (or its parent company) is not audited in the ordinary course of business and the applicant does not submit its audited financial statements with the short-form application, it must submit its (or its parent company's) fiscal year-end 2018 unaudited financial statements with its short-form application, including balance sheet, net income, and cash flow, and certify that the long-form applicant will obtain and submit its (or its parent company's) audited financial statements from the prior fiscal year within 180 days after being announced as a winning bidder. If an applicant certifies in its short-form application that it will submit audited financial statements during the long-form application process, but such audited financial statements are not submitted when required, the winning bidder or long-form applicant will be deemed to be in default and subject to a base forfeiture of $50,000.

46. *Second Eligibility Pathway.* An applicant that does not have at least two years of operational experience must submit with its short-form application its (or its parent company's) financial

statements that are audited by an independent certified public accountant from the three most recent fiscal years (*i.e.,* 2016, 2017, and 2018), including balance sheets, net income, and cash flow as well as the audit opinion and accompanying notes. Such an applicant must also submit with its short-form application a letter of interest from a qualified bank stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder and is selected for bids of a certain dollar amount. The letter should include the maximum dollar amount for which the bank would be willing to issue a letter of credit to the applicant and a statement that the bank would be willing to issue a letter of credit that is substantially in the same form as set forth in the model letter of credit provided in the *Rural Digital Opportunity Fund Order.*

47. *Financial Qualifications.* An applicant submitting audited financial statements with its short-form application must identify whether it has a clean opinion letter on its submitted audited financial statements. An opinion letter is clean if it has an unmodified opinion without an emphasis-of-matter paragraph about the entity's ability to continue as a going concern. An unmodified opinion is one where ''the auditor concludes that the [audited] financial statements are presented fairly, in all material respects, in accordance with the applicable financial reporting framework.''

48. An applicant that submits the required audited financial statements and has a clean opinion letter on the submitted audited financial statements would be deemed financially qualified to participate in the auction.

49. For an applicant that does not have a clean opinion letter on all submitted audited financial statements, Commission staff will first determine whether the issue is material to the applicant's participation in the auction. If so, any such applicants—and any applicants that submit unaudited financial statements—will be subject to a review of the full set of financial statements submitted with the short-form application, as well as other information submitted with the application and/or information submitted to the Commission in other contexts (*e.g.,* financials filed with a FCC Form 481, revenues reported in FCC Form 499, etc.). To the extent this information does not sufficiently demonstrate that an applicant is financially qualified, the application will be deemed incomplete, and Commission staff may request further information from the applicant during the application resubmission period.

50. The Commission staff's determination at the short-form stage that an applicant is financially qualified to bid does not preclude a determination at the long-form application review stage that an applicant is not authorized to receive Rural Digital Opportunity Fund support. During the long-form application stage, a winning bidder must: (1) Certify that it will have available funds for all project costs that exceed the amount of Rural Digital Opportunity Fund support for the first two years, (2) submit a description of how the required construction will be funded, and (3) obtain a letter of credit from a bank meeting the Commission's requirements.

51. *Eligibility to Bid for Performance Tier and Latency Combination.* The Commission will collect information to determine, at the short-form application stage and in advance of the start of bidding in the auction, each applicant's eligibility to bid for the performance tier and latency combinations it has selected in its application for each state.

52. The Commission will use the short-form application to assess the likelihood that an applicant would not default if selected as a winning bidder. If the applicant becomes qualified to bid in Auction 904 and subsequently becomes a winning bidder, Commission staff will evaluate the information submitted in the long-form application and will rely on an eligible bank's willingness to issue the applicant a letter of credit to determine whether an applicant is reasonably capable of meeting its Rural Digital Opportunity Fund auction obligations in the specific areas where it has winning bids. ''Reasonably capable'' refers to the Commission staff's reasonable expectation that the applicant can meet those obligations. A determination at the short-form stage that an applicant is eligible to bid for a performance tier and latency combination would not preclude a determination at the long-form application stage that an applicant does not meet the technical qualifications for the performance tier and latency combination and thus will not be authorized to receive Rural Digital Opportunity Fund support. In addition, the Commission's adoption of certain non-compliance measures in the event of default—both before a winning bidder is authorized for support and if a support recipient does not fulfill its Rural Digital Opportunity Fund obligations after it has been authorized—should encourage each applicant to select performance tier and latency combinations with public interest obligations that it can reasonably expect to meet. The Commission adopts (1) the information and showing each applicant must submit to establish its qualifications for the performance tier and latency combinations it has selected on its application, and (2) the process Commission staff will use to determine whether an applicant is eligible to bid on those combination(s).

53. *Selecting Performance Tier and Latency Combinations.* Each applicant must select in its short-form application the performance tier and latency combination(s) for which it intends to bid in each state where it seeks support. An applicant may select more than one performance tier and latency combination in a state. For each tier and latency combination, an applicant must indicate the technology or technologies it intends to use to meet the associated requirements. If an applicant intends to use spectrum, it must also indicate the spectrum band(s) and total amount of uplink and downlink bandwidth (in megahertz) that it has access to for the last mile for each performance tier and latency combination it selected in each state.

54. *Operational Information.* An applicant must submit in its short-form application sufficient operational information regarding its experience providing voice, broadband, and/or electric distribution or transmission service and its plans for provisioning service if awarded support. An applicant must submit high-level operational information to complete its operational showing and demonstrate that it can be expected to be reasonably capable of meeting the public interest obligations (*e.g.,* speed, usage, latency, and service milestones) for each performance tier and latency combination selected.

55. Eligibility to bid for specific tier and latency combinations will be determined on a state-by-state basis. For each selected performance tier and latency combination, an applicant will be required to demonstrate that it is reasonably capable of meeting the relevant public interest obligations for each state it selects and to explain how it intends to provision service if awarded support.

56. An applicant must answer the questions listed in Appendix A to the *Auction 904 Comment Public Notice* for each state it selects in its application. If an applicant is a consortium/joint venture, or holding/parent company, it should answer the questions for each operating company that intends to provide service if the consortium/joint

venture or holding/parent company is named as a winning bidder.

57. An applicant must address both voice and broadband services in response to the questions. An applicant that intends to implement a new system to meet its voice requirements must provide additional specific information about that system. An ETC must offer qualifying voice service using its own facilities, at least in part, and the Commission expects that an applicant will conduct the due diligence necessary to ensure that it can meet this requirement.

58. If Commission staff is unable to find that an applicant can reasonably be expected to meet the relevant public interest obligations based on the information submitted in its short-form application, Commission staff would deem the application incomplete, and the applicant would have another opportunity during the application resubmission period to submit additional information to demonstrate that it meets this standard. Commission staff would notify the applicant that additional information is required to assess the applicant's eligibility to bid for any or all of the specific states and performance tier and latency combinations selected in its short-form application. During the application resubmission period, an applicant would be able to submit additional information to establish its eligibility to bid for the relevant performance tier and latency combinations. An applicant would also have the option of selecting a lesser performance tier and latency combination for which it might be more technically qualified. Once the application resubmission period has ended, Commission staff would make its final determination of an applicant's eligibility to bid for any or all of the specific states and performance tier and latency combinations selected in its application, and then notify each applicant in which states and for which performance tier and latency combinations it is eligible to bid. The bidding system will be configured to permit a bidder to bid only in the state(s) and for the performance tier and latency combinations on which it is deemed eligible to bid.

59. Responses to the questions in Appendix A to the *Auction 904 Procedures Public Notice* and any associated supporting documentation will be treated as confidential and withheld from routine public inspection. An applicant need not submit a § 0.459 confidentiality request to seek protection of this information from public disclosure.

60. *Assumptions.* The Commission adopts certain assumptions that an applicant will need to make about network usage and subscription rates when determining, for purposes of its short-form application, whether it can meet the public interest obligations for its selected performance tier and latency combination(s) if it becomes a winning bidder and is authorized to receive Auction 904 support.

61. First, an applicant must assume that it will offer service to at least 95 percent of the required number of locations across its bids in each state. The Commission's rules require that each long-form applicant provide in its long-form application a certification by a professional engineer that the applicant's proposed network can deliver the required service to at least 95 percent of the required number of locations. Rural Digital Opportunity Fund support recipients will ultimately be required to offer service to 100 percent of the actual locations in their service areas and offer service to newly built locations upon reasonable request that were built prior to milestone year eight. Consequently, Commission staff will also review the information provided in the short-form and long-form applications to verify that the applicant has the plans and capability to scale the network if necessary. The Commission cautions potential bidders that, after the close of a round, each bid represents an irrevocable offer to meet the terms of the bid if it becomes a winning bid. Each winning bidder that is authorized to receive Rural Digital Opportunity Fund support will be required to offer service in areas where it is authorized to receive support. Accordingly, an applicant that becomes a qualified bidder should assume for each round of the auction that it could be required to offer service meeting the relevant requirements to the number of locations across all the bids that it places in each state.

62. Each service provider is required to assume a subscription rate of at least 70 percent for both voice services and broadband services by the final service milestone when determining whether it can meet the public interest obligations for its selected performance tiers and latency combinations. A support recipient will not be required to demonstrate that it has achieved at least a 70 percent subscription rate. Instead, the Commission requires an applicant to assume for purposes of its application that it will achieve at least a 70 percent subscription rate when engineering its network. Because it may take time for an applicant that becomes a winning bidder and is authorized to receive Auction 904 support to obtain customers as it builds out its network, the Commission will permit an applicant to factor this into its engineering submission and make reasonable assumptions about how the subscription rate will scale during the build-out term.

63. Regardless of the assumptions an applicant makes about its subscription rate when engineering its network, the applicant must keep in mind that its network must be capable of scaling to meet demand. A Rural Digital Opportunity Fund recipient cannot report in the High Cost Universal Service Broadband Portal that a location is served until it can provide service meeting the relevant performance requirements to that location within 10 business days after receiving a request.

64. *Spectrum Access.* The Rural Digital Opportunity Fund auction rules require a short-form applicant that plans to use radiofrequency spectrum to demonstrate that it has (1) the proper spectrum use authorizations, if applicable; (2) access to operate in the spectrum it intends to use; and (3) sufficient spectrum resources to cover peak network usage and meet the minimum performance requirements to serve the fixed locations in eligible areas. For the described spectrum access to be sufficient as of the date of the short-form application, the applicant must have obtained any necessary approvals from the Commission for the spectrum, if applicable. The Rural Digital Opportunity Fund auction short-form application rules also require an applicant to certify that it will retain such authorizations for 10 years.

65. To demonstrate sufficient access to spectrum, an applicant must (i) identify the spectrum bands it will use for last mile, backhaul, and any other parts of the network; (ii) describe the total amount of uplink and downlink bandwidth (in megahertz) that it has access to in such spectrum band(s) for the last mile; (iii) describe the authorizations (including leases) it has obtained to operate in the spectrum, if applicable; and (iv) list the call signs and/or application file numbers associated with its spectrum authorizations, if applicable. If an applicant is a consortium/joint venture, or holding/parent company, it should make this demonstration for each operating company that intends to provide service if the consortium/joint venture or holding/parent company is named as a winning bidder.

66. Any applicant that intends to provide service using satellite technology must describe in its short-form application its expected timing for

applying for earth station licenses if it has not already obtained these licenses. An applicant that intends to obtain microwave license(s) for backhaul to meet its public interest obligations must describe in its short-form application its expected timing for applying for such license(s), if it has not already obtained them.

67. This spectrum information, combined with the operational and financial information submitted in the short-form application, will allow an applicant to demonstrate that it has sufficient spectrum resources and is reasonably capable of meeting the public interest obligations required by its selected performance tier and latency combination(s). If a license, lease, or other authorization is set to expire prior to the end of the 10-year support term, the Commission will infer that the authorization will be able to be renewed when determining at the short-form application stage whether an applicant has sufficient access to spectrum. However, this inference will in no way influence or prejudge the resolution of any future renewal application, and if the authorization is not renewed during the support term and the support recipient is unable to meet its Rural Digital Opportunity Fund obligations, that support recipient will be in default and subject to any applicable non-compliance measures.

68. In Appendix B to the *Auction 904 Procedures Public Notice,* the Commission identifies the licensed and unlicensed spectrum bands that it anticipates could be used by a service provider operating in these bands to, at a minimum, offer service meeting the requirements for the Minimum performance tier provided that the service provider is using sufficient bandwidth in the spectrum band(s) and a technology that can operate in these spectrum bands consistent with applicable rules and regulations. This is a non-exhaustive list of spectrum bands that an applicant could potentially use to meet its performance obligations.

69. In the *Rural Digital Opportunity Fund Order,* the Commission decided that it would permit an applicant that plans to operate in the 3550–3650 MHz band using a priority access license that will be subject to auction with bidding scheduled to begin in July 2020 (Auction 105) to indicate the status of its participation in that auction (consistent with auction procedures regarding the disclosure of non-public auction-related information) as long as it provides alternatives for how it intends to meet its obligations if it were not awarded a license. The Commission will allow an applicant to do the same if it intends to participate in the 2.5 GHz Rural Tribal Priority Window this year or is in the process of applying for a license following Auction 102 or Auction 103. The Commission also extends this option to applicants that intend to participate in the 3.7 GHz Service band auction (Auction 107) and the Lower 37 GHz band proceeding and to applicants that intend to operate in the unlicensed 6 GHz band once it is available. An applicant that intends to use this spectrum to meet its Rural Digital Opportunity Fund public interest obligations must indicate in its short-form application the status of its participation in any relevant proceeding and must provide alternatives for if it does not ultimately obtain a license or if the timing for these proceedings change such that it is not able to obtain a license or otherwise operate in these bands in time to meet the interim service milestones.

70. *Collection and Use of Identifiers Associated with Information Submitted to the Commission in Other Contexts.* Any relevant information that an applicant has submitted to the Commission in other contexts may be considered for purposes of determining whether the applicant is expected to be reasonably capable of meeting the public interest obligations for its selected performance tier and latency combination(s) if it becomes a winning bidder and is authorized to receive Rural Digital Opportunity Fund support. This other information would include the following: data reported in FCC Form 477 Local Telephone Competition and Broadband Report (FCC Form 477), FCC Form 481 Carrier Annual Reporting Data Collection Form (FCC Form 481), and FCC Form 499–A Annual Telecommunications Reporting Worksheet (FCC Form 499–A), including non-public information. For example, whether an applicant already offers service that meets the public interest obligations associated with its selected performance tier and latency combination(s) and the number of subscribers to that service may be considered.

71. Applicants must submit in the short-form application any FCC Registration Numbers (FRNs) that an applicant or its parent company—and in the case of a holding company applicant, the operating companies identified in its application—has used to submit its FCC Form 477 data during the past two years. The Commission will collect FCC Form 477 FRNs that were used for the following filing periods: data as of December 31, 2019; June 30, 2019; and December 31, 2018. Requiring submission of the FRNs that an applicant has used for FCC Form 477, will allow reviewers to cross-reference FCC Form 477 data that an applicant (or a related entity) has filed during the past two years. All interested parties should ensure that they have filed and will timely file all required FCC Form 477 data.

72. An applicant must submit in the short-form application any study area codes (SACs) indicating that the applicant (or its parent company/subsidiaries) is an existing ETC. A holding-company applicant must submit the SACs of its operating companies identified in the application. An applicant is required by the Commission's short-form application rules to disclose its status as an ETC if applicable.

73. An applicant must submit in the short-form application any FCC Form 499 filer identification numbers that the applicant or its parent company and, in the case of a holding company, its operating companies identified in the application have used to file an FCC Form 499–A in the past year, if applicable. Applicants must submit filer identification numbers that were used for the April 1, 2020 filing.

74. *Limiting Eligibility to Bid for Certain Performance Tier and Latency Combinations.* Only applicants that can make a case to bid in the Gigabit performance tier are those applicants proposing to use a technology: (1) That has a proven track record of offering mass market voice and broadband services directly to residential consumers; and (2) where there are concrete examples of such technology being used to offer service at speeds that would meet the requirements for the higher speed tiers or at latency levels meeting the low latency requirements. Thus, an applicant that intends to use any form of satellite technology, whether geostationary, high earth orbit, medium earth orbit, or low earth orbit, will not be allowed to select the Gigabit performance tier. An applicant that intends to use geostationary, high earth orbit or medium earth orbit satellite technology will not be allowed to select low latency. An applicant proposing to use fixed wireless or DSL will have the opportunity to demonstrate in its short-form application to Commission staff that it is reasonably capable of offering service meeting the Gigabit performance tier public interest obligations even if it has not previously reported offering Gigabit broadband service. Likewise, an applicant proposing to use low earth orbit satellite technology will have the opportunity to demonstrate in its short-form application to Commission staff that it is reasonably capable of offering

service meeting the low latency requirements. For the Above Baseline, Baseline, and Minimum performance tiers and for high latency, the Commission will review all technologies on a case-by-case basis.

75. *Gigabit Performance Tier.* The Commission will prohibit service providers that intend to use any form of satellite technology from selecting the Gigabit performance tier.

76. Service providers that intend to use fixed wireless or DSL technologies may make a case for bidding in the Gigabit performance tier. While an applicant will be permitted to select the Gigabit performance tier in its application if it intends to use fixed wireless or DSL technologies for meeting its Auction 904 public interest obligations, such applicants face a high burden to persuade Commission staff that it is reasonably capable of meeting the public interest obligations and thus qualified to bid for the Gigabit performance tier. The Commission does not anticipate that an applicant using DSL technologies would be able to demonstrate that it is reasonably capable of offering a service that meets the Gigabit performance tier public interest obligations absent a hybrid approach that relies mostly on fiber. Likewise, Likewise, given distance limitations, spectrum bands attributes, channel bandwidths requirements, backhaul and medium haul requirements, tower siting requirements, capacity constraints, required upstream speeds, required minimum monthly usage allowances, and other issues raised in the record, the Commission expects it will be similarly challenging for a fixed wireless provider to make a case that it can offer a mass market service meeting the Gigabit performance tier public interest obligations in the less dense areas eligible for Auction 904. This is so especially for entities lacking an operational history of offering Gigabit service in rural areas.

77. The Commission anticipates that the fixed wireless and DSL technology solutions are likely to be customized for each applicant to account for the challenges in deploying Gigabit speeds in rural areas. Accordingly, rather than develop a set of one-size-fits-all standards for the review, Commission staff will benefit from having the opportunity to discuss network plans with each applicant through the Commission's existing resubmission process. An applicant proposing to deploy fixed wireless and DSL technologies to offer Gigabit speeds and any engineers that assisted with the application must be prepared to engage in follow-up conference calls upon request with Commission staff to elaborate on their Appendix A responses with a particular focus on concerns raised in the record

78. The Commission reminds potential applicants that they are certifying under penalty of perjury in their short-form applications that they are technically qualified to meet the public interest obligations for each performance tier and latency combination they select. The Commission may initiate enforcement proceedings against applicants that submit threadbare or wholly unrealistic technical showings while selecting the Gigabit or other higher performance tiers. An applicant will be deemed in default if at the long-form application stage, Commission staff determines the applicant is not reasonably capable of meeting the public interest obligations associated with its winning bids. The base default forfeiture already adopted for Auction 904 will be subject to adjustment upward or downward as appropriate based on the criteria set forth in the Commission's forfeiture guidelines. Accordingly, all applicants should conduct due diligence and consider seriously whether they will be able to meet the relevant public interest obligations before selecting performance tier and latency combinations in their applications.

79. *Low Latency.* Providers that intend to use geostationary, high earth orbit, or medium earth orbit satellite technology are prohibited from selecting low latency in combination with any of the performance tiers.

80. *Other Performance Tiers and High Latency.* For the lower performance tiers—*i.e.,* Above Baseline, Baseline, and Minimum—and for high latency, the Commission will not adopt any presumptions or exclude any type of technology. The Commission will permit an applicant to propose using any technology to meet the relevant performance obligations.

81. *Due Diligence Certification.* Each applicant has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of support for which it will seek to bid in Auction 904 if it becomes a qualified bidder. The Commission makes no representations or warranties about the use of this support for particular services. Auction 904 represents an opportunity to apply for Rural Digital Opportunity Fund support, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does the award of Rural Digital Opportunity Fund support constitute a guarantee of business success.

82. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, each potential bidder should perform technical and financial analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any support, it will be able to build and operate facilities that provide service to a particular area in accordance with the public interest obligations and the Commission's rules generally.

83. Each applicant in Auction 904 should continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on support available in an auction. The due diligence considerations mentioned in the document do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 904. The burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

84. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on or otherwise receive Rural Digital Opportunity Fund support. Each potential bidder is responsible for undertaking research to ensure that any support won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

85. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third-party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, an applicant must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. The Commission makes no representations or guarantees regarding the accuracy or completeness of

information that has been provided by outside entities and incorporated into its databases.

86. Each applicant must make the following certification in its short-form application under penalty of perjury:

> The applicant acknowledges that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Rural Digital Opportunity Fund support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the Rural Digital Opportunity Fund obligations and the Commission's rules generally.

87. *Eligible Telecommunications Carrier Certification.* An applicant must acknowledge in its short-form application that it must be designated as an ETC for the areas in which it will receive support prior to being authorized to receive support. Only ETCs designated pursuant to § 214(e) of the Communications Act of 1934, as amended (the Act) ''shall be eligible to receive specific Federal universal service support.'' Section 214(e)(2) gives states the primary responsibility for ETC designation. However, § 214(e)(6) provides that the Commission is responsible for processing requests for ETC designation when the service provider is not subject to the jurisdiction of any state commission. Support is disbursed only after the provider receives an ETC designation and satisfies the other long-form application requirements.

88. An applicant need not already be an ETC as of the initial short-form application filing deadline for Auction 904, but that it must obtain a high-cost ETC designation for the areas covered by its winning bids within 180 days after being announced as a winning bidder. Long-form applicants subject to state jurisdiction must petition the relevant state commissions for ETC designation and should follow state rules and requirements to apply for designation(s). Long-form applicants not subject to state jurisdiction must petition the Commission for designation(s). The Commission places the burden of proof upon the petitioner seeking a Commission ETC designation to demonstrate that the Commission has jurisdiction. Such demonstration may be made through the submission of an affirmative statement from the relevant state commission declining jurisdiction. In addition, the Bureau will consider state legislation specifically declining jurisdiction over the type of service offered by the long-form applicant to be relevant. Petitioners seeking an ETC designation to serve Tribal lands may also petition the Commission directly so long as they have not initiated an ETC designation proceeding before the relevant state commission. Petitioners taking this approach should verify that the intended service area is completely on Tribal lands. If not, the petitioner must petition the relevant state commission for waiver of the state's jurisdiction over the non-Tribal areas.

89. All applicants should be familiar with the requirements that are applicable to ETCs and conduct due diligence to ensure that they can meet the requirements. For example, each Auction 904 support recipient must offer Lifeline voice and broadband service throughout the eligible areas covered by its winning bids to qualifying low-income consumers pursuant to the Lifeline program rules. While an Auction 904 long-form applicant is not required to obtain an ETC designation that is limited only to the eligible census blocks covered by its winning bids, it may only use its Auction 904 support to offer the required voice and broadband services to locations in eligible census blocks. If an Auction 904 support recipient has obtained an ETC designation that covers more area than the eligible census blocks in its winning bids, that support recipient has the obligation to provide Lifeline services throughout its designated service area, including in areas where it cannot use its Auction 904 support. A high-cost ETC may also be subject to state-specific requirements imposed by the state that designates it as an ETC.

90. Additionally, ETCs must offer qualifying voice service using their own facilities, at least in part. The Commission has interpreted the term ''facilities,'' for purposes of § 214(e) of the Act, to mean ''any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under § 254(c)(1).'' As explained by the Commission, ''a carrier need not offer universal service *wholly* over its own facilities in order to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale.'' Facilities are the ETC's ''own'' if the ETC has exclusive right to use the facilities to provide the supported services or when service is provided by any affiliate within the holding company structure.

91. An ETC satisfies its obligation to ''offer'' qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund-related requirements. Accordingly, a broadband provider may satisfy its voice obligation by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor, but a provider cannot simply rely on the availability of over-the-top voice options to satisfy this obligation.

92. *Procedures for Limited Disclosure of Application Information.* The Commission will withhold from the public, as well as other applicants, the following information related to the short-form application process at least until the auction closes and the results are announced:

- The state(s) selected by an applicant.
- The state(s) for which the applicant has been determined to be qualified to bid.
- The performance tier and latency combination(s) selected by an applicant.
- The spectrum access attachment submitted with the short-form application.
- The performance tier and latency combination(s) for which the applicant has been determined to be eligible to bid and the associated weight for each combination.
- An applicant's responses to the questions in Appendix A to the document and any supporting documentation submitted in any attachment(s) that are intended to demonstrate an applicant's ability to meet the public interest obligations for each performance tier and latency combination that the applicant has selected in its application.
- Any financial information contained in an applicant's short-form application for which the applicant has requested confidential treatment under the abbreviated process.
- An applicant's letter of interest from a qualified bank that the bank would provide a letter of credit to the applicant.

All other application information that is not subject to a request for confidential treatment under § 0.459 of the Commission's rules will be publicly available upon the release of the public notice announcing the status of submitted short-form applications after initial review.

93. Any applicant may use the abbreviated process under § 0.459(a)(4) to request confidential treatment of the financial information contained in its short-form application. The abbreviated process allows all applicants to answer a simple ''yes/no'' question on FCC Form 183 as to whether they wish their information to be withheld from public

inspection. The Commission will not grant requests to withhold financial data that applicants elsewhere disclose to the public, and that information will be disclosed in the normal course. An applicant that seeks confidential treatment of the financial information contained in its short-form application need not submit a statement that conforms with the requirements of § 0.459(b) unless and until its request for confidential treatment is challenged.

94. The § 0.459(a)(4) abbreviated process for requesting confidential treatment may not be used by an applicant to request confidential treatment of any information in its short-form application other than its financial information. Thus, an applicant that wishes to seek confidential treatment of any other portion(s) of its short-form application must file a regular § 0.459 request for confidential treatment of any such information with its short-form application (other than responses to the questions in Appendix A to the document and associated supporting documentation and a letter of interest that the Commission presumes to be competitively sensitive). This request must include a statement of the reasons for withholding those portions of the application from public inspection. Additionally, in the event an applicant's abbreviated request for confidential treatment of the financial information contained in its short-form application is challenged, the applicant must submit a request for confidential treatment of its financial information that conforms with the requirements of § 0.459 within 10 business days after receiving notice of the challenge.

95. After the close of bidding and announcement of auction results, the Commission will make publicly available all short-form application information, except for an applicant's operational information, letter of interest, and confidential financial information.

96. *Prohibited Communications and Compliance with Antitrust Laws.* The Commission's rules prohibit an applicant from communicating certain auction-related information to another applicant from the auction short-form application filing deadline until the post-auction deadline for winning bidders to file long-form applications for support. More specifically, § 1.21002 of the Commission's rules prohibits an applicant in Auction 904 from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies during the prohibition period. The rule's exception for communications between applicants that are members of a joint bidding arrangement shall not apply in Auction 904.

97. *Entities Covered by § 1.21002.* Section 1.21002's prohibition of certain communications will apply to any applicant that submits a short-form application to participate in Auction 904. This prohibition applies to all applicants that submit short-form applications regardless of whether such applicants become qualified bidders or actually bid in the auction.

98. An ''applicant'' for purposes of this rule includes the entity filing the application, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

99. All applicants applying to obtain support are ''competing applicants'' under the rule.

100. *Prohibition Applies Until Long-Form Application Deadline.* Section 1.21002's prohibition of certain communications begins at the short-form application filing deadline and ends at the long-form application deadline. Long-form applications will be due within a specified number of days after release of the Auction 904 closing public notice.

101. *Scope of Prohibition of Communications.* Section 1.21002 prohibits an applicant from communicating with another applicant with respect to ''its own, or one another's, or any other competing applicant's bids or bidding strategies.'' In addition to express statements of bids and bidding strategies, the prohibition against communicating ''in any manner'' includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

102. Parties subject to § 1.21002 should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed to be conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

103. A communication must convey ''bids or bidding strategies'' to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate both (1) to the eligible areas in the auction and (2) to bids or bidding strategies or post-auction market structure.

104. Accordingly, neither business discussions and negotiations that are unrelated to Auction 904 nor those that do not convey information about the bids or bidding strategies of an applicant in Auction 904 or the post-auction market structure are prohibited by the rule. Not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 904 will not violate the rule. In contrast, communicating, among other things, how an applicant will participate, including specific states selected, specific bid amounts, and/or whether or not the applicant is placing bids, would convey bids or bidding strategies and would thus be prohibited.

105. While § 1.21002 does not prohibit business discussions and negotiations among auction applicants that are not auction related, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey cost or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

106. Bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited ''communications concerning bids and bidding strategies may include communications regarding capital calls

or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.'' Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose ''its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate . . . in specific markets'' and has placed auction participants on notice that the use of its bidding system ''to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.''

107. Likewise, when completing a short-form application, each applicant should avoid any statements or disclosures that may violate § 1.21002, particularly considering the limited information procedures in effect for Auction 904. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its state selection, such as referring to certain states or markets in describing agreements, including any information in attachments that will be publicly available that may otherwise disclose the applicant's state selections, or, to the extent it has an alternative option, using applicant names that refer to states or locations within a state.

108. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate § 1.21002 even though that information subsequently may be made public during later periods of the application or bidding processes.

109. *Communicating with Third Parties.* Section 1.21002 does not prohibit an applicant from communicating bids or bidding strategies to a third party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other applicants, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability, if a violation of the rule has occurred.

110. In the case of an individual, the precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of engaging in a prohibited communication. Whether a prohibited communication has taken place in each case will depend upon the totality of circumstances, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

111. Separate Auction 904 applicants should not specify the same individual on their short-form applications to serve as an authorized bidder. A violation of § 1.21002 could occur if an individual acts as the authorized bidder for two or more applicants because a single individual may, even unwittingly, be influenced by the knowledge of the bids or bidding strategies of multiple applicants, in his or her actions on behalf of such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.,* a law firm, engineering firm, or consulting firm), a violation similarly could occur. In the latter case, at a minimum, applicants should certify on their applications that specific precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with § 1.21002.

112. Potential applicants may discuss the short-form application or bids for specific eligible areas with the counsel, consultant, or expert of their choice before the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including state(s) selected on the short-form application, is conveyed to that individual. With respect to bidding, the same third-party individual could, before the short-form application deadline, assist more than one potential applicant with calculating how much support the specific applicant would require to provide service in each eligible area for which it is interested in bidding. If such work can be completed in advance of the short-form application deadline, it would eliminate the need for third-party bidding advice during the auction. Finally, to the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

113. Applicants should use an abundance of caution in their dealings with other parties. This would include communications with public entities concerning state or federal loan or support programs. Applicants should also take care in any communications to members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a § 1.21002 violation. Similarly, an applicant's public statement of intent not to place bids during Auction 904 bidding could also violate the rule.

114. *Section 1.21001(b)(4) Certification.* By electronically submitting a short-form application, each applicant in Auction 904 certifies its compliance with §§ 1.21001(b)(4) and 1.21002. In particular, an applicant must certify under penalty of perjury that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Rural Digital Opportunity Fund support. Also, the applicant must certify that it and all applicable parties have complied with and will continue to comply with 47 CFR 1.21002.

115. Merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated § 1.21002(b) may be subject to sanctions.

116. *Duty to Report Prohibited Communications.* Section 1.21002(c) provides that any applicant that makes or receives a communication that appears to violate § 1.21002 must report such communication in writing to the Commission immediately, and in no

case later than five business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

117. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an Auction 904 applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by § 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy.

118. Sections 1.65(a) and 1.21002 of the Commission's rules require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. Enforcement actions were initiated against two applicants in Auction 903 for failing to timely report communications that potentially violated the rule.

119. *Procedure for Reporting Prohibited Communications.* A party reporting any prohibited communication pursuant to §§ 1.65, 1.21001(b), or 1.21002(c) must take care to ensure that any report of the prohibited communication does not itself give rise to a violation of § 1.21002. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that allow such materials to be made available for public inspection.

120. Parties must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions. Any reports required by § 1.21002(c) must be filed consistent with the instructions set forth in the document. For Auction 904, such reports must be filed with Jonathan Campbell, Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available. Any such report should be submitted by email to Mr. Campbell at the following email address: *auction904@fcc.gov.* If a report must be submitted in hard copy, any such report shall be delivered only to Jonathan Campbell, Chief, Auctions Division, Office of Economics and Analytics, Federal Communications Commission, 45 L St. NE, Washington, DC 20554.

121. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in § 0.459 of the Commission's rules. Such parties should coordinate with the Auctions Division staff about the procedures for submitting such reports.

122. *Winning Bidders Must Disclose the Terms of Agreements.* Each applicant that is a winning bidder may be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement into which it has entered. This may apply to any bidding consortium, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action and sanctions.

123. *Additional Information Concerning Prohibition of Certain Communications in Commission Auctions.* A summary listing of Commission documents addressing the application of the prohibited communications rule is available on the Commission's auction web page at *www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications.* Applicants utilizing these precedents should keep in mind the specific language of the rule applied in past decisions, as well as any differences in the context of the applicable auctions.

124. *Antitrust Laws.* Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of § 1.21002 will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

125. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating further in Auction 904 and in future auctions, among other sanctions.

126. *Red Light Rule.* Applicants seeking to participate in Auction 904 are subject to the Commission's red light rule. Unless otherwise expressly provided for, the Commission would withhold action on an application by any entity found to be delinquent in its debt to the Commission.

127. The Commission finds good cause to provide a limited waiver of the red light rule for any applicant seeking to participate in Auction 904 that is red-lighted for debt owed to the Commission at the time it timely files a short-form application. Specifically, a red-lighted applicant seeking to participate in Auction 904 will have until the close of the application resubmission filing window to pay any debt(s) associated with the red light. No further opportunity to cure will be allowed. If an applicant has not resolved its red light issue(s) by the close of the initial filing window, its application will be deemed incomplete. If the applicant has not resolved its red light issue(s) by the close of the application resubmission window, Commission staff will immediately cease all processing of the applicant's short-form application, and the applicant will be deemed not qualified to bid in the auction. Because this waiver is limited, it does not waive or otherwise affect the Commission's right or obligation to collect any debt owed to the Commission by an Auction 904 applicant by any means available to the Commission, including set off, referral of debt to the United States Treasury for collection, and/or by red lighting other applications or requests filed by an Auction 904 applicant.

128. Potential applicants for Auction 904 should review their own records, as well as the Commission's Red Light

Display System (RLD), to determine whether they owe any non-tax debt to the Commission and should try to resolve and pay any outstanding debt(s) prior to submitting a short-form application. The RLD enables a party to check the status of its account by individual FCC Registration Numbers (FRNs) and links other FRNs sharing the same Tax Identification Number (TIN) when determining whether there are outstanding delinquent debts. The RLD is available at *http://www.fcc.gov/redlight/.* Additional information is available at *https://www.fcc.gov/debt_collection/.*

129. Additionally, an Auction 904 applicant may incur debt to the Commission after it files its short-form application and may fail to pay that debt when due. An applicant should note that the Commission will conduct additional red light checks prior to authorizing support. Qualified bidders should continue to review their own records as well as the RLD periodically during the auction and to resolve and pay all outstanding debts to the Commission as soon as possible. The Commission will not authorize any winning bidder to receive support until its red light issues have been resolved.

130. *USF Debarment.* The Commission's rules provide for the debarment of those convicted of or found civilly liable for defrauding the high-cost support program. Those rules apply with equal force to high-cost support assigned by Auction 904.

131. *Modifications to FCC Form 183. Only Minor Modifications Allowed.* After the initial FCC Form 183 filing deadline, an Auction 904 applicant will be permitted to make only minor changes to its application consistent with the Commission's rules. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three bidders) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modifications to an FCC Form 183 (*e.g.,* adding a state in which the applicant intends to bid, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, or change in applicant's legal classification that results in a change in control) will not be permitted after the initial FCC Form 183 filing deadline. If an amendment reporting changes is a ''major amendment,'' as described in § 1.21001(d)(4), the major amendment will not be accepted and may result in dismissal of the application.

132. *Duty to Maintain Accuracy and Completeness of FCC Form 183.* Pursuant to § 1.65 of the Commission's rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in the Auction 904. An applicant for Auction 904 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 183 no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

133. *Modifying an FCC Form 183.* An entity seeking to participate in Auction 904 must file an FCC Form 183 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 183 in the Auction Application System. An applicant that has certified and submitted its FCC Form 183 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; however, the applicant must re-certify and resubmit its FCC Form 183 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.

134. An applicant will also be allowed to modify its FCC Form 183 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the Auction 904 qualified bidders. During these times, if an applicant needs to make permissible minor changes to its FCC Form 183, or must make changes in order to maintain the accuracy and completeness of its application pursuant to § 1.65, it must make the change(s) in the Auction Application System and then re-certify and re-submit its application to confirm and effect the change(s).

135. An applicant's ability to modify its FCC Form 183 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window and between the closing of the resubmission filing window and the release of the public notice announcing the Auction 904 qualified bidders. During these periods, an applicant will be able to view its submitted application, but it will be permitted to modify only the applicant's address, responsible party address, and contact information (*e.g.,* name, address, telephone number, etc.) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 183 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 183, or changes to maintain the accuracy and completeness of its application pursuant to § 1.65, the applicant must submit a letter briefly summarizing the changes to its FCC Form 183 via email to *auction904@fcc.gov.* The email summarizing the changes must include a subject line referring to Auction 904 and the name of the applicant, for example, ''Re: Changes to Auction 904 Auction Application of XYZ Corp.'' Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 183 application electronically in the Auction Application System once it is again open and available to applicants.

136. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (*e.g.,* correcting a misstatement of the applicant's legal classification). If an applicant needs to make a permissible minor change of this nature, it must submit a written request by email to *auction904@fcc.gov,* requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then recertify and resubmit its FCC Form 183 in the Auction Application System to confirm and effect the change(s).

137. As with filing the FCC Form 183, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

138. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate § 1.21002 or the limited information procedures adopted for Auction 904. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's state and/or performance tier and latency selection(s) or specific information about bid(s), should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to § 1.21002.

139. Questions about FCC Form 183 amendments should be directed to the Auctions Division at (202) 418–0660 or *auction904@fcc.gov.*

VI. Preparing for Bidding in Auction 904

140. *Bidder Education.* Prior to the deadline for applications to participate in Auction 904, detailed educational information will be provided in various formats to would-be participants. OEA, in conjunction with the Bureau, will provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 183. In addition, OEA will provide an online application procedures tutorial for the auction covering information on pre-bidding preparation, completing short-form applications, and the application review process.

141. In advance of the start of the mock auction, OEA will provide educational materials on the bidding processes for Auction 904, beginning with release of a user guide for the bidding system and bidding system file formats, followed by an online bidding procedures tutorial.

142. The online tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible in the Education section of the Auction 904 website at *www.fcc.gov/auction/904.* Once posted, the tutorials will be accessible at any time.

143. Finally, the Commission's Office of Communications Business Opportunities will engage with small providers interested in the auction process.

144. *Sort-Form Applications: Due Before 6:00 p.m. ET on July 15, 2020.* In order to be eligible to bid in this auction, applicants must first follow the procedures to submit a short-form application (FCC Form 183) electronically via the Auction Application System, following the instructions set forth in the FCC Form 183 Instructions. This short-form application will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. ET on July 15, 2020. Late applications will not be accepted. No application fee is required.

145. Applications may be filed at any time beginning at noon ET on July 1, 2020, until the filing window closes at 6:00 p.m. ET on July 15, 2020. Applicants are strongly encouraged to file early and in advance of the deadline. Applicants are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the filing deadline on July 15, 2020.

146. An applicant must always click on the CERTIFY & SUBMIT button on the ''Certify & Submit'' screen to successfully submit its FCC Form 183 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 183 will be provided in a separate public notice. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Auctions Technical Support are recorded.

147. *Application Processing and Minor Modifications. Public Notice of Applicant's Initial Application Status and Opportunity for Minor Modifications.* After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding, and subsequently will issue a public notice with applicants' initial application status identifying (1) those that are complete and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and a paper copy will be sent to the contact address listed in the FCC Form 183 for each applicant by overnight delivery. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

148. After the initial application filing deadline on July 15, 2020, applicants can make only minor modifications to their applications. Major modifications (*e.g.,* change control of the applicant, change the certifying official, or selecting additional states in which to bid) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 904.

149. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 183, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. Authorizations may be sent by email to *auction904@fcc.gov.*

150. *Public Notice of Applicant's Final Application Status.* After Commission staff review resubmitted applications, OEA will release a public notice identifying applicants that have become qualified bidders. The *Auction 904 Qualified Bidders Public Notice* will be issued before bidding in Auction 904 begins. Qualified bidders are those applicants with submitted FCC Form 183 applications that are deemed timely filed and complete.

151. *Auction Registration.* All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 183. The mailing will

include the SecurID® tokens that will be required to place bids and the Auction Bidder Line phone number.

152. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on October 21, 2020, should call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

153. If SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338–2868.

154. *Remote Electronic Bidding via the Rural Digital Opportunity Fund Bidding System.* Bidders will be able to participate in Auction 904 over the internet using the Rural Digital Opportunity Fund Bidding System. Only qualified bidders are permitted to bid. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. A bidder cannot bid without his or her SecurID tokens. For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 183. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 904. SecurID® tokens can be recycled and should be returned to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

155. The Commission makes no warranties, and shall not be deemed to have made any warranties, with respect to the bidding system, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the bidding system. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the bidding system.

156. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. After the close of a bidding round, the results of bid processing will not be altered absent evidence of a failure in the bidding system.

157. *Mock Auction.* All qualified bidders will be eligible to participate in a mock auction, which will begin on October 26, 2020. The mock auction will enable qualified bidders to become familiar with the bidding system and to practice submitting bids prior to the auction. All qualified bidders, including all their authorized bidders, should participate in the mock auction to ensure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Auction 904 Qualified Bidders Public Notice.*

VII. Bidding in Auction 904

158. *Auction Structure: Reverse Auction Mechanism. Multi-Round Reserve Auction Format.* The Commission will conduct Auction 904 using a multi-round, descending clock auction. Bidding in Auction 904 will work as follows: In each round of the auction, a bidder will be asked whether it is willing to provide service to an area, at a performance tier and latency it indicates, in exchange for a support amount that is at least as high as an amount announced by the bidding system. In each subsequent round, the announced support amount will be less than the amount from the previous round. To the extent that the bidder is willing to accept the announced amount, it will so indicate by submitting a ''bid'' on a spreadsheet indicating the area, the tier and latency, and the current amount that it accepts. If the current round's announced support amount becomes too low for the bidder, the bidder can simply stop bidding for the area or, alternatively, can enter a bid that indicates the lowest amount it will accept (an amount higher than the round's announced amount and lower than the last round's announced amount) in exchange for providing the service.

159. The announced support amount to which the bidder responds in a round depends on a percentage—applicable to bidding for all areas—as well as the reserve price for the specific area and the level of service that the bidder proposes to provide if it is assigned support for the area. These factors are linked through a formula. The bidding template—the spreadsheet—will show the support amount for a bid as well as the various factors determining that support amount in a given bidding round. Therefore, to bid effectively, a bidder need only determine the lowest amount of support it will accept in exchange for providing service to an area and bid for support that is at least that amount.

160. *Minimum Geographic Area for Bidding.* The Commission will use CBGs containing one or more eligible census blocks as the minimum biddable area in the auction. In March 2020, the Bureau released a preliminary list of eligible census blocks based on June 30, 2019 FCC Form 477 data. This list included just under 858,000 eligible census blocks, which are located in just under 65,000 CBGs. The Bureau will release a revised map and list of eligible census blocks.

161. *Auction Delay, Suspension, or Cancellation.* By announcement in the bidding system, the auction may be delayed, suspended, or cancelled in the event of natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. In such cases, OEA and the Bureau, in their sole discretion, may elect to resume the auction starting from the point at which the auction was suspended or cancel the auction in its entirety.

162. *Bidding Procedures. Bidding Overview.* The Commission will use a descending clock auction to identify (1) the areas that will receive Rural Digital Opportunity Fund support; (2) the provider that will be assigned to receive

support in each such area; and (3) the amount of support that each winning bidder will be eligible to receive, subject to post-auction application review. In the *Rural Digital Opportunity Fund Order,* the Commission concluded that bids for different areas at specified performance tier and latency levels will be compared to each other based on the percentage each bid represents of their respective areas' reserve prices; however, once the budget has cleared, the Commission will prioritize bids with lower tier and latency weights. OEA, in conjunction with the Bureau, will release a guide that provides further technical and mathematical detail regarding the bidding, assignment, and support amount determination procedures.

163. The auction will be conducted over the internet, and bidders will upload bids in a specified file format for processing by the bidding system. The bidding system will announce a clock percentage before each round. The clock percentage is used to delimit the range of acceptable bid percentages in each round of the auction and as a common unit to compare bids for different performance tiers and latencies, which were assigned weights (''T+L weights'') in the *Rural Digital Opportunity Fund Order.*

164. The clock percentage will begin at a high level, implying a support amount that is equal to or close to the full reserve price, even for bids at the largest T+L weight, and descend from one round to the next. In a round, a bidder can submit a bid for a given area at a specified performance tier and latency combination at any percentage that is greater than or equal to the round's clock percentage and less than the previous round's clock percentage. A bid indicates that the bidder is willing to provide service to the area that meets the specified performance tier and latency requirements in exchange for support that is no less than the support amount implied by the bid percentage.

165. The clock percentage will continue to descend in a series of bidding rounds, implying diminishing support amounts, until the aggregate amount of requested support represented by the bids placed in a round at the clock percentage is no greater than the budget. At that point, when the budget ''clears,'' the bidding system will begin to assign support, prioritizing bids with lower T+L weights. Bidding will continue for areas that were bid at the round's clock percentage and have not been assigned, and the clock will continue to descend in subsequent rounds. When there is no longer competition for any area, the auction will end. Because of the second-price rule, a winning bidder will be assigned support in amounts at least as high as the support amounts corresponding to its bid percentages.

166. *Reserve Prices.* In the *Rural Digital Opportunity Fund Order,* the Commission decided to use the CAM to set reserve prices for the Rural Digital Opportunity Fund Phase I auction; that the reserve price for each CBG will be no greater than the CAM-calculated support amount for the eligible census blocks in the CBG; and that a cap will be imposed in the amount of support per location provided to extremely high-cost census blocks. For high-cost census blocks, the CAM calculates a reserve price equal to the cost-per-location for all locations in the census block minus the funding threshold of $40.00 per location, or $30.00 per location in Tribal areas or areas lacking 10/1 Mbps. For extremely high-cost census blocks, support-per-location is capped at $212.50, or $222.50 in Tribal areas or areas lacking 10/1.

167. *Bid Collection. Round Structure.* Auction 904 will consist of sequential bidding rounds according to an announced schedule providing the start time and closing time of each bidding round. The Commission retains the discretion to change the bidding schedule with advance notice to bidders. OEA may modify the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending on bidding activity and other factors.

168. *Clock Percentages and Implied Support Amounts Based on Performance Tier and Latency Weights.* The clock will be denominated in terms of a percentage, which will be decremented for each round. To determine the annual support amount for an area implied at each percentage, the percentage is adjusted for the T+L weight of the bid and multiplied by the reserve price of the area.

169. The bidding system will accept bids for four performance tiers with varying speed and usage allowances and, for each performance tier, will provide for bids at either high or low latency. All bids will be considered simultaneously so that bidders proposing varying performance standards will compete directly against each other for the limited Rural Digital Opportunity Fund budget, but with an assignment preference for bids with lower T+L weights once the budget has cleared. Also, bidders will bid for support expressed as a percentage of an area's reserve price.

170. In the *Rural Digital Opportunity Fund Order,* the Commission adopted weights to compare bids for the different performance tiers and latency combinations. The Commission determined that Minimum performance tier bids will have a 50 weight; Baseline performance tier bids will have a 35 weight; Above Baseline performance tier bids will have a 20 weight; and Gigabit performance tier bids will have zero weight. Moreover, high-latency bids will have a 40 weight and low latency bids will have zero weight added to their respective performance tier weight. The lowest possible weight for a performance tier and latency is 0, and the highest possible weight is 90. Each weight uniquely defines a performance tier and latency combination, as shown in the table below.

WEIGHTS FOR PERFORMANCE TIERS AND LATENCIES

Minimum		Baseline		Above baseline		Gigabit	
High latency	Low latency	High latency	Low latency	High latency	Low latency	High latency	Low latency
90	50	75	35	60	20	40	0

171. The clock percentage in each round will imply a total amount of annual support in dollars for each area available for bidding, based on the area's reserve price and the T+L weight specified in the bid. The annual support amount implied at the clock percentage will be the smaller of the reserve price and the annual support amount obtained by using a formula that incorporates the T+L weights. Specifically:

$$\text{Implied Annual Support Amount (at the clock percentage)} = \min\left\{R, \left(\frac{C-(T+L)}{100}\right)R\right\}$$

Where:
R denotes the area's reserve price
T denotes the tier weight
L denotes the latency weight
C denotes the clock percentage

172. Because the highest implied support amount can never exceed an area's reserve price, when the clock percentage is greater than 100, the total implied annual support for lower weighted performance tier and latency combinations may remain at an area's reserve price for one or more rounds, while the total implied annual support of one or more higher weighted performance tier and latency combinations may be lower than an area's reserve price. When the clock percentage is decremented below 100, the implied annual support for any performance tier and latency combination will be below an area's respective reserve price.

173. The ''implied support formula'' can be used to determine the implied support at any price point percentage by substituting a given percentage for the clock percentage.

174. *Acceptable Bid Amounts.* In the first round, a bidder may place a bid at any price point percentage equal to or greater than the clock percentage and equal to or less than the opening percentage, specified up to two decimal places. In each subsequent round, a bidder may place a bid at any price point percentage equal to or greater than the clock percentage and less than the previous round's clock percentage, specified up to two decimal places.

175. Bids must imply a support amount that is one percent or more of an area's reserve price to be acceptable. For a given performance tier and latency combination, when the price point percentage equals T+L, the formula implies that the annual support amount is zero. When the price point percentage equals T+L+1, the formula implies an annual support amount that is one percent of the area's reserve price. Hence, a bid percentage must be at least T+L+1 for the bid to be accepted by the bidding system.

176. *Bidding for Geographic Areas.* A bid for support in a CBG is a bid for support for the locations within all eligible census blocks within that area.

177. A bidder may place only one bid on a given geographic area in a round, whether that area is bid on singly or included in a package bid.

178. The total implied support of a single bidder's bids at the clock percentage in any round may not exceed the total Rural Digital Opportunity Fund budget.

179. *Bid for a Single Area.* A bid is an offer to serve all locations in eligible census blocks within the indicated CBG at the indicated performance tier and latency combination for a total annual amount of support that is not less than the implied annual support at the price point percentage specified by the bidder and not more than the reserve price. In each round, a bid for a single available CBG with reserve price *R* consists of two pieces: A T+L weight and a price point that is a percentage not less than the current round's clock percentage and less than the previous round's clock percentage. For a given round, a CBG can be included in at most one bid—whether a bid on a single area or a package bid on multiple areas—made by a bidder, and a bidder can only bid on areas that are in states that the bidder selected on its application and for which it qualified.

180. Bidders will not be allowed to change the performance tier and latency combination in a bid for a particular area from round to round. Once a bidder has submitted a bid for an area at a particular performance tier and latency combination (which must be a performance tier and latency combination for the state for which the bidder qualified at the application stage) any bids in subsequent rounds by that bidder for the same area must specify the same performance tier and latency combination.

181. *Bid for a Package of Areas.* The Commission adopts package bidding procedures that will give bidders the option to place bids to serve a bidder-specified list of CBGs. However, corresponding bid processing procedures may assign fewer than the full list of areas to the bidder as long as the funding associated with the assigned areas is at least equal to a bidder-specified percentage of the funding requested for the complete list of areas in the package. A bidder can specify a package bid by providing a list of CBGs, a single performance tier and latency combination, a single price point for the areas in the list, and a minimum scale percentage for the package. The minimum scale percentage must be no higher than 75 percent for Auction 904. Thus, a package bid is an offer by the bidder to serve any subset of areas in the list at the support amount implied at the bid percentage, provided that the ratio of the total implied support of the subset to the total implied support of the list meets or exceeds the bidder-specified minimum scale percentage.

182. A bidder must bid to serve each area in the package bid at the same performance tier and latency combination. Moreover, every area in a package bid must be in the same state. For a given round, a CBG can appear in at most one bid—either a single bid or a package bid—made by a given bidder. A bidder may change the minimum scale percentage in any package bid from round to round.

183. *Bids Placed by Proxy Bidding Instructions.* The Commission will permit proxy bidding. With proxy bidding, a bidder may submit instructions for the system to continue to bid automatically for an area with a specified performance tier and latency combination in every round until either (1) the clock percentage falls below a bidder-specified proxy amount, (2) the bidder intervenes to change its bid, or (3) the area is assigned, whichever happens first. Proxy bidding instructions for a single area or a package of areas will contain all the information required for these bids, and the specified price point percentage will potentially be valid for multiple rounds. Proxy bidding instructions cannot include instructions for changes to the minimum scale percentage of a package bid nor to the specified area or areas.

184. During a round, the bidding system will generate a bid at the clock percentage on behalf of the bidder as long as the percentage specified in the proxy instruction is less than or equal to the current clock percentage. If the proxy percentage exceeds the current clock percentage but is lower than the prior round's clock percentage, then the bidding system will generate a bid at the price point percentage of the proxy. These bids will be treated by the auction system in the same way as any other bids placed in the auction. During a bidding round, a bidder may cancel or enter new proxy bidding instructions. Because proxy instructions may expire as the clock percentage descends and as areas get assigned, even with proxy bidding, bidders are strongly urged to monitor the progress of the auction to ensure that they do not need to cancel or adjust their proxy instructions.

185. Proxy bidding instructions will be treated as confidential information and will not be disclosed to the public at any time because they may reveal cost information that would not otherwise be made public (*e.g.,* if proxy bidding instructions are not fully implemented

because the clock percentage does not fall as low as the specified proxy percentage). All submitted bids and the amount of support awarded for any assigned bid, regardless of whether they were placed by the bidder or by the bidding system according to proxy bidding instructions, will be publicly disclosed after the auction concludes.

186. *Activity Rules.* The Commission will measure a bidder's bidding activity in a round in terms of implied support dollars. The Commission adopts activity rules that prevent a bidder's activity in a round from exceeding its activity in the previous round.

187. A bidder's activity in a round: (1) Is calculated as the sum of the implied support amounts (calculated at the bid percentage) for all the areas bid for in the round; and (2) may not exceed its activity from the previous round. A bidder will be limited in its ability to switch to bidding for support in different areas from round to round. Specifically, a bidder's activity in a round from areas that the bidder did not bid on at the previous round's clock percentage cannot exceed an amount determined by a percentage (the ''switching percentage'') of the bidder's total implied support from bids at the previous round's clock percentage. This switching percentage will be 20 percent for the second round of the auction only, and 10 percent for subsequent rounds, and OEA has the discretion to change the switching percentage, with adequate notice, before a round begins. The Commission also will not allow any switching once the budget has cleared. That is, once the budget has cleared, a bidder will be allowed to bid for an area only if the bidder bid for that area at the previous round's clock percentage and if that area has not yet been assigned.

188. *Bid Processing.* Once a bidding round closes, the bidding system will consider the submitted bids to determine whether an additional round of bidding at a lower clock percentage is needed to bring the amount of requested support down to a level within the available budget. If the total requested support at the clock percentage exceeds the budget, another bidding round occurs. In a round in which the amount of overall requested support falls to a level within the budget (*i.e.,* the budget ''clears''), bid processing will take the additional steps of beginning to assign support.

189. If, after the bids have been processed in the clearing round, some areas bid at the clock percentage have not been assigned (*e.g.,* because there were multiple bids for an area at the same T+L weight—and no bids at a lower T+L weight—at the clock percentage), the bidding system will commence another round of bidding to resolve the competition, and rounds will continue with bidding for these areas at lower clock percentages.

190. As a result, the bids that can be assigned under the budget in the round when the budget clears and in any later rounds will determine the areas that will be provided Rural Digital Opportunity Fund support. At most, one bid per area will be assigned support. The specifications of that bid, in turn, determine the performance tier and latency combination at which service will be provided to the eligible locations in the area. Additional details and examples of bid processing will be provided in the technical guide.

191. *Clock Percentage.* In each of a series of discrete bidding rounds, a bidder will be offered an amount of support for an area at a specified performance tier and latency combination that is determined by the clock percentage for the round and the area's reserve price. By bidding at that clock percentage, the bidder indicates that it is willing to provide the required service in the bid area in exchange for a payment at least as large as that implied by the clock percentage and the T+L weight. The opening percentage will determine the highest support amount that the bidder will be offered in the auction for a given area and performance tier and latency combination.

192. *Opening Percentage.* The opening percentage will be set to 100 percent plus an additional percentage equal to the largest T+L weight that is submitted by any qualified bidder in the auction, as proposed. Therefore, if any applicant is qualified to bid to provide service at the Minimum performance tier and high latency—a performance tier and latency combination assigned a weight of 90—the opening percentage will be set at 190 percent.

193. *Clock Decrements.* The Commission will begin the auction by decrementing the clock percentage by 10 points in each round. Also, the Commission provides OEA with the discretion to change that amount during the auction if it appears that a lower or higher decrement would better manage the pace of the auction. For example, if bidding is proceeding particularly slowly, OEA may increase the bid decrement to speed up the auction, recognizing that bidders have the option of bidding at an intra-round price point percentage if the clock percentage falls to a percentage corresponding to an amount of support that is no longer sufficient. The Commission will begin the auction with a decrement of 10 percent and limit any further changes to the decrement to between 5 percent and 20 percent.

194. *Bid Processing After a Clock Round Before the Clearing Round. Aggregate Cost at the Clock Percentage.* After each round until the budget has cleared, the bidding system will calculate an ''aggregate cost,'' an estimate of what it would cost to assign support at the clock percentage to the bids submitted in the round, in order to determine whether the budget will clear in that round. More precisely, the aggregate cost is the sum of the implied support amounts for all the areas receiving bids at the clock percentage for the round, evaluated at the clock percentage. The calculation counts each area only once, even if the area receives bids, potentially including package bids, from multiple bidders. If there are multiple bids for an area at different performance tier and latency combinations, the calculation uses the bid with the highest implied support amount. If the aggregate cost for the round exceeds the budget, the bidding system will implement another round with a lower clock percentage.

195. *Clearing Determination.* The first round in which the aggregate cost is less than or equal to the overall support budget is considered the ''clearing round.'' In the clearing round, the bidding system will further process bids submitted in the round and, if necessary, bids submitted at the previous round's clock percentage, to determine those areas that can be assigned and the support amounts winning bidders will receive.

196. *Bid Processing in the Clearing Round.* In the clearing round, the bidding system will consider bids in more detail to determine which can be identified as winning, or ''assigned,'' bids in that round; the ''second prices'' to be paid for winning bids; and which bids will carry forward to an additional bidding round.

197. *Assignment.* Once bid processing has determined that the current round is the clearing round, the bidding system will begin to assign winning bids, awarding support to at most one bid for a given area. The system considers all the bids submitted in the round in ascending order of price point percentage to determine which bids can be assigned within the budget. Bids at the same price point are considered in ascending order of T+L weight.

198. As it considers bids in ascending price point percentage order and then in ascending T+L weight order, the system assigns a bid with a given T+L weight if no other bid for the same area has already been assigned, as long as the

area did not receive bids at the clock percentage at the same or at a lower T+L weight and the areas to be assigned in a package bid meet the bid's minimum scale percentage. The bidding system also checks to ensure that sufficient budget is available to assign the bid.

199. To determine whether there is sufficient budget to support a bid, the bidding system keeps a running sum of support costs. This cost calculation at price point percentages between and including the current and previous clock percentages extends the concept of the aggregate cost calculation (which identifies the clearing round) to take into account, at sequential intermediate price points, the cost of bids that have been assigned so far and the estimated cost for areas bid at the clock percentage that have not been assigned.

200. At each ascending price point increment, starting at the clock percentage, the running cost calculation is the sum of support for three types of bids: (1) For assigned bids for which there were no other bids for support for their respective areas at price points lower than the currently-considered price point percentage, the system calculates the cost of providing support as the amount of support implied by the currently considered price point; (2) for assigned bids for areas that did receive other bids at price points lower than the currently-considered price point, support is generally calculated as the amount implied by the next-higher price point at which the area received a bid (where next-higher is relative to the price point of the assigned bid, not the currently-considered price point); and (3) bids at the clearing round's clock percentage that have not been assigned are evaluated as they were in the pre-clearing aggregate cost calculation: only one bid per area is included in the calculation, namely, the bid with the highest implied support amount (*i.e.,* the lowest T+L weight) evaluated at the clock percentage.

201. Once the system has determined which of the bids submitted in the round are assigned, it then determines the highest price point percentage at which the total support cost of the assigned bids does not exceed the budget (the ''clearing price point''). There will be no assigned bids at price point percentages above the clearing price point.

202. Once the system has processed all the bids submitted in the round, if the system has determined that the clearing price point is equal to the clock percentage of the previous round and there is still available budget, the system will proceed to consider bids submitted at the clock percentage of the previous round. These carried-forward bids will be considered in ascending order of T+L weights, and bid-specific pseudo-random numbers will be used to break ties.

203. *Support Amount Determination.* To determine the support amount for an assigned area, the system considers whether there were any other bids for the area in the round below the clearing price point. If there were no other bids below the clearing price point, the assigned area is supported at the clearing price point.

204. If a bid is assigned for an area that received more than one bid in the round below the clearing price point, the assigned bid is generally supported at the next higher price point percentage at which there is a bid for the area. For example, if there are two bids for an area below the clearing price point, the lower bid is supported at the bid percentage of the higher bid.

205. For any carried-forward bids assigned in the clearing round, the support amounts will be calculated based on the clock percentage of the previous round. A carried-forward bid can be assigned in the clearing round only if the system has determined that the clearing price point is equal to the clock percentage of the previous round.

206. *Bids and Bid Processing in Rounds After the Budget Clears. Carried-Forward and Acceptable Bids.* Once the budget clears, further bidding resolves competition for areas that were bid at the clock percentage of the previous round and have not yet been assigned. Therefore, bidding rounds continue after the clearing round at lower clock percentages, but bids are restricted to areas for which the bidder had bid at the previous round's clock percentage but that could not be assigned. Such bids may be for a given unassigned area that received multiple single bids, package bids that were not assigned because the bidder's minimum scale percentage for the package was not met, or remainders of package bids—unassigned areas that formed part of package bids that were partially assigned.

207. Bids at the clock percentage for unassigned areas will carry forward automatically to the next bidding round at the previous round's clock percentage, since the bidder had previously accepted that percentage. In the round into which the bids carry forward, the bidder may also bid for support for these areas at the current round's clock percentage or at intermediate price points. In rounds after the clearing round, a bidder cannot switch to bidding for an area for which it did not bid at the previous round's clock percentage.

208. While bids for unassigned packages will carry forward at the previous clock percentage, the bidder for such a package may group the bids for the areas in the package into smaller packages and bid on those smaller packages at the current round's percentages. However, the unassigned remainders of package bids partially assigned to the bidder will carry forward as individual area bids. Any bids the bidder places for the remainder areas at the new round's percentages must be bids for individual areas—that is, the bidder cannot create a new package of any of the unassigned remainders.

209. Proxy instructions, if at a price point percentage below the clock percentage of the previous round, generally continue to apply in rounds after the clearing round under the same conditions that apply to other bids. In the case of a proxy instruction for a package bid that is only partially assigned to the bidder, the proxy instruction continues to apply to the unassigned areas in the package bid. That is, the price point percentage specified in the proxy instructions would apply to bids for the individual remainder areas.

210. *Bid Processing.* When processing the bids of a round occurring after the clearing round, the system considers bids for assignment and support amount determination in ascending order of T+L weight and then in ascending order of price point percentage. The system assigns a bid with a given T+L weight if the area has not already been assigned, as long as the area did not receive bids at the clock percentage at the same or at a lower T+L weight and, in the case of a package bid, as long as the areas to be assigned in the package meet the bid's minimum scale percentage.

211. To determine the support amount for an assigned area, the system considers whether there were any other bids for the area in the round at the same or at a lower T+L weight. If there were no other bids, the assigned area is supported at the clock percentage of the previous round, consistent with the second-price rule. If a bid is assigned for an area that received more than one bid in the round at the same or at a lower T+L weight, the assigned bid is generally supported at the next higher price point percentage at which there was a bid for the area at the same or at a lower T+L weight.

212. If, after the bids of the round have been processed, one or more of the areas with bids at the clock percentage

have not yet been assigned, there will be another bidding round at a lower clock percentage, with the same restrictions on bids and following the same assignment and pricing procedures.

213. *Closing Conditions.* The auction will end once the overall budget has cleared if all areas that were bid at the round's clock percentage were assigned during the bid processing of the round.

214. *Availability of Bidding Information.* Bidders will have secure access to certain non-public bidding information while bidding is ongoing. After each round, and before the next round begins, the Commission will make the following information available to individual bidders:

- The clock percentage for the upcoming round.
- The aggregate cost at the previous round's clock percentage for rounds prior to the clearing round.
  - The aggregate cost at the clock percentage is not disclosed for the clearing round or any later round.
- For all eligible areas in all states, including those in which the bidder was not qualified to bid or is not bidding, whether the number of bidders that placed bids at the previous round's clock percentage was 0, 1, or 2 or more, and for areas that received 1 bid or 2 or more bids, the lowest T+L weight that was associated with a bid in the previous round for the area.
  - For the clearing round and any subsequent round, bidders are also informed about which areas have been assigned.
- Bidder-specific results:
  - The implied support of the bidder's carried-forward bids for the next round and a list of those carried-forward bids.
  - The number of areas for which proxy instructions are in effect for future rounds.
  - After the clearing round, areas and support amounts that have been assigned to the bidder.
- Summary statistics of the bidder's bidding in the previous round, including:
  - The bidder's activity, based on all bids in the previous round, and the implied support of the bidder's bids at the clock percentage.
  - The number of areas for which the bidder bid, at the clock percentage and at other price points.

215. Prior to each round, the Commission will also make available to each bidder the implied support amounts at the round's clock percentage for the areas and performance tier and latency combinations for which the bidder is eligible to bid.

216. The bidding system will make available to bidders the T+L weight associated with the bid in an area that received a single bid in the previous round, and it will disclose the lowest T+L weight of any bid received in the previous round in an area with 2 or more bids.

217. The Commission will withhold information on the progress of the auction from the general public until after the close of bidding when auction results are announced. Accordingly, during the auction, the public will not have access to such interim information as the current round, the clock percentage, the aggregate cost, or any summary statistics on bidding or assigned bids.

218. After the close of bidding and announcement of auction results, the Commission will make publicly available all bidding data, except for proxy bidding instructions.

219. *Auction Announcements.* The bidding system will report necessary information to bidders through auction announcements. All auction announcements will be available by clicking a link in the Rural Digital Opportunity Fund Bidding System.

220. *Auction Results.* OEA will determine the winning bids as described in the document. After OEA and the Bureau announce the auction results, they will provide a means for the public to view and download bidding and results data.

VIII. Post-Auction Procedures

221. *General Information Regarding Long-Form Applications.* Pursuant to § 1.21004(a), each Auction 904 winning bidder is required to file an application for Rural Digital Opportunity Fund support, referred to as a long-form application, by the applicable deadline. Shortly after bidding has ended, OEA and the Bureau will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadline for the long-form application. Winning bidders will then have the opportunity to assign their winning bids to related entities or individual members of a consortium. Winning bidders or their designees will use the FCC Form 683 and the Auction Application System to participate in the Divide Winning Bids process and to submit their long-form applications. The Commission expects long-form applicants to expeditiously complete their applications and respond in a timely manner to staff requests for additional or missing information.

222. Details regarding the submission and processing of long-form applications will be provided in a public notice after the close of the bidding. After a long-form applicant's application has been reviewed and is considered to be complete, and after the long-form applicant has submitted an acceptable letter of credit and accompanying Bankruptcy Code opinion letter, a public notice will be released authorizing the long-form applicant to receive Rural Digital Opportunity Fund support.

223. *Divide Winning Bids.* Any winning bidder that intends to assign some or all of its winning bids to related entities must do so by submitting the Divide Winning Bids portion of the FCC Form 683 during the Divide Winning Bids filing window. The Divide Winning Bids filing window will be announced in the public notice declaring the auction closed.

224. A winning bidder in Auction 904 may only assign its winning bids to a related entity that is named in its short-form application or that was formed after the short-form application deadline (*i.e.,* July 15, 2020). A related entity is an entity that is controlled by the winning bidder or is a member of (or an entity controlled by a member of) a consortium/joint venture of which the winning bidder is a member. Thus, if a holding company/parent company is a winning bidder, the winning bidder may designate at least one operating company that it controls to complete the long-form application to receive Rural Digital Opportunity Fund support for some or all of the winning bids in a state. If a consortium/joint venture is a winning bidder, the entity may designate at least one member of (or an entity controlled by a member of) the consortium/joint venture to complete the long-form application to receive Rural Digital Opportunity Fund support for some or all of the winning bids in a state.

225. A winning bidder may assign winning bids to more than one entity in a single state, but it cannot assign a single winning bid to more than one entity. Thus, a winning bidder may not split among multiple entities either: (1) Eligible census blocks within a winning bid for an individual CBG, or (2) separate CBGs within a winning package bid.

226. Each entity that is assigned a winning bid through the Divide Winning Bids process is the entity that must file the long-form application portion of FCC Form 683 in its own name. Except for one limited exception, that long-form applicant must be designated as the eligible telecommunications carrier to serve the relevant area(s), be named in the requisite letter(s) of credit, and fulfill the public interest obligations

associated with receiving Rural Digital Opportunity Fund support.

227. If a winning bidder is a holding/parent company that has multiple operating companies in a state and intends to assign its winning bids to multiple operating companies in a state, it may choose one of those entities to be the lead operating company. In such circumstances, the winning bids should be assigned to that lead operating company, the long-form application should be filed in the name of the lead operating company, the letter of credit should be in the name of the lead operating company, and payments will be made to the study area code associated with the lead operating company. However, the long-form application must identify which operating companies will meet the public interest obligations for which CBGs and documentation must be submitted that demonstrates that each of the operating companies has an ETC designation covering the relevant CBGs. Compliance with the service milestones will be determined on a statewide basis across all the relevant operating companies.

228. A winning bidder that assigns some or all its winning bids to a related entity must make a number of certifications in the Divide Winning Bids portion of FCC Form 683. In particular, it must certify and acknowledge that it: (1) Has assigned the winning bids to related entities that were named in the short-form application or are newly formed, (2) will inform each entity of its filing obligation and cause each entity to submit a timely FCC Form 683 long-form application, (3) will be at risk for default if any of the related entities do not submit a timely FCC Form 683 long-form application, and (4) will submit a timely FCC Form 683 long-form application for any of the winning bids that it did not assign to another entity.

229. *Long-Form Application: Disclosures and Certifications.* Within the number of days specified by the Auction 904 closing public notice, a long-form applicant must electronically submit a properly completed long-form application (FCC Form 683) for the areas for which it (or its parent/holding company or consortium/joint venture) was deemed a winning bidder. Further instructions and filing requirements will be provided to long-form applicants in the auction closing public notice.

230. *Ownership Disclosure.* A long-form applicant must fully disclose in its long-form application its ownership structure as well as information regarding the real party- or parties-in-interest in the applicant or application as set forth in § 1.2112(a). A long-form applicant that was also a winning bidder will already have ownership information on file with the Commission that was submitted in its short-form application during the pre-auction process, which may simply need to be updated as necessary.

231. *General Universal Service Certifications.* A long-form applicant must certify in its long-form application that it is in compliance with all statutory and regulatory requirements for receiving the universal service support that it seeks as of the long-form application filing deadline, or that it will be in compliance with such requirements before being authorized to receive Rural Digital Opportunity Fund support. A long-form applicant must also certify that it will comply with all program requirements, including service milestones. In addition, a long-form applicant must certify that it is aware that if it is not authorized to receive support based on its application, the application may be dismissed without further consideration and penalties may apply.

232. *Financial and Technical Capability Certification.* A long-form applicant must certify in its long-form application that it is financially and technically capable of meeting the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support. A long-form applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. A long-form applicant should take care to review its resources and its plans before making the required certification.

233. *Public Interest Obligations Certification.* A long-form applicant must certify in its long-form application that it will meet the relevant public interest obligations for each performance tier and latency combination for which it (or its parent/holding company or consortium/joint venture) was deemed a winning bidder, including the requirement that it will offer service at rates that are equal to or lower than the Commission's reasonable comparability benchmarks for fixed services offered in urban areas.

234. *Eligible Telecommunications Carrier Certification.* A long-form applicant must acknowledge in its long-form application that it must be designated as an ETC in the relevant areas prior to being authorized to receive Rural Digital Opportunity Fund support in those areas. Specifically, the long-form applicant must certify that, if it has already been designated as an ETC in the relevant areas, it has provided a certification of its status in each such area and the relevant documentation supporting that certification in its long-form application. If the long-form applicant has not yet been designated as an ETC in the relevant areas, the long-form applicant must certify that it will submit a certification of its status as an ETC in each such area and the relevant documentation supporting that certification prior to being authorized to receive such support. This certification of ETC status and documentation must be submitted by the applicant within 180 days after the release of the Auction 904 closing public notice.

235. *Description of Technology and System Design.* Each long-form applicant will be required to demonstrate that it has a design plan with supportable technologies to meet the relevant Rural Digital Opportunity Fund public interest obligations in the areas covered by the winning bids by submitting technical information to support the operational assertions made in the short-form application. A long-form applicant is required to submit a detailed technology and system design description that explains how the design and technologies chosen will meet the relevant performance requirements, including information regarding quality, coverage, voice service, network management and on-going operations. This submission must include a detailed network diagram. The network diagram must be certified by a professional engineer that ''the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements.'' Because it may take time for a long-form applicant to create a detailed technology and system design description that is tailored to such areas, it will submit its technology and system design description in two stages.

236. *Stage I—Initial Overview.* A long-form applicant must submit with its long-form application (due within the number of business days specified after the release of the Auction 904 closing public notice) an overview of its intended technology and system design for each state in which winning bids were made. The overview must describe at a high level how the long-form applicant will meet its Rural Digital Opportunity Fund public interest obligations for the relevant performance tier and latency combination(s) using Rural Digital Opportunity Fund support (*e.g.,* building a new network or expanding an existing network, deploying new technology or existing

technology). This overview should avoid highly technical terminology or jargon unless such language is integral to explaining the project. The overview will be made publicly available, so a long-form applicant should not include any confidential trade secrets or commercial information in its overview.

237. *Stage II—Detailed Description.* Within the specified number of days after the release of the Auction 904 closing public notice, a long-form applicant must submit, for each state in which winning bids were made, a more detailed description of its technology and system design. This second submission must describe the network to be built or upgraded, demonstrate the project's feasibility, and include the network diagram certified by a professional engineer. It must describe in detail a network that fully supports the delivery of consumer voice and broadband service that meets the requisite performance requirements to at least 95 percent of the required number of locations in each state by the end of the six-year build-out period and for the duration of the 10-year support term, assuming a 70 percent subscription rate by the final service milestone. It also must contain sufficient detail to demonstrate that the long-form applicant can meet the interim service milestones if it becomes authorized to receive support. If a long-form applicant submits a technology and system design description that lacks sufficient detail to demonstrate that the long-form applicant has the technical qualifications to meet the relevant Rural Digital Opportunity Fund obligations, the long-form applicant will be asked to provide further details about its proposed network. The Commission will treat all the information submitted with this second submission as confidential and will withhold it from routine public inspection.

238. The Commission provides guidance on how a long-form applicant can successfully meet the Stage II requirement in § 54.804(b)(2)(iv) to provide a description of its technology and system design. Specifically, the Commission describes the types of information it would expect a long-form applicant to include, at a minimum, in a detailed description of its technology and system design in order to demonstrate that it has the technical qualifications to meet its Rural Digital Opportunity Fund obligations.

239. The Commission understands that long-form applicants will be in a variety of implementation stages throughout the support term. For example, a long-form applicant may have already completed its network construction, may be in the process of constructing its network, or may be planning how it will construct its network. Indeed, the long-form applicant may have portions of its network(s) in different stages at the same time for different states, areas, or technology design solutions. Therefore, the Commission expects that the detailed descriptions that a long-form applicant submits will be based upon its current actions or intentions and that changes may and in many cases will be made throughout the support term. The Commission is looking for the long-form applicant to demonstrate that it has a technically feasible solution that will meet the Rural Digital Opportunity Fund support requirements by the relevant service milestones.

240. *Overall Network Design.* A long-form applicant, regardless of the technology (or technologies) it proposes to use, is expected to:

- Describe the proposed last mile architecture(s), design, and technologies.
- Describe the proposed middle mile/backhaul topology, architecture, design, and technologies.
- Describe the proposed interconnection architecture, design, and technologies solution to connect to the internet. This will include the likely service providers, link data-rate/size, locations, dual-homing, and multi-homing characteristics.
- Describe the proposed architecture that will be used to provide voice service. Describe whether the proposed voice services will: (1) Be internally provided, (2) use a managed voice service provider, (3) use a voice over the top service, or (4) use another type of voice service.
- Describe the network's scalability to support customer growth and network data usage growth to account for: (1) Ever increasing application requirements, (2) increasing quality demands, and (3) lower response/latency demands for ever increasing usage of highly interactive applications.
- Describe the design and features that it proposes to implement that will: Improve reliability (such as redundancy) for equipment, links and software; dual homing; and multi-homing connectivity.
- Describe network infrastructure ownership. Indicate which parts of the network will use the long-form applicant's or another party's existing network facilities, including both non-wireless and wireless facilities extending from the network to customers' locations. For non-wireless facilities that do not yet exist, the description should indicate whether the new facilities will be aerial, buried, or underground. This includes leased lines, transit services, rented tower space for radios, etc.
- Provide technical information about the design methods, ''rules of thumb,'' and engineering assumptions used to size the capacity of the network's nodes (or gateways), links and wireless base stations. These are often expressed as ratios, such as ''oversubscription ratio'' applied in the middle-mile/backhaul and interconnection network levels that funnel the consumer traffic to the internet. The information provided should demonstrate how the required performance for the relevant performance tier will be achieved during periods of peak usage, downstream and upstream speed, and latency assuming a 70 percent subscription rate by the final service milestone. The document includes a diagram showing the various oversubscription ratios, link media (wired, wireless, etc.), redundancy and multi-homing in a visual format.
- Describe how the long-form applicant's design will meet the peak period end-to-end performance requirements for the path from the consumer premises to the internet. This requires that the applicant detail consumer path use case(s) that the long-form applicant will use to move traffic to and from the consumer premises to the internet. This description should define the technical, planning and capacity parameters that a stream of packets would experience along this end-to-end path. For example, the document includes a diagram showing five paths that include various oversubscription ratios, link media (wired, wireless, etc.), redundancy, and multi-homing characteristics. The Commission expects individual path use cases to describe the pathway: Links (media, technology, data-rates, redundancy, etc.); frequencies, channels, antenna and wireless parameters; topology (mesh, ring, hierarchical) that also note redundant links or multi-homing, etc.; network devices (equipment type, redundancy, reliability); protocols; oversubscription ratios; and ETC owned vs leased infrastructure.

241. *Project Plan.* The applicant will provide a project plan that describes a network build-out schedule that includes but is not restricted to plans for constructing last mile and middle mile facilities.

- The build-out schedule should include when (month, quarter or projected date) and where (geographic description, county, city, town, CBG, census tract; note the state or higher level is not acceptable).

• The build-out schedule should show the long-form applicant's projected milestones on an annual basis, including achievement of the interim service milestones described in § 54.802(c) of the Commission's rules and completion of the network for the number of locations determined by the CAM by the end of the sixth year of support.

• The project plan and included schedule should incorporate detailed information showing how the long-form applicant plans to offer, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service meeting the relevant performance requirements when the system is complete.

242. *Network Management and On-going Operations.* The applicant's detailed description should:

• Describe the applicant's plans for monitoring network usage/capacity, performance, congestion, and other parameters.

• Describe how the applicant will maintain the performance and quality of the service for the duration of the 10-year support term.

• Describe who will provide these services. Will the applicant: (1) Use existing internal organizations, (2) use contracted management service providers, (3) create new internal organizations, or (4) engage new contractors?

• Describe how the applicant will comply with Commission performance measures for speed and latency. The description should include whether the applicant plans to use the Measuring Broadband America (MBA) system, off-the-shelf testing mechanisms such as existing network management systems and network management tools, or provider-developed self-testing mechanisms.

243. *Network Diagram.* The network diagram must be certified by a professional engineer and should:

• Identify all wireline and wireless segments of the proposed networks. This should include applicable middle-mile/backhaul and interconnection network infrastructure. These are also commonly referred to as ''links'' between the nodes. These descriptions should indicate the media/link technology, data-rate/speed, and topology if point-to-point, ring, etc.

• Uniquely identify (i) major network nodes including their manufacturer and model, as well as their functions, locations, and throughput/capacity; (ii) access nodes or gateways, including their technology, manufacturer and model, location, and throughput/capacity; and (iii) major inter-nodal links (not last mile), and their throughput/capacity.

• Indicate how many locations/consumers will be offered service from each access node or from each gateway, and which performance tier or tiers will be supported at each access node.

• Indicate what parts of the network will be new deployment and what parts will use existing network facilities.

• Identify specialized nodes used in providing voice service, such as SIP servers, PSTN gateways or voice OTT providers.

• Explain how nodes or gateways are connected to the internet backbone and Public Switched Telephone Network. Show redundancy, dual- or multi-homing configurations.

244. *Terrestrial Fixed Wireless.* A long-form applicant that proposes to use terrestrial fixed wireless technologies should:

• Explain, with technical detail, how the proposed spectrum can meet or exceed the relevant performance requirements at peak usage periods. Clearly identify the licensed and unlicensed spectrum that will be used.

• Provide the calculations used, for each performance tier and frequency band, to design the last mile link budgets in both the upload and download directions at the cell edge, using the technical specifications of the expected base station and customer premise equipment. Submit assumptions regarding fading statistics, cell edge probability of coverage, and cell loading for each relevant performance tier.

• Provide coverage maps for the planned and/or existing networks that will be used to meet the Rural Digital Opportunity Fund public interest obligations, indicating where the upload and download speeds will meet or exceed the relevant performance tier speed(s). The coverage maps should be provided for each interim and final service milestone and should display the required service areas and target locations (or a representation thereof).

• Provide detailed radio access network (RAN) infrastructure information used to generate the coverage maps for each unique cell including longitude, latitude, antenna height, antenna orientation, antenna down-tilt, antenna model, antenna system configuration, effective radiated power, operating spectrum amount, operating spectrum type, and operating radio technology.

• Describe the underlying propagation model used to prepare the coverage maps and how the model incorporates the operating spectrum, antenna heights, distances, fading statistics, terrain resolution, and clutter resolution.

• Describe the underlying cell site and generally, radio frequency (RF) access network capacity management and traffic engineering models or concepts. Also describe any adjunct carrier aggregation or spectrum sharing techniques and if the proposed system could accommodate these features, if needed.

• Describe, for each relevant performance tier and latency combination, the base station equipment that the long-form applicant plans to use.

• Describe the planned customer premise equipment configuration.

245. *Satellite Technologies.* A long-form applicant that proposes to use primarily satellite technologies should:

• Describe how many satellites that are in view simultaneously from any specific location will be required to meet the relevant Rural Digital Opportunity Fund public interest obligations.

• Describe how many uplink and downlink gateway antenna beams will be required on each satellite, and the capacity of each beam in megabits per second. For each winning bid area/state to be served, provide both the uplink and downlink beams, provide the gateway call sign, beam ID, frequency bands used, and location (city/state).

• Describe how many uplink and downlink user antenna beams will be required on each satellite, and the capacity of each beam in megabits per second.

• Describe how the gateway capacity is connected to user beams on the satellite, in terms of beams and data capacity per beam.

• Describe how much satellite capacity (in gigabits per second) the applicant plans to reserve, by winning bid area/state, to serve the locations required under applicant's award and to achieve the required service milestones.

• Describe whether the capacity on the uplink and downlink beams would be able to be reallocated once a satellite commences operation, if the subscription rate is less than 70 percent in one beam but more than 70 percent in another beam. If there are circumstances in which such reallocation would not be possible, please describe those circumstances and the states impacted.

246. *Available Funds Certification and Description.* A long-form applicant must certify in its long-form application that it will have available funds for all project costs that exceed the amount of

Rural Digital Opportunity Fund support to be received for the first two years of its support term. A long-form applicant must also describe how the required construction will be funded in each state. The description should include the estimated project costs for all facilities that are required to complete the project, including the costs of upgrading, replacing, or otherwise modifying existing facilities to expand coverage or meet performance requirements. The estimated costs must be broken down to indicate the costs associated with each proposed service area at the state level and must specify how Rural Digital Opportunity Fund support and other funds, if applicable, will be used to complete the project. The description must include financial projections demonstrating that the long-form applicant can cover the necessary debt service payments over the life of any loans. The Commission will treat all the information submitted with this submission as confidential and will withhold it from routine public inspection.

247. *Spectrum Access.* A long-form applicant that intends to use wireless technologies to meet the relevant Rural Digital Opportunity fund public interest obligations must demonstrate that it currently has sufficient access to spectrum. Specifically, a long-form applicant must, in its long-form application (i) identify the spectrum band(s) it will use for the last mile, backhaul, and any other parts of the network; (ii) describe the total amount of uplink and downlink bandwidth (in megahertz) that it has access to in each spectrum band for the last mile; (iii) describe the authorizations (including leases) it has obtained to operate in the spectrum, if applicable; and (iv) list the call signs and/or application file numbers associated with its spectrum authorizations, if applicable. To the extent that a long-form applicant will use licensed spectrum, it should provide details about how the licensed service area covers its winning bid area(s) (*e.g.,* provide a list of geographic areas that the spectrum license covers and describe how those areas relate to the winning bid area(s)).

248. A long-form applicant must also certify that the description of the spectrum access is accurate and that it will retain such access for at least 10 years after the date on which it is authorized to receive support. Applications will be reviewed to assess the reasonableness of this certification.

249. *Letter of Credit Commitment Letter.* Within the specified number of days after the release of the Auction 904 closing public notice, a long-form applicant must submit a letter from a bank acceptable to the Commission, as set forth in § 54.804(b)(3), committing to issue an irrevocable stand-by letter of credit, in the required form, to the long-form applicant. The letter must, at a minimum, provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit in Appendix C of the *Rural Digital Opportunity Fund Order.*

250. *Documentation of ETC Designation.* Within 180 days after the release of the Auction 904 closing public notice, a long-form applicant is required to submit appropriate documentation of its high-cost ETC designation in all the areas for which it will receive support. Appropriate documentation should include the original designation order, any relevant modifications, *e.g.,* expansion of service area or inclusion of wireless, along with any name-change orders. A long-form applicant is also required to provide documentation showing that the designated areas (*e.g.,* census blocks, wire centers, etc.) cover the relevant winning bid areas so that it is clear that the long-form applicant has high-cost ETC status in each winning bid area. Such documentation could include maps of the long-form applicant's ETC designation area, map overlays of the winning bid areas, and/or charts listing designated areas. Additionally, a long-form applicant is required to submit a letter with its documentation from an officer of the company certifying that the long-form applicant's ETC designation for each state covers the relevant areas where the long-form applicant will receive support.

251. In the event a long-form applicant is unable to obtain the necessary ETC designations within this timeframe, it would be appropriate to waive the 180-day timeframe if the long-form applicant is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. The Commission will presume that a long-form applicant acted in good faith if it files its ETC application with the state commission or the Commission as applicable within 30 days of the release of the Auction 904 closing public notice. Absent a waiver of the deadline, a long-form applicant that fails to obtain the necessary ETC designations by this deadline will be subject to an auction forfeiture and will not be authorized to receive Auction 904 support.

252. *Audited Financial Statements.* Within 180 days after the release of the Auction 904 closing public notice, a long-form applicant that did not submit audited financial statements in its pre-auction short-form application must submit the financial statements from the prior fiscal year that are audited by an independent certified public accountant. Any long-form applicant that fails to submit the audited financial statements as required by the 180-day deadline will be subject to a base forfeiture of $50,000, which will be subject to adjustment upward or downward as appropriate based on the criteria set forth in the Commission's forfeiture guidelines.

253. *Letter of Credit and Bankruptcy Code Opinion Letter.* After a long-form applicant's application has been reviewed and is considered complete, the Commission will issue a public notice identifying each long-form applicant that may be authorized to receive Rural Digital Opportunity Fund support. No later than 10 business days after the release of the public notice, a long-form applicant must obtain one irrevocable standby letter of credit at the value specified in § 54.804(c)(1) from a bank acceptable to the Commission as set forth in § 54.804(c)(2) for each state where the long-form applicant is seeking to be authorized. The letter of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix C of the *Rural Digital Opportunity Fund Order.* The first letter of credit must cover the first year of support at a minimum. The value of the letter of credit must increase each year until it has been verified that the support recipient has met certain milestones as described in more detail in § 54.804(c)(1) of the Commission's rules.

254. In addition, a long-form applicant will be required to provide with the letter of credit an opinion letter from outside legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the long-form applicant's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the letter of credit, under § 541 of the Bankruptcy Code.

255. *Default Payment Requirements. Auction Forfeiture.* Any Auction 904 winning bidder or long-form applicant will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support. A winning bidder or long-form applicant will be considered in default and will be subject to forfeiture if it fails to timely

file a long-form application, fails to meet the document submission deadlines, is found ineligible or unqualified to receive Rural Digital Opportunity Fund support by the Bureau on delegated authority, and/or otherwise defaults on its winning bids or is disqualified for any reason prior to the authorization of support. Any such determination by the Bureau shall be final, and a winning bidder or long-form applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise. Agreeing to such payment in the event of a default is a condition for participating in bidding in Auction 904.

256. In the event of an auction default, the Commission will impose a base forfeiture per violation of $3,000 subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guideline. A violation is defined as any form of default with respect to the CBG. In other words, there shall be separate violations for each CBG assigned in a bid. To ensure that the amount of the base forfeiture is not disproportionate to the amount of a winning bidder's bid, the Commission will limit the total base forfeiture to 15 percent of the bidder's total assigned support for the bid for the support term.

257. *Non-Compliance Measures Post-Authorization.* A long-form applicant that has received notice from the Commission that it is authorized to receive Rural Digital Opportunity Fund support will be subject to non-compliance measures once it becomes a support recipient if it fails or is unable to meet its minimum coverage requirement, other public interest obligations, or fails to fulfill any other term or condition of Rural Digital Opportunity Fund support. These measures will scale with the extent of non-compliance, and include additional reporting, withholding of support, support recovery, and drawing on the support recipient's letter of credit if the support recipient cannot pay back the relevant support by the applicable deadline. A support recipient may also be subject to other sanctions for non-compliance with the terms and conditions of Rural Digital Opportunity Fund support, including, but not limited to, potential revocation of ETC designations and suspension or debarment. Additionally, support recipients are subject to the non-compliance measures that have been adopted in conjunction with the methodology for high-cost support recipients to measure and report speed and latency performance to fixed locations.

Auction 904 Short-Form Application Operational Questions (Appendix A)

Operational History

1. Has the applicant previously deployed consumer broadband networks (Yes/No)? If so:

a. Provide the date range when broadband service was offered and in which state(s) service was offered. Specify dates for each state.

b. Provide an estimate of how many subscribers are currently served in each state. (If the applicant is no longer providing service in any state, estimate the number of customers that were served at the beginning of the last full year that the applicant did provide service.)

c. What services (*e.g.,* voice, video, broadband internet access) were or are provided in each state?

d. List any data-usage limit (data cap) used as part of existing broadband access services.

e. What specific technologies and network architecture are used for last-mile; middle-mile/backhaul; and internet interconnections?

f. What are the deployed voice technologies and how are these voice services implemented?

Proposed Network(s) Using Funding From Auction 904

Answer for each state the applicant selected in its application:

2. *Network Infrastructures:*

a. Briefly describe from a high-level network perspective which network architectures and technologies will be used in the applicant's proposed deployment. If there are variations by state, region, or other criteria, describe each network or location.

b. *Last-mile:* What are the relevant topologies, technologies and protocols and the corresponding industry standards for the last-mile network infrastructure in the applicant's proposed deployment?

c. *Middle-Mile/Backhaul:* What are the relevant topologies, technologies and protocols and the corresponding industry standards for the middle-mile/backhaul network infrastructure in the applicant's proposal?

d. *Internet Access:* What are the relevant topologies, technologies and protocols and the corresponding industry standards for the internet access network infrastructure in the applicant's proposal? This is the connection to major IXPs, transit providers, etc.

e. *Gigabit Performance Tier:* Special care must be taken to describe the above portions of the network, especially last-mile, when service providers propose to bid in the Gigabit performance tier. For example, if an applicant proposes to use DSL to offer Gigabit service, wire lengths, wire quality & capability, protocols, vendor devices and other factors must be detailed. Additionally, fixed wireless providers proposing to bid in the Gigabit performance tier must pay special and careful consideration in answering the questions in 4(e) below on Network Performance.

f. If the applicant is proposing to use non-standard technologies and protocols, the applicant should identify which vendor(s) and product(s) are being considered and provide links to the vendors' websites and to publicly available technical specifications of the product(s). If technical specifications for the non-standard technologies are not available on a vendor's website, technical documents may be submitted with the application.

3. *Voice Services:*

a. Briefly describe the anticipated system(s) that will be used to provide voice services to the applicant's subscribers, including a standalone voice service. Examples of such solutions could include: (1) Internally designed and operated; (2) provided by a Managed Voice Service Provider; or (3) or an OTT (Over-The-Top) solution available to subscribers via the applicant. If the applicant is considering multiple solutions, provide information on each one and identify possible vendors or service providers.

b. If the applicant plans to use an internally designed and operated system, provide specific information on any existing voice system the applicant operates.

c. If the applicant plans to implement a new system to meet these requirements, provide specific information on the technology, standards, latency, planned QoS, architecture; design; protocols; equipment; vendors; public switched telephone network (PSTN) interconnections (links, speed and to whom you interconnect); capacity (projected peak call rates versus total projected subscribers); reliability and availability design and procedures; and the applicant's specific plans to control, manage, monitor, and recover/repair/troubleshoot outages. If any of these issues are addressed in response to the other questions in Appendix A to the *Auction 904 Procedures Public Notice,* it is permissible to cross-reference that information here.

4. *Network Performance:*

a. Can the applicant demonstrate that the technology and the engineering design will fully support the proposed performance tier, latency and voice service requirements for the requisite number of locations during peak periods (Yes/No)?

b. Briefly describe the capabilities of the network technologies that will enable performance tier (speed and usage allowance), latency and (where applicable) voice service mean opinion score (MOS) requirements to be met. This can include traffic management, Quality of Service, over-building/scalability, using equipment that easily allows upgrades and other techniques.

c. For both broadband and voice services, state the target or design peak period over-subscription ratio(s) for the last-mile, middle-mile/backhaul and internet interconnection that will be used. Additionally, describe the basic assumptions and calculations that will be used in determining these ratios.

d. What general rules-of-thumb will be used to determine if any portion of the network infrastructure needs to be improved, upgraded or expanded to ensure the network is able to meet the required speed, latency and where required voice quality? For example, taking action when (1) when middle-mile link average peak period load is greater than 70 percent; when a link peak period load exceeds 95 percent more than 10 times; when a router's average peak period processing utilization exceeds 70 percent; when an internet access link load exceeds 75 percent for a specified time period; when call setup, call drop, call completion rates meet or exceed applicant targets.

e. For fixed broadband wireless access and satellite networks, describe how the proposed frequency band(s) and technology attributes, for both last mile and backhaul, will achieve the performance tier(s) and latency requirements to all locations for both broadband and voice services. Specifically, describe how the planned frequency bands, base station configuration, including, for example, point-to-point, point-to-multipoint or mesh architectures, and customer premise equipment (CPE), channel bandwidths, minimal requirements, traffic assumptions and propagation assumptions and calculations yield sufficient capacity to all the planned locations.

5. *Network Buildout:* Can the applicant demonstrate that all the network buildout requirements to achieve all service milestones can be met (Yes/No)? The applicant will be required to submit a detailed project plan in the long-form application if it is named as a winning bidder. Describe concisely the information that the applicant would make available in such a detailed project plan.

6. *Network Equipment, Consultants and Deployment Vendors:* For the proposed performance tier and latency combination(s), can the applicant demonstrate that potential vendors, integrators and other partners are able to provide commercially available and fully compatible network equipment/systems, interconnection, last mile technology and CPE that will meet the performance tier(s) and latency performance requirements at a cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? Describe concisely the information and sources of such information that the applicant could make available to support this response.

7. *Network Management:*

a. Briefly describe the method(s) that will be used to monitor, operate, problem resolution, provision and optimize the network and associated services such as voice. Identify if the proposed solution is internally developed and operated; expands existing systems; uses a third-party network management provider; or is some variant or combination of these methods.

b. Remember to include how voice operations will be monitored, operated, problems resolved, provisioned and optimized as appropriate.

c. If the applicant will expand existing network management systems, describe how the current system provides successful operations.

d. If the applicant will use a third-party network management provider, identify any providers the applicant is currently considering.

e. If the applicant will develop, deploy and operate a new system can the applicant demonstrate that it can provide internally developed operations systems for provisioning and maintaining the proposed network including equipment and segments, interconnections, CPE and customer services at cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? If not, can the applicant demonstrate that potential vendors, integrators, and other partners are able to provide commercially available and fully compatible operations systems and tools for provisioning and maintaining the proposed network at cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? Describe concisely the information and sources of such information that the applicant could make available to support these responses.

8. *Satellite Networks:* If the applicant is using satellite technologies, identify which satellites would be used, and describe concisely the total satellite capacity available, that is, capacity that is not currently in use for existing subscribers. In addition, describe how the proposed network will achieve the performance tier(s) and latency requirements to all planned locations in a mass-market consumer service.

Auction 904 Spectrum Chart (Appendix B)

Spectrum band/service	Paired licensed		Unpaired licensed	Unlicensed
	Uplink freq. (MHz)	Downlink freq. (MHz)	Uplink & downlink freq. (MHz)	Unlicensed (MHz)
600 MHz	663–698	617–652.		
Lower 700 MHz	698–716	728–746	716–728 (Downlink only).	
Upper 700 MHz	776–787	746–757.		
800 MHz SMR	813.5/817-824	858.5/862-869.		
Cellular	824–849	869–894.		
Broadband PCS	1850–1915	1930–1995.		
AWS–1	1710–1755	2110–2155.		
AWS (H Block)	1915–1920	1995–2000.		
AWS–3	1755–1780	2155–2180	1695–1710 (Uplink only).	
AWS–4			2000–2020, 2180–2200 (Downlink only).	
BRS/EBS			2496–2690.	
WCS	2305–2315	2350–2360	2315–2320, 2345–2350.	
CBRS (3.5 GHz)			3550–3700.	
3.7 GHz Service			3700–3800, 3800–3900, 3900–3980.	
Lower 37 GHz			37000–37600.	

Spectrum band/service	Paired licensed		Unpaired licensed	Unlicensed
	Uplink freq. (MHz)	Downlink freq. (MHz)	Uplink & downlink freq. (MHz)	Unlicensed (MHz)
UMFUS (terrestrial)			24,250–24,450, 24,750–25,250, 27,500–28,350, 37,600–38,600, 38,600–40,000, 47,200–48,200..	
70–80–90 GHz unpaired & 70–80 GHz paired (point-to-point terrestrial).	Point-to-Point Pairs for 70-80 GHz 71,000–76,000 with 81,000–86,000		71,000–76,000, 81,000–86,000, 92,000–94,000, 94,100–95,000.	
TV White Spaces				54-72, 76–88, 174–216, 470–698
900 MHz				902–928
2.4 GHz				2400–2483.5
5 GHz				5150–5250, 5250–5350, 5470–5725, 5725–5850
6 GHz				5925–6425, 6525–6875
24 GHz				24,000–24,250
57–71 GHz				57,000–71,000
Ku Band (satellite)	12,750–13,250, 14,000–14,500.	10,700–12,700.		
Ka Band (satellite)	27,500–30,000	17,700–20,200.		
V Band (satellite)	47,200–50,200, 50,400–52,400.	37,500–42,000.		

Abbreviations

AWS Advanced Wireless Services
BRS/EBS Broadband Radio Service/Education Broadband Service
CBRS Citizens Broadband Radio Service
PCS Personal Communications Service
SMR Specialized Mobile Radio
UMFUS Upper Microwave Flexible Use Service
WCS Wireless Communications Service

IX. Procedural Matters

258. *Paperwork Reduction Act Analysis.* The document implements the information collections adopted in the *Rural Digital Opportunity Fund Order,* 85 FR 13773 (Mar. 10, 2020), and does not contain any additional information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission received PRA approval for information collections related to the short-form application process and is seeking PRA approval for the information collections related to the long-form application processes. The document does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

259. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in connection with the *Rural Digital Opportunity Fund NPRM,* 84 FR 43543 (Aug. 21, 2019), and a Final Regulatory Flexibility Analysis (FRFA) in connection with the *Rural Digital Opportunity Fund Order,* 85 FR 13773 (Mar. 10, 2020). A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was also filed in the *Auction 904 Comment Public Notice,* 85 FR 15092 (Mar. 17, 2020) in this proceeding. The Commission sought written public comment on the proposals in the *Rural Digital Opportunity Fund NPRM* and in the *Auction 904 Comment Public Notice,* including comments on the IRFAs and the Supplemental IRFA. No comments were filed addressing the IRFAs. The Commission included a Final Regulatory Flexibility Analysis (FRFA) in connection with the *Rural Digital Opportunity Fund Order.* The Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA in the *Rural Digital Opportunity Fund Order* to reflect the actions taken in the document and conforms to the RFA.

260. *Need for, and Objectives of, this Public Notice.* The Public Notice establishes procedures for the Rural Digital Opportunity Fund auction (Auction 904). The Public Notice establishes procedures for, among other things, how an applicant can become qualified to bid in the auction, how bidders will submit bids, and how bids will be processed to determine winners and assign support amounts.

261. Following the release of the *Rural Digital Opportunity Fund Order,* the Commission released the *Auction 904 Comment Public Notice.* The *Auction 904 Comment Public Notice* proposed specific procedures for implementing the rules proposed in the *Rural Digital Opportunity Fund NPRM* and adopted in the *Rural Digital Opportunity Fund Order.* The *Auction 904 Comment Public Notice* did not change matters adopted in the *Rural Digital Opportunity Fund Order,* but requested comment on how the proposals in the *Auction 904 Comment Public Notice* might affect the previous regulatory flexibility analyses in this proceeding.

262. The document establishes procedures for awarding support in Auction 904 through a multi-round, reverse auction, the minimum biddable area for the auction, aggregating eligible areas into larger geographic units for bidding, setting reserve prices, and the availability of application and auction information to bidders and to the public during and after the auction. The document also establishes detailed bidding procedures for conducting Auction 904 using a descending clock auction format, including bid collection, clock prices, bid format, package bidding format, proxy bidding, bidder activity rules, bid processing, and how support amounts are determined.

263. To implement the rules adopted by the Commission in the *Rural Digital Opportunity Fund Order* for the pre-auction process, the document establishes specific procedures and requirements for applying to participate and becoming qualified to bid in Auction 904, including designating the state(s) and performance tier/latency combinations in which an applicant intends to bid, and providing operational and financial information designed to allow the Commission to assess the applicant's qualifications to meet the public interest obligations for each area for which it seeks support. The document also sets forth information that a winning bidder will be required to submit in its post-auction long-form application in order to become authorized to receive Auction 904 support.

264. Accordingly, the procedures established in the document are consistent with the *Rural Digital Opportunity Fund Order* and the prior regulatory flexibility analyses set forth in this proceeding, and no changes to the earlier analyses are required.

265. *Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA.* There were no comments filed that specifically addressed the proposed procedures presented in the Supplemental IRFA.

266. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments.

267. The Chief Counsel did not file any comments in response to the auction procedures proposed in this proceeding.

268. *Description and Estimate of the Number of Small Entities to which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the procedures adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

269. A FRFA was incorporated into the *Rural Digital Opportunity Fund Order.* In that analysis, the Commission described in detail the small entities that might be significantly affected. In the document, the Commission incorporates by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the *Rural Digital Opportunity Fund Order.*

270. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The data, information and document collection required by the *Rural Digital Opportunity Fund Order* as described in the previous FRFA and the Supplemental IRFA in the *Auction 904 Comment Public Notice* in this proceeding are incorporated by reference.

271. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.

272. The analysis of the Commission's efforts to minimize the possible significant economic impact on small entities as described in the previous *Rural Digital Opportunity Fund Order* FRFA is incorporated by reference. In addition, the bidding procedures established in the document are designed to facilitate the participation of qualified service providers of all kinds, including small entities, in the Rural Digital Opportunity Fund program, and to give all bidders, including small entities, the flexibility to place bids that align with their intended network construction or expansion, regardless of the size of their current network footprints. For example, the Commission will use census block groups (CBGs) containing one or more eligible census blocks as the minimum biddable area for the auction in order to provide bidders, including small providers, with flexibility to target their intended areas of network expansion or construction without significantly complicating the bidding process. To help ensure that all bidders—both large and small—understand the bidding procedures, including those related to package bidding, further educational opportunities and materials will be provided well in advance of the auction.

273. Furthermore, the pre-auction application procedures set forth in the document are intended to require applicants to submit enough information to permit the Commission to determine their qualifications to participate in Auction 904, without requiring so much information that it is cost-prohibitive for any entity, including small entities, to participate.

274. Finally, recognizing that some entities may be new to Commission auctions, the Commission announces the types of materials and other information it will make available to help educate parties that have not previously applied to participate or bid in a Commission auction. Specifically, OEA will compile and release a guide that provides further technical and mathematical detail regarding the bidding, assignment, and support amount determination procedures. Two online tutorials will be available to serve as references for potential applicants and bidders. Additionally, a mock auction will be conducted that will enable all qualified bidders, including small entities, to become familiar with the bidding system and to practice submitting bids prior to the auction. By providing these resources, the Commission seeks to minimize any economic impact on small entities and help all entities—both large and small—fully understand the bidding and application procedures. The Commission's Office of Communications Business Opportunities will also engage with small providers.

275. *Report to Congress.* The Commission will send a copy of the document, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the document, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the document and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–13216 Filed 6–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 17–264, 17–105, 05–6; FCC 20–65; FRS 16777]

Filing of Applications; Modernization of Media Regulation Initiative; Revision of the Public Notice Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts changes to its rules and procedures for broadcast station applicants to provide public notice of application filings to the principal area that is served or to be served by the

station. The changes are designed to improve, streamline, and standardize the notices, including replacing notice by newspaper with online notice. The changes are further designed to enhance rule compliance and public participation in the application process, increase public access to filed applications, and reduce applicant burdens.

DATES: Effective July 20, 2020, except for rule changes to 47 CFR 73.3525, 73.3526, 73.3527, 73.3571, 73.3573, 73.3580, and 73.3594. The Commission will publish a separate document in the **Federal Register** announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2721; Lisa Scanlan, Deputy Division Chief, Media Bureau, Audio Division, (202) 418–2704; Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418–2709. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (*Second R&O*), MB Docket Nos. 17–264, 17–105, and 05–6; FCC 20–65, adopted on May 12, 2020, and released on May 13, 2020. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *http://fjallfoss.fcc.gov/edocs_public/* or via the FCC's Electronic Comment Filing System (ECFS) website at *http://www.fcc.gov/ecfs.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, *see* 44 U.S.C. 3507. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the PRA. These new or modified information collections will become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of this *Second R&O* to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. *Introduction.* In the *Second R&O,* the Commission revised the broadcast local public notice rule, 47 CFR 73.3580, along with other associated rules. These rule amendments were proposed in the *Further Notice of Proposed Rulemaking (FNPRM)* in this proceeding, 34 FCC Rcd 9251 (2019), 84 FR 54881 (Oct. 18, 2019), which expanded upon the initial *Notice of Proposed Rulemaking (NPRM),* 32 FCC Rcd 8203 (2017), 82 FR 56574 (Nov. 29, 2017). Based upon comments received in response to both the *NPRM* and the *FNPRM,* the Commission adopted, in some cases with modifications, its proposals to update, clarify, and streamline § 73.3580 and the local public notice obligations contained in that and other related rule sections. Specifically, it adopted the proposal to eliminate the obligation to publish public notices in print newspapers, and to require instead that applicants provide public notice through online notices that link directly to the Commission-hosted online public inspection file or application databases, and/or through on-air announcements that direct viewers and listeners to those application resources. The new rules are designed to simplify broadcasters' local public notice obligations in a manner that reduces costs and burdens on applicants, while facilitating robust public participation in the broadcast licensing process.

2. Section 311 of the Communications Act of 1934, as amended (47 U.S.C. 311), provides that applicants for certain broadcast authorizations shall give notice of such filing in the principal area which is served or is to be served by the station. The purpose of the statute, and of the implementing § 73.3580, is to ensure that relevant communities are made aware of applications and are afforded the opportunity to participate in the broadcast licensing process. Under the current rule, notices break down broadly into giving on-air notice of application filings and/or publishing such notice in newspapers, yet the details of those requirements differ based on the type of application being filed and the type of applicant submitting the filing. This resulted in a rule that has become increasingly complex, creating compliance difficulties.

3. Based on comments filed in response to the *NPRM,* the Commission proposed in the *FNPRM* to eliminate the requirement to publish written public notice in newspapers, replacing newspaper publication with shorter online written notice, and also seeking comment on whether to there were more effective means of providing online public notice. The Commission further proposed to streamline both on-air and online written public notices, requiring simpler and less frequent on-air announcements that emphasize referring viewers and listeners to the Commission-hosted Online Public Inspection File (OPIF), and that the schedule of such announcements be made uniform for all applicants, broadcast services, and application types. Commenters to the *FNPRM* generally agreed with the proposals, differing only as to some of the details, with some of the comments pointing to improvements that will further increase access to application information needed for meaningful public participation in the process.

4. *Proposed elimination of public notice requirements.* As a threshold matter, the Commission adopted its tentative conclusion that it is obliged under 47 U.S.C. 311(a)(1) to require broadcast station applicants to provide notice of application filing in the principal area which is served or is to be served by the station.

5. *Substitution of online written public notice for newspaper publication.* The Commission adopted its proposal to discontinue requiring broadcast station applicants to publish local public notice in newspapers, and to require instead that applicants required to give ''written'' (as opposed to on-air) notice do so by posting notices on a publicly accessible website for 30 days,

beginning within five days of the acceptance of the application for filing. Given the ease of internet search and specificity to stations of interest, the Commission found that the cost savings and increased information yielded by online notice with links to the application outweighed the minimal benefit of publishing occasional notices in one local newspaper.

6. *Online notice requirements.* Based upon comments received, the Commission adopted modifications to its online notice proposals. Instead of posting the entire notice text on its home page, as proposed in the *FNPRM,* the Commission modified the proposal to provide that a broadcaster should be required to include a conspicuous ''FCC Applications'' link or tab on the home page that will link to a separate page containing the full notice text. The Commission further modified the proposed text of online notices to mirror on-air announcements and to indicate where members of the public may obtain information regarding filing comments on applications. The Commission committed to provide links in OPIF and the Licensing and Management System (LMS) database landing page to a separate page detailing how a member of the public can comment on an application. The Commission also adopted its proposal that online notice be posted continuously for 30 days immediately following acceptance of the application for filing and clarified that the 30-day period can begin as soon as the application is accepted, but not later than five business days following acceptance for filing. With regard to noncommercial educational (NCE) stations, the Commission retained the current practice of exempting them from providing written public notice, except in cases where the NCE station has not commenced program operations or is off the air. Likewise, it found that silent stations must provide online notice in lieu of on-air announcements. Finally, the Commission adopted its proposal to require applicants for authorization under 47 U.S.C. 325(c) to provide notice by online posting, using the same sites as specified for other broadcast stations.

7. *Websites for posting online notice.* The Commission adopted its proposal to require online public notice to be published, in order of availability, on (1) the website of the applicant station; (2) the website of the applicant station's licensee; (3) the website of the applicant station's parent entity or, if there is no applicant-affiliated website (4) on a locally targeted, publicly accessible website, defined as an internet website (a) that members of the public can access without payment, registration, or any other requirement that the user provide information or respond to a survey or questionnaire in exchange for being able to access the online notice, and (b) that is locally targeted to the area served and/or to be served by the applicant station (*e.g.,* local government website, local community bulletin board website, local newspaper website, state broadcasters' association website). In response to comments, however, we supplement and modify our proposal. At the suggestion of commenters, it required that ''posting'' on the applicant station website be accomplished by inserting a tab or link on the home page conspicuously labeled ''FCC Applications,'' that will link to a separate page containing the text of the notice(s).

8. Upon consideration of comments the Commission agreed that having a separate web page for the written notice would avoid consuming too much space on the home page in the event that there were multiple applications pending. In recognition of comments that point out that the design of websites can vary widely among broadcasters, the Commission decided it would not dictate the exact placement of the link or the tab on the home page of the website. Several comments pointed out that what may be optimal placement of a link or tab on one station's website may be inappropriate on another's. The Commission thus disagreed with certain commenters that ''conspicuous'' display of such a link or tab on a station's home page requires that it must be placed at the top of the station's home page. Other Commission rules mandating links on broadcaster websites do not impose such specific placement, but instead only require that the link be on the home page. *See, e.g.,* 47 CFR 73.3526(b)(2)(ii); 47 CFR 73.1216(c)(1). Therefore, the Commission will require, as with the contest rules (47 CFR 73.1216), that the link or tab must be conspicuously displayed on the station's home page, and further defined ''conspicuous,'' as it has in other contexts, to mean that the link or tab must be displayed in such size, color, contrast, and/or location on the home page that it is readily readable, understandable, and locatable by visitors to that page, and thus may be quickly found among other web content.[1] Thus, online public notice on an applicant-affiliated website shall require a tab or link, conspicuously and appropriately labeled, on the website home page, which links to a permanent, dedicated page containing only required online local public notice(s). To the extent that there are no pending applications requiring online public notice, the link or tab should link to a page indicating that there are no pending applications subject to the posting requirement. The page must indicate when it was last updated.

9. *Online notice texts.* The Commission adopted its proposed online notice texts, with slight modification to bring the online text more in line with the proposed on-air announcement, which contains a reference directed to consumers wishing to obtain information regarding filing comments or petitions on the application, with a concomitant plan to provide links on the OPIF and LMS landing pages to information concerning how members of the public can comment on pending applications. The Commission adopted the following texts for online local public notices. For authorized stations (with a granted construction permit or license):

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU'S MYIBFS DATABASE].

''Type of Application,'' in online notices, should be a brief but complete statement of the purpose of the application, for example: ''for renewal of its broadcast license''; ''to assign its broadcast license to X Broadcasting Corporation''; ''to change its community of license from Florin to Guilder, Michigan.'' For proposed stations that have not been authorized, the Commission adopted the following text:

On [DATE], [APPLICANT NAME], [APPLICANT FOR] [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF

[1] As the Commission stated when adopting an online posting requirement for station contest rules, ''the burden is on the broadcaster to inform the public, not on the public to discern the message.'' *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests,* Report and Order, 30 FCC Rcd 10468, 10474, para. 12 (2015), 81 FR 7477 (Feb. 12, 2016).

LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE TO BE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU'S MYIBFS DATABASE].

Examples of ''Station Type'' in online notices would be, ''television,'' ''radio,'' ''low power television,'' ''low-power FM,'' ''Class A television,'' or ''FM translator.''

10. *Duration of posting for online notice.* The Commission adopted its proposal to require 30-day continuous posting of online local public notice, to commence no earlier than the date a public notice of application acceptance is released, and no later than five business days after public notice of acceptance is released. It modified the initial proposal to provide for commencement of posting no later than five business days rather than five calendar days after release of notice of acceptance, so that posting will take place within a reasonable amount of time after public notice of acceptance, but will not require posting to commence on a weekend or holiday. The Commission found that this requirement will afford sufficient time for composition and coding of the required online notice, or in some cases time to locate a suitable third-party website.

11. *NCE online requirements.* The Commission upheld its existing practice of allowing NCE stations to fulfill their local notice requirements solely through on-air announcements, where possible. Given that operating NCE stations are currently exempt from publishing local public notice in newspapers, and that due to the nonprofit nature of such stations they are exempted from other requirements such as the payment of application filing fees, the Commission saw no reason to impose even the minimal costs of the online notice requirement on such stations. Accordingly, NCE stations are exempted from the requirement to post online notice of applications, unless they are not broadcasting during the part of the year when on-air announcements are required, as discussed below. The Commission further adopted its proposal that applicants for initial construction permits for new NCE broadcast stations comply only with the online notice requirements, as they are unable to broadcast on-air announcements. Finally, the Commission adopted its proposal to eliminate the provision in paragraph (e) of current § 73.3580(e) exempting ''the only operating station in its broadcast service which is located in the community involved'' from having to provide written notice.

12. *Silent stations.* The Commission adopted its *FNPRM* proposal that any station required to make on-air announcements that is not broadcasting during all or a portion of the period during which the on-air announcements are required to be broadcast must comply with the online notice requirements during the time period it is not broadcasting. A station required to provide both online notice and on-air announcements, for example, a commercial assignment or transfer applicant, would be expected to provide online notice for the entire 30-day period notwithstanding whether it was currently broadcasting. The Commission further adopted its proposal that if such a station returns to the air during the period that on-air announcements are required, the station must resume on-air announcements.

13. *Authorizations pursuant to 47 U.S.C. 325(c).* The Commission adopted its *FNPRM* proposal to require applicants for authorization under 47 U.S.C. 325(c), for a permit to deliver programs to a foreign broadcast station for re-broadcast into the United States, to provide online notice only, rather than newspaper publication, with the online notice posted on a website locally targeted to the principal area to be served in the United States by the foreign broadcast station. Section 325(c) applicants propose to locate, use, or maintain a studio supplying programming to a foreign broadcast station whose signals are consistently received in the United States. The Commission adopted this rule as proposed in the *FNPRM,* along with the notice text proposed, except adding the language, adopted for online notice of broadcast applications, indicating that the public can obtain information regarding how to comment on applications in IBFS, and further retaining the current requirement that the notice include a description of the programs to be transmitted over the station. The Commission found that it would serve the public interest to retain the current requirement that the notice include a description of the programs to be transmitted over the station. *See* current 47 CFR 73.3580(f)(8). The nature of the programming is a key component of a section 325 (c) permit and the Commission's public interest analysis. Such programming usually targets a specific segment or sub-set of population residing in the principal area to be served in the United States. Accordingly, providing a description of the programs to be transmitted over a foreign station would ensure that the relevant population is targeted for local public notice for purposes of these section 325(c) authorizations. The Commission also proposed to retain the exemption from local public notice for stations applying for section 325(c) authorization for special event programming only and, having received no comment, adopted it as proposed. The online notice text for stations applying for section 325(c) authorization will be as follows:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. [DESCRIPTION OF THE PROGRAMS TO BE TRANSMITTED OVER THE STATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU MYIBFS DATABASE].

14. *Streamlining content of on-air announcements.* The Commission adopted, with some modifications, its *FNPRM* proposals for on-air announcements. It adopted its proposed streamlined script, which directs viewers and listeners to the application in OPIF or Commission databases; it further adopted its proposal to allow broadcasters to air public notice announcements at any time from 7 a.m. to 11 p.m. local time, Monday through Friday; and it increased the number of proposed on-air announcements from four to six, at least once per week for four consecutive weeks, with no more than one announcement per day nor more than two per week.

15. *Number of Announcements.* For all applicants required to provide on-air notice, the Commission amended its original proposal of four on-air announcements over a four-week period, to now require a total of six on-air announcements, to be aired at least once per week, for four consecutive weeks, commencing no later than five business days after release of the Commission public notice announcing that the application was accepted for filing. On-air announcements aired in the same week shall not air on the same day, and no more than two on-air

announcements shall air in the same week. The Commission also adopted its proposal to eliminate all pre-filing announcements.

16. *Start of Notice Period.* The Commission also modified its *FNPRM* proposal regarding commencement of the notice period for on-air announcements. The notice period will commence no later than five business days after release of the Commission's public notice accepting filing of the application. Although some commenters believed the notice period should commence upon application filing, the time period for filing petitions to deny commences on the date of acceptance, and the time period between application filing and acceptance may in some instances be substantially delayed. The public would therefore not benefit from public notice given prior to the date commencing the period for filing comments and petitions. The Commission did change the commencement of the notice period from no more than five calendar days to no more than five business days following release of notice of acceptance, in order to be more consistent with the rule for online notice, and also because on-air announcements will not be made on weekends.

17. *Timing of on-air announcements.* As proposed in the *FNPRM,* the Commission modified § 73.3580(d) to permit on-air announcements for all applicants, services, and application types to air at any time from 7:00 a.m. to 11:00 p.m. local time at the community of license, from Monday through Friday. This will bring uniformity to the current rule, under which applicants must air announcements during varying time windows based on applicant, application, and service type.

18. *On-air announcement scripts.* The Commission adopted the on-air announcement scripts as proposed in the *FNPRM,* with one minor change as set forth below. Additionally, program crawls containing on-air announcement text will not be required, but the Commission adopted its proposal to require that the entire text of the on-air announcement for television stations be displayed on screen while being read by an announcer. The on-air announcement scripts are as follows:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION].[2] Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit *publicfiles.fcc.gov* and search in [STATION CALL SIGN'S] public file.

For stations without an OPIF:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit *www.fcc.gov/stationsearch,* and search in the list of [STATION CALL SIGN'S] filed applications.

19. In the *FNPRM,* the Commission requested comment as to whether it should require additional language in on-air announcement scripts regarding requests to waive Commission rules and the nature of the waiver sought. It concluded that adopting waiver-specific language in the on-air script is not warranted. Rather, Commission-generated public notices of assignment and transfer application filings and actions in the Media Bureau LMS database will henceforth indicate whether the applicant has indicated that it is seeking a media ownership waiver. Because the on-air scripts and online notices will direct viewers and listeners to applicants' online public inspection files or applications, which include the specific waiver sought, the Commission believed it is not necessary for applicants to give further notice of a waiver request, whether on-air or online. The Commission also adopted its *FNPRM* proposal to require television broadcasters to display on screen the full text of the on-air announcement during the verbal broadcast of the announcement. It believed the public interest will be enhanced by requiring television broadcasters to display the text of the new, abbreviated on-air script, and that benefit outweighs any minimal burden this requirement will impose. Visual text beyond the announcement will not be required, nor will television text crawls containing the text of the on-air notice. Because crawls are most often used to deliver urgent and, in some cases, emergency information to viewers, use of text crawls for local public notice will at best confuse viewers, and at worst their overuse might result in viewers ignoring text crawls that convey information vital to public safety.

20. *Channel Sharing and Multicasting.* The Commission clarified that each television station in a channel sharing arrangement must broadcast appropriate on-air announcements on its program stream. Under a channel-sharing arrangement, the Commission has stated that each licensee has an independent obligation to comply with all pertinent statutory requirements and our rules. Thus, under our current rules, each separately licensed station engaged in a channel sharing arrangement must broadcast any on-air announcements required of it on its program stream. Radio or television stations may also engage in multicasting, which involves transmission of multiple streams of programming by a single licensee. For such multicasting stations, the Commission interpreted 47 U.S.C. 311 and its rules to require on-air notice only on the digital TV or digital radio station's primary over-the-air programming stream as defined in 47 CFR 73.403(a) and 73.624(b). Section 311 provides that an ''applicant'' must ''give notice'' of the filing of a covered application in the principal area served. Nothing in section 311 or elsewhere in the Act requires that notice be provided over each and every individual stream broadcast by the applicant. The Commission believed that on-air notice provided over the primary stream, which is the stream with the most viewers or listeners, is sufficient to meet the goal of section 311 to inform the public.

21. *International broadcast station applications.* The Commission adopted its *FNPRM* proposal to require international broadcast stations, governed by subpart F of part 73 of the Commission's rules, to give local public notice by publishing notice of the application on a website that targets the local community in which the international broadcast station's transmission facilities are located or are proposed to be located (*e.g.,* local government internet website, local community bulletin board internet website). The Commission agreed with the only commenter to address this issue that residents of the area in which an international broadcast station's transmitter is located are not listeners of that station, which is designed to be heard by the general public in foreign countries, and thus are not likely to seek out the station's web page. The Commission therefore adopted a rule requiring international broadcast stations to give online notice on a website that is locally targeted to the community where the station's

[2] The Commission also adopted the short description of ''type of application'' as proposed in the *FNPRM. See FNPRM,* 34 FCC Rcd at 9266 n.94.

transmission facilities are located as defined in paragraph 7, above.

22. *Other provisions and rules.* Having received no opposition in the comments, the Commission adopted the following proposals as set forth in the *FNPRM:*

(a) Retention of the categories of applicants, broadcast services, and application types for which local public notice is not required, as currently listed in 47 CFR 73.3580(a)(1)–(7).

(b) Retention of the requirement that applicants certify in any application for which public notice is required that they will comply with the applicable requirements of the local public notice rule;

(c) Retention of the requirement that those license renewal applicants that are obliged to provide public notice only through on-air announcements must add to their OPIF the list of dates and times the required on-air announcements were broadcast;

(d) Elimination of the requirement that the on-air license renewal announcement script be added to an applicant's OPIF, due to the use of mandatory language contained in the new rules; and

(e) Clarification that low-power FM (LPFM) stations will continue to have the same local public notice obligations as other NCE radio stations, *i.e.,* on-air announcements only, except when the station is unbuilt, off the air, or silent. Concerning this last proposal, for the sake of clarity, the Commission directed that 47 CFR 73.3580 of the rules should be added to the list of rules applicable to LPFM stations set forth in 47 CFR 73.801. Cross-referencing § 73.3580 in § 73.801 will eliminate any confusion regarding the obligations of LPFM stations. The Commission thus amends 47 CFR 73.801 accordingly.

23. The Commission further adopted its proposal to apply the same updated public notice requirements to public notice of hearing designation orders under 47 CFR 73.3594, and to eliminate the public notice requirement for the withdrawal of an application pursuant to an agreement to resolve mutual exclusivity under 47 CFR 73.3525. Although one commenter suggested some modifications to the proposed notice in 47 CFR 73.3594, the Commission concluded that the notice provisions as proposed in the *FNPRM,* including both on-air announcements and online notice, will suffice to advise the public of the particulars of a hearing designation order, and will give consumers ample opportunity to investigate those issues themselves. The on-air announcement text is as follows:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on certain issues. Members of the public wishing to view the Hearing Designation Order and list of issues can visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE'S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the ''Hearing Designation Order'' notice.

The online notice text is as follows:

HEARING DESIGNATION ORDER

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC's ORDER OR SUMMARY OF DESIGNATION FOR HEARING]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC's INTERNET WEBSITE].

Provisions for on-air announcement commencement and frequency of announcement, times when announcements are to be made, language of broadcasts, and text to be displayed visually are the same as with on-air announcements set forth herein. Provisions for online announcement sites for posting, times for commencement of posting and duration of posting are likewise the same as for online announcements set forth herein.

Procedural Matters

24. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) and the *Further Notice of Proposed Rulemaking* (*FNPRM*) to this proceeding, and the *Notice of Proposed Rulemaking* in MB Docket No. 05–6, 70 FR 37728 (June 30, 2005). The Commission sought written public comment on the proposals in the *FNPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

25. *Need for, and Objectives of, the Second R&O.* This *Second Report and Order* (*Second R&O*) adopted several rule changes that are intended (a) to clarify and simplify the rules and procedures to be followed by certain applicants for broadcast authorizations in order to give local public notice of those applications; and (b) to give local public notice of the designation of certain applications for evidentiary hearing. The Commission replaced the current rules (*see generally* 47 CFR 73.3580, 73.3594), which had been characterized as being difficult to follow, and which contain varying local public notice requirements based on the type of application and the type of station to which the application pertains. The rules adopted in the *Second R&O* constitute a more uniform, and thus more convenient, set of procedures for providing notice through on-air announcements and by online posting of links to applications, rather than publication in local newspapers. Additionally, by eliminating the need to publish some public notices in local newspapers and allowing a broadcaster instead to post notices on its website or an affiliated website, the new rules eliminate a substantial expense currently borne by broadcasters. The Commission also eliminated the current rule requiring public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity. 47 CFR 73.3525(b). Additionally, the Commission amended certain other rules to the extent that they reference the substantive rule changes.

26. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments to the IRFA filed.

27. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

28. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' *Id.* section 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small

Business Act. *Id.* section 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. *Id.* section 632.

29. The rule changes adopted herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

30. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. 13 CFR 121.201; 2012 NAICS Code 515120. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999, and 70 had annual receipts of $50 million or more. U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). Based on this data the Commission therefore estimated that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial television stations to be 1,374. *Broadcast Station Totals as of December 31, 2019,* FCC News Release (rel. Jan. 3, 2020) (*Broadcast Station Totals*). Of this total, 1,261 stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 6, 2020, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 388. *Id.* The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. 13 CFR 21.103(a)(1). Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

33. There are also 387 Class A stations. *See Broadcast Station Totals.* Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations, thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,897 low-power television (LPTV) stations and 3,648 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

34. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' U.S. Census Bureau, 2012 NAICS Definitions, ''515112 Radio Stations.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. 13 CFR 121.201; NAICS code 515112. Census data for 2012 show that 2,849 firms in this category operated in that year. U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112). Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. *Id.* Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

35. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,389 and the number of commercial FM radio stations to be 6,772 for a total number of 11,161, along with 8,182 FM translator and booster stations. *See Broadcast Station Totals.* As of March 2020, 4,389 a.m. stations and 6,767 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,135. *Id.* NCE stations are non-profit, and therefore considered to be small entities. 5 U.S.C. 601(4), (6). Therefore, we estimate that the majority of radio broadcast stations are small entities.

36. *Low Power FM Stations.* The same SBA definition that applies to radio stations applies to low power FM stations. As noted, the SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 515112. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,169. *See Broadcast Station Totals.* Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, we will presume that these licensees qualify as small entities under the SBA definition.

37. We note again, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. 13 CFR 21.103(a)(1). Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate

of small radio stations potentially affected by the rule revisions discussed in the *NPRM* includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

38. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In this section, we identify the reporting, recordkeeping, and other compliance requirements adopted in the *Second R&O,* and consider whether small entities are affected disproportionately by any such requirements.

39. *Reporting Requirements.* The *Second R&O* does not adopt reporting requirements.

40. *Recordkeeping Requirements.* The *Second R&O* adopts recordkeeping requirements insofar as it amends 47 CFR 73.3526(e) and 73.3527(e) to reflect the nature of the proposed new on-air announcement requirements for which licensees must certify compliance and retain the certification in the online public inspection file (OPIF). The new requirements are no more extensive than the current certification and retention requirements, and in fact are less onerous in that there are fewer announcements requiring certification, and OPIF is online rather than a physical file. Thus, the impact on small entities will be no greater than it is currently, and in most cases the new rules will be less burdensome.

41. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)–(c)(4).

42. The *Second R&O* amends 47 CFR 73.3580 to reorganize, simplify, and clarify broadcasters' public notice obligations when filing certain applications, such as license renewal applications and applications to assign or transfer broadcast authorizations. In addition to streamlining and making uniform the requirement of some stations to provide public notice through on-air announcements, the *Second R&O* requires public notice of the filing of certain broadcast applications through online postings on the internet, instead of publishing such notice in a newspaper. These proposals will reduce burdens on all broadcast applicants, including small entities, when meeting their obligation to notify the public of pending or prospective applications, while improving the public's access to information enabling it to participate in the licensing process. The majority of commenters agreed that permitting public notice through the internet would be less costly and administratively burdensome than the existing requirement of newspaper publication, and thus the new rule will provide a less burdensome compliance option for all applicants, including small entities. With regard to just one category of applicants, those applying for consent to assign a broadcast authorization or to transfer control of the entity holding a broadcast authorization, the Commission has estimated that there are 4,020 annual applicants, each of which must publish public notice in a local newspaper four times at a cost of $113.25 per publication, for a total annual burden of $1,820,256, for applicants in this category alone. *See* Notice of Office of Management and Budget Action, ICR Ref. No. 201905–3060–002, ''No Material or Nonsubstantive Change to a Currently Approved Collection'' (for Application for Consent to Assignment or Transfer of Broadcast Authorizations, OMB Control No. 3060–0031) (rel. May 16, 2019), ''Supporting Statement'' at 7. Given that the majority of online notices will be posted on applicant-affiliated websites, which are typically maintained by in-house staff and do not involve materials such as paper or ink, the cost of online notice should be minimal. Thus, replacing newspaper publication with online notices can result in considerable cost savings to broadcasters and broadcast applicants.

43. Any changes to the rules originally proposed in this proceeding are based on commenter suggestions, and do not significantly increase burdens on applicants vis-à-vis the current rules. For example, the Commission originally proposed that certain applicants be required to make four on-air announcements once per week over a four-week period; the adopted rule, suggested by commenters, requires six announcements, at least once per week over a four-week period. Under the current rules applicants for license renewal, which includes all licensees once every eight years, must make a minimum of ten on-air announcements. Thus, even with the modest increase over the proposed number of on-air announcements, the overall burden on applicants has been decreased, especially considering that on-air announcements under the rule adopted in the *Second R&O* are shorter and more uniform than those under the rules being replaced. Similarly, based on comments the Commission modified the proposed online notice rule to allow stations to post online notice on a separate page rather than on their home page, with a conspicuous tab or link to the separate page on the home page to facilitate the public's access to the information. This modification was designed to save space on broadcasters' websites while making links more accessible to the public. Again, the modified rules still represent a substantial burden decrease to broadcasters compared to the rules being replaced.

44. *Report to Congress.* The Commission will send a copy of this *Second R&O,* including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See id.* section 604(b).

45. *Paperwork Reduction Act.* This *Second R&O* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

46. In this *Second R&O,* we adopt modified rules for applicants required to provide local public notice of application filings and other notices. We have assessed the effects of the new rules on small business concerns. We find that the streamlined rules and

procedures adopted here will minimize the information collection burden on affected applicants, permittees, and licensees, including small businesses.

47. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Second R&O* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). The Commission will send a copy of this *Second R&O* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

48. *It is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this *Second Report and Order is adopted* and *will become effective* 30 days after publication in the **Federal Register**.

49. *It is further ordered* that part 73 of the Commission's Rules *is amended* as set forth in the Final Rules to the *Second Report and Order,* and the rule change to § 73.801 adopted herein will become effective 30 days after the date of publication in the **Federal Register**.

50. *It is further ordered* that part 73 of the Commission's Rules *is amended* as set forth in the Final Rules, and the rule changes to §§ 73.3525, 73.3526, 73.3527, 73.3571, 73.3573, 73.3580, and 73.3594 adopted herein, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, *will become effective* on the date specified in a document published in the **Federal Register** announcing such approval.

51. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket Nos. 05–6 and 17–264 *shall be terminated*, and their dockets *closed*.

52. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

53. *It is further ordered* that the Commission *shall send* a copy of this *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Cable television, Civil defense, Communications equipment, Defense communications, Education, Equal employment opportunity, Foreign relations, Mexico, Political candidates, Radio, Reporting and recordkeeping requirements, Satellites, Television.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends of 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Amend § 73.801 by adding ''Section 73.3580'' in numeric order to read as follows:

§ 73.801 Broadcast regulations applicable to LPFM stations.

* * * * *

Section 73.3580 Local public notice of filing of broadcast applications.

* * * * *

§ 73.3525 [Amended]

■ 3. Amend § 73.3525 by:

■ a. Removing paragraph (b) and redesignating paragraphs (c) through (l) as paragraphs (b) through (k).

■ b. In newly redesignated paragraph (k), removing ''§§ 1.2105(c) and 73.5002 of this section'' and add in its place ''§§ 1.2105(c) of this chapter and 73.5002.''

■ 4. Amend § 73.3526 by revising paragraph (e)(13) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(13) *Local public notice announcements.* Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(c)(3), place in the station's online public inspection file a statement certifying compliance with this paragraph (e)(13). The dates and times that the on-air announcements were broadcast shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period specified in § 73.3580(e)(2) (for as long as the application to which it refers).

* * * * *

■ 5. Amend § 73.3527 by revising paragraph (e)(10) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(10) *Local public notice announcements.* Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(c)(3), place in the station's online public inspection file a statement certifying compliance with this paragraph (e)(10). The dates and times that the on-air announcements were broadcast shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period specified in § 73.3580(e)(2) (for as long as the application to which it refers).

* * * * *

■ 6. Amend § 73.3571 by revising paragraph (j)(3) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(j) * * *

(3) The applicant must comply with the local public notice provisions of § 73.3580(c)(5).

* * * * *

■ 7. Amend § 73.3573 by revising paragraph (g)(3) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(g) * * *

(3) The applicant must comply with the local public notice provisions of § 73.3580(c)(5).

* * * * *

■ 8. Revise § 73.3580 to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

(a) *Definitions.* The following definitions shall apply to this section:

(1) *Acceptance public notice.* A Commission public notice announcing that an application has been accepted for filing.

(2) *Applicant-affiliated website.* (i) Any of the following internet websites,

to the extent they are maintained, in order of priority:

(A) The applicant station's internet website;

(B) The applicant's internet website; or

(C) The applicant's parent entity's internet website.

(ii) An applicant maintaining or having access to more than one of the internet websites in paragraphs (a)(2)(i)(A) through (C) of this section shall post a link or tab to a web page containing the online notice text on the website with the highest priority.

(3) *Locally originating programming.* Programming from a low power television (LPTV) or television translator station as defined in § 74.701(h) of this chapter.

(4) *Major amendment.* A major amendment to an application is that defined in §§ 73.3571(b), 73.3572(c), 73.3573(b), and 73.3578, and 74.787(b) of this chapter.

(5) *Publicly accessible website.* An internet website:

(i) That is accessible to members of the public without registration or payment requirements, or any other requirement that the user provide information, or response to a survey or questionnaire in exchange for being able to access information on the website; and

(ii) That is locally targeted to the area served and/or to be served by the applicant station (*e.g.,* local government internet website, local community bulletin board internet website, state broadcasters' association internet website). For international broadcast station applications filed pursuant to § 73.3574, the internet website must locally target the community in which the International broadcast station's transmission facilities are located or are proposed to be located (*e.g.,* local government internet website, local community bulletin board internet website).

(b) *Types of public notice.* Public notice is required of applicants for certain broadcast authorizations in the manner set forth in paragraphs (b)(1) and (2) of this section:

(1) *On-air announcement.* An applicant shall broadcast on-air announcements of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, over its station as follows:

(i) *Content.* The on-air announcement shall be in the following form:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit *publicfiles.fcc.gov,* and search in [STATION CALL SIGN'S] public file.

An applicant station without an online public inspection file shall instead broadcast the following on-air announcement:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit *www.fcc.gov/stationsearch,* and search in the list of [STATION CALL SIGN'S] filed applications.

Television broadcast stations, in presenting on-air announcements, must use visuals with the full text of the on-air announcement when this information is being orally presented by the announcer.

(ii) *Frequency of broadcast.* The applicant shall broadcast the on-air announcements at least once per week (Monday through Friday) for four consecutive weeks, for a total of six (6) broadcasts, with no more than two broadcasts in a week. Broadcasts made in the same week shall not air on the same day.

(iii) *Commencement of broadcast.* The applicant may air the first broadcast of the on-air announcement as early as the date of release of the acceptance public notice for the application, but not later than the fifth business day following release of the acceptance public notice for the application.

(iv) *Time of broadcast.* The applicant shall broadcast all on-air announcements between the hours of 7:00 a.m. and 11:00 p.m. local time at the applicant station's community of license, Monday through Friday.

(v) *Language of broadcast.* A station broadcasting primarily in a foreign language should broadcast the announcements in that language.

(vi) *Silent stations or stations not broadcasting.* Any station required to broadcast on-air announcements that is not broadcasting during all or a portion of the period during which on-air announcements are required to be broadcast, including silent stations and noncommercial educational broadcast stations that are not scheduled to broadcast during the portion of the year during which on-air announcements are required to be broadcast, must comply with the provisions of paragraph (b)(2) of this section during the time period in which it is unable to broadcast required on-air announcements, and must broadcast required on-air announcements during the time period it is able to do so.

(2) *Online notice.* An applicant shall conspicuously post on an internet website notice of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, as follows:

(i) *Content.* The online notice shall be in the following form:

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU'S MYIBFS DATABASE].

An applicant for a proposed but not authorized station shall post the following online notice:

On [DATE], [APPLICANT NAME], applicant for [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE TO BE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE

INTERNATIONAL BUREAU'S MYIBFS DATABASE].

An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post the following online notice:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. [DESCRIPTION OF THE PROGRAMS TO BE TRANSMITTED OVER THE STATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU'S MYIBFS DATABASE].

(ii) *Site.* The applicant shall post online notice by posting a conspicuous link or tab labeled ''FCC Applications'' on an applicant-affiliated website, as defined in paragraph (a)(2) of this section. The link or tab will link directly to a page containing only the online notice text referenced in paragraph (b)(2)(i) of this section. To the extent that there are no pending applications requiring online public notice, the link or tab should link to a page indicating that there are no pending applications subject to the posting requirement. This page must include the date when it was last updated. If the applicant does not maintain or have access to an applicant-affiliated website, the applicant may post the online notice on a publicly accessible website, as defined in paragraph (a)(5) of this section. An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post online notice on a publicly accessible website that is locally targeted to the principal area to be served in the United States by the foreign broadcast station.

(iii) *Duration of posting.* If the online notice is posted on an applicant-affiliated website or on a publicly accessible website for which the applicant is not required to compensate the website owner in exchange for posting the online notice, then the applicant must post the online notice for a minimum of 30 consecutive days. If the applicant does not maintain an applicant-affiliated website, and the applicant is required to compensate a website owner in exchange for posting on a publicly accessible website, the applicant must post the online notice for a period of not less than 24 consecutive hours, once per week (Monday through Friday), for four consecutive weeks.

(iv) *Commencement of posting.* The applicant must post the online notice no earlier than the date of release of the acceptance public notice for the application, and not later than five business days following release of the acceptance public notice for the application.

(c) *Applications requiring local public notice.* The following applications filed by licensees or permittees of the following types of stations must provide public notice in the manner set forth in paragraphs (c)(1) through (6) of this section:

(1) *Applications for a construction permit for a new station, a major amendment thereto, or a major modification to a construction permit for a new unbuilt station.* (i) For a commercial or noncommercial educational full power television; commercial or noncommercial educational full-service AM or FM radio station; Class A television station; low power television (LPTV) or television translator station; low-power FM (LPFM) station; or commercial or noncommercial FM translator or FM booster station, the applicant shall give online notice.

(ii) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are to be located.

(2) *Applications for a major change to the facilities of an operating station, or major amendments thereto.* (i) For a noncommercial educational full power television; noncommercial full-service AM or FM radio station; or for an LPFM station, the applicant shall broadcast on-air announcements.

(ii) For a commercial full power television; commercial full-service AM or FM radio station; or a Class A television station, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV or television translator station; or an FM translator or FM booster station, the applicant shall give online notice.

(iv) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are located.

(3) *Applications for renewal of license.* (i) For a full power television; full-service AM or FM radio station; Class A television station; LPTV station locally originating programming; or LPFM station, the applicant shall broadcast on-air announcements.

(ii) For an LPTV station that does not locally originate programming; or for a TV or FM translator station, the applicant shall give online notice.

(iii) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are located.

(4) *Applications for assignment or transfer of control of a construction permit or license, or major amendments thereto.* (i) For a noncommercial educational full power television; noncommercial educational full-service AM or FM radio station; or an LPFM station, the applicant shall broadcast on-air announcements.

(ii) For a commercial full power television; commercial full-service AM or FM radio station; Class A television station; or an LPTV station that locally originates programming, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV station that does not locally originate programming, or a TV or FM translator station, the applicant shall give online notice.

(iv) For an international broadcast station, the applicant shall give online notice on a publicly accessible website, locally targeted to the community in which the station's transmission facilities are located.

(v) For any application for assignment or transfer of control of a construction permit or license, for a station that is not operating, the applicant shall give online notice.

(5) *Applications for a minor modification to change a station's community of license, or major amendments thereto.* (i) For a noncommercial educational full-service AM or FM radio station, the applicant shall broadcast on-air announcements.

(ii) For a commercial full-service AM or FM radio station, the applicant shall both broadcast on-air announcements and give online notice. In addition to the online notice set forth in paragraph (b)(2) of this section locally targeted to the applicant station's current community of license, the applicant shall also give online notice on a publicly accessible website locally targeted to the community that the applicant proposes to designate as its new community of license, for the same time periods and in the same manner as set forth in paragraph (b)(2) of this section.

(6) *Applications for a permit pursuant to section 325(c) of the Communications*

Act (studio delivering programming to a foreign station). The applicant shall give online notice.

(d) *Applications for which local public notice is not required.* The following types of applications are not subject to the local public notice provisions of this section:

(1) A minor change in the facilities of an authorized station, as indicated in §§ 73.3571, 73.3572, 73.3573, and 73.3574, and 74.787(b) of this chapter, except a minor change to designate a different community of license for an AM or FM radio broadcast station, pursuant to the provisions of §§ 73.3571(j) and 73.3573(g).

(2) Consent to an involuntary assignment or transfer or to a voluntary assignment or transfer which does not result in a change of control and which may be applied for on FCC Form 316, or any successor form released in the future, pursuant to the provisions of § 73.3540(b).

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license.

(4) Extension of time to complete construction of authorized facilities.

(5) An authorization of facilities for remote pickup or studio links for use in the operation of a broadcast station.

(6) Authorization pursuant to section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) where the programs to be transmitted are special events not of a continuing nature.

(7) An authorization under any of the proviso clauses of section 308(a) of the Communications Act concerning applications for and conditions in licenses.

(e) *Certification of local public notice.* (1) The applicant must certify in the appropriate application that it will comply with the public notice requirements set forth in paragraph (c) of this section.

(2) An applicant for renewal of a license that is required to maintain an online public inspection file shall, within seven (7) days of the last day of broadcast of the required on-air announcements, place in its online public inspection file a statement certifying compliance with this section, along with the dates and times that the on-air announcements were broadcast. An applicant for renewal of a license that is required to maintain an online public inspection file, and that is not broadcasting during all or a portion of the period during which on-air announcements are required to be broadcast, as set forth in paragraph (b)(1)(v) of this section, shall, within seven (7) days of the last on-air announcement or last day of posting online notice, whichever occurs last, place in its online public inspection file a statement certifying compliance with this section, along with the dates and times that any on-air announcements were broadcast, along with the dates and times that online notice was posted and the Universal Resource Locator (URL) of the internet website on which online notice was posted. This certification need not be filed with the Commission but shall be retained in the online public inspection file for as long as the application to which it refers.

(f) *Time for acting on applications.* Applications (as originally filed or amended) will be acted upon by the FCC no sooner than 30 days following release of the acceptance public notice, except as otherwise permitted in § 73.3542 or § 73.1635.

■ 9. Revise § 73.3594 to read as follows:

§ 73.3594 Local public notice of designation for hearing.

(a) When an application subject to the provisions of § 73.3580 is designated for hearing, the applicant shall give notice of such designation as follows:

(1) *On-air announcement.* The applicant (except an applicant filing an application for an International broadcast, low power TV, TV translator, FM translator, and FM booster station) shall broadcast an on-air announcement of the designation of an application for hearing over its radio or television station as follows:

(i) *Content.* The on-air announcement shall be in the following form:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on certain issues. Members of the public wishing to view the Hearing Designation Order and list of issues can visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE'S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the ''Hearing Designation Order'' notice.

Television broadcast stations (commercial and noncommercial educational), in presenting on-air announcements, must use visuals [with the full text of the on-air announcement] when this information is being orally presented by the announcer.

(ii) *Frequency of broadcast.* The on-air announcements shall be broadcast a total of six (6) times, once per week for four consecutive weeks.

(iii) *Commencement of broadcast.* The first broadcast of the on-air announcement shall occur no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth business day following release of said order.

(iv) *Time of broadcast.* The on-air announcements shall be broadcast between the hours of 7:00 a.m. and 11:00 p.m. local time at the applicant station's community of license, Monday through Friday.

(v) *Language of broadcast.* A station broadcasting primarily in a foreign language shall broadcast the announcements in that language.

(2) *Online notice.* The applicant shall also post an online notice of the designation of an application for hearing conspicuously on an internet website as follows:

(i) *Content.* The online notice shall be in the following form:

HEARING DESIGNATION ORDER

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC's ORDER OR SUMMARY OF DESIGNATION FOR HEARING]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC's INTERNET WEBSITE].

(ii) *Site.* (A) The applicant shall post online notice by posting a conspicuous link or tab labeled ''FCC Hearing'' on an applicant-affiliated website, as defined in paragraph (a)(2) of this section. The link or tab will link directly to a page containing only the online notice text referenced in paragraph (b)(2)(i) of this section. The applicant shall post online notice on one of the following internet websites, to the extent such websites are maintained, in order of priority:

(*1*) The applicant station's internet website;

(*2*) The applicant's internet website; or

(*3*) The applicant's parent entity's internet website.

(B) If the applicant does not maintain an internet website for the station or itself, or if the applicant's parent entity does not maintain an internet website, the applicant shall post online notice on an internet website:

(*1*) That is accessible to members of the public without registration or payment requirements, or any other requirement that the user provide information, or response to a survey or questionnaire in exchange for being able to access information on the website; and

(*2*) That is locally targeted to the area served and/or to be served by the applicant station (*e.g.,* local government internet website, local community bulletin board internet website, state broadcasters' association internet website).

(iii) *Commencement of posting.* The online notice shall be posted no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth business day following release of said order.

(iv) *Length of posting.* The online notice must be posted for a minimum of 30 consecutive days.

(b) Within seven (7) days of the last day of broadcast of the notice required by paragraph (a)(1) of this section, the applicant shall file a an original statement and one copy with the Secretary of the Commission setting forth the dates and times on which the on-air announcements were made, the date the online notice was first posted, and the Universal Resource Locator (URL) address of the internet website on which online notice is posted.

(c) The failure to comply with the provisions of this section is cause for dismissal of an application with prejudice. However, upon a finding that applicant has complied (or proposes to comply) with the provisions of section 311(a)(2) of the Communications Act, and that the public interest, convenience, and necessity will be served thereby, the presiding officer may authorize an applicant, upon a showing of special circumstances, to give notice in a manner other than that prescribed by this section; may accept notice that is given in a manner which does not conform strictly in all respects with the provisions of this section; or may extend the time for giving notice.

[FR Doc. 2020–11127 Filed 6–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 20–31; FCC 20–63; FRS 16773]

Implementation of Provisions of the Television Viewer Protection Act of 2019 Governing Negotiation of Retransmission Consent Between Qualified Multichannel Video Programming Distributor Buying Groups and Large Station Groups

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) revises its rules governing good faith negotiation of retransmission consent, to implement provisions of the Television Viewer Protection Act of 2019 governing negotiations between qualified multichannel video programming distributor buying groups and large broadcast station groups.

DATES: These rule revisions are effective on July 20, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at *Raelynn.Remy@fcc.gov,* or (202) 418–2936.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order), FCC 20–63, adopted on May 12, 2020, and released on May 13, 2020. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at FCC–20–63A1.docx. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Report and Order (Order), we revise § 76.65 of our rules, which governs good faith negotiation of retransmission consent, to implement provisions in section 1003 of the Television Viewer Protection Act of 2019 (TVPA).[1] Under section 1003, the Commission must adopt rules that provide for negotiation of retransmission consent between ''qualified multichannel video programming distributor [MVPD] buying group[s]'' and ''large [broadcast] station group[s]'' as those terms are defined in the TVPA. As discussed below, we adopt our proposals from the NPRM in this proceeding: (i) To define the term ''large station group'' as used in section 1003 to mean, in relevant part, an entity whose individual television broadcast station members *collectively* have a national audience reach of more than 20 percent;[2] (ii) to define the term ''qualified MVPD buying group'' as used in section 1003 to mean, in relevant part, an entity that negotiates on behalf of MVPDs that collectively serve no more than 25 percent of all households receiving service from *any* MVPD in a given local market;[3] and (iii) to codify in § 76.65 of our rules the provisions governing negotiation of retransmission consent between qualified MVPD buying groups and large station groups, as well as the definitions of ''local market'' and ''multichannel video programming distributor'' set forth in section 1003(b)(3). As proposed, we also make minor conforming changes to § 76.65.

I. Background

2. In December 2019, Congress enacted the TVPA, which is the latest in a series of statutes that have revised the Communications Act of 1934 (Act) to establish parameters for the carriage of television broadcast stations by MVPDs.

[1] This Order adopts rules that implement only section 1003 of the TVPA. The Media Bureau has addressed implementation of section 1004 of the TVPA, which establishes truth-in-billing requirements applicable to MVPDs and providers of fixed broadband internet access service, in a separate proceeding. Through this rulemaking, we fulfill our statutory obligation to revise our rules to specify that ''certain small MVPDs can meet the obligation to negotiate [retransmission consent] in good faith . . . by negotiating with a large station group through a qualified MVPD buying group.''

[2] Aside from satisfying the audience reach requirement, a ''large station group'' otherwise must meet the definition set forth in section 325(b)(7)(D) of the Act.

[3] Aside from satisfying this requirement, a ''qualified MVPD buying group'' otherwise must meet the definition set forth in section 325(b)(7)(C) of the Act.

Section 1003 of the TVPA revised section 325(b) of the Act principally by allowing smaller MVPDs to negotiate collectively as a buying group for retransmission consent with large broadcast station groups. Specifically, section 1003(a)(3) revised section 325(b)(3)(C) by adding new subsection 325(b)(3)(C)(vi), which directs the Commission to commence a rulemaking proceeding to revise its retransmission consent rules to specify that: (1) A [MVPD] may satisfy its obligation to negotiate retransmission consent in good faith under section 325(b)(3)(C)(iii) with a large broadcast station group by designating a qualified MVPD buying group to negotiate on its behalf, so long as the qualified MVPD buying group itself negotiates in good faith in accordance with such clause; (2) it is a violation of the obligation to negotiate in good faith under section 325(b)(3)(C)(iii) for the qualified MVPD buying group to disclose the prices, terms, or conditions of an ongoing negotiation or the final terms of a negotiation to a member of such group that is not intending, or is unlikely, to enter into the final terms negotiated by the group; and (3) a large broadcast station group has an obligation to negotiate [retransmission consent] in good faith under section 325(b)(3)(C)(ii) with respect to a negotiation with a qualified MVPD buying group.

3. In addition, section 1003(b) of the TVPA amended section 325(b)(7) of the Act principally by adding new subsections 325(b)(7)(C) and (D), which define the terms ''qualified MVPD buying group'' and ''large station group,'' respectively, for the purpose of applying the new good faith negotiation provisions of section 325(b)(3)(C)(vi).[4] New section 325(b)(7)(C) of the Act defines ''qualified MVPD buying group,'' in relevant part, as an entity that:

• Negotiates [retransmission consent] on behalf of two or more multichannel video programming distributors—

• none of which is a [MVPD] that serves more than 500,000 subscribers nationally; and

• that do not collectively serve more than 25 percent of all households served by a [MVPD] in any single local market in which the applicable large station group operates.

4. Moreover, new section 325(b)(7)(D) of the Act defines ''large station group'' as a group of television broadcast stations that are directly or indirectly under common de jure control permitted by the regulations of the Commission, generally negotiate agreements for retransmission consent as a single entity, and include only television broadcast stations that have a national audience reach of more than 20 percent.

5. In January 2020, the Commission issued the NPRM, which proposed to revise section 76.65 of its rules as set forth above. The pleading cycle for the NPRM ended on March 16, 2020. Three parties filed comments in response to the NPRM,[5] and no parties filed reply comments. Commenters uniformly support our proposals.

II. Discussion

6. We adopt the unopposed revisions to section 76.65 of our rules proposed in the NPRM. First, we revise § 76.65 to define the term ''large station group'' as, among other things, an entity whose individual television station members collectively have a national audience reach of more than 20 percent. We conclude that this interpretation of the term ''large station group'' finds support in the text and structure of the TVPA, and would best effectuate Congressional intent.[6] In particular, as we noted in the NPRM, the text of the first two clauses in the definition of ''large station group'' require, respectively, that stations comprising a ''large station group'' be under ''common de jure control'' and negotiate agreements as a ''single entity.'' We find that these two requirements properly characterize only stations that collectively comprise a group, rather than individual stations, and that the third clause of the definition thus should be interpreted as imposing a requirement that must be true of the stations collectively. Moreover, as we observed in the NPRM, the TVPA contemplates that ''qualified MVPD buying groups'' and ''large station groups'' would be counterparties in a retransmission consent negotiation. Because the former term imposes a market share cap of 25 percent on the MVPDs ''collectively,'' we conclude that the 20 percent market share threshold for ''large station groups'' similarly should be construed to apply to the stations collectively.[7] Finally, given that a key purpose of the new good faith negotiation provisions is to level the playing field by ''allow[ing] smaller MVPDs to collectively negotiate as a buying group [with large station groups] for retransmission consent,'' we adopt our tentative finding that Congress could not have intended to create a collective negotiation mechanism to address the growing bargaining power of large station groups but then defined those groups in a way that would render the mechanism unavailable as a practical matter. As we stated in the NPRM, a contrary interpretation, whereby each station in the group individually must have at least a 20 percent national audience reach, would be illogical given that there are currently no stations that meet this threshold.

7. We also adopt our proposal to construe the phrase ''all households served by a [MVPD]'' in the statutory definition of ''qualified MVPD buying group'' to mean all households that receive service from *any* MVPD, rather than all households served by a *specific* MVPD in a given local market. Because the percentage of households that subscribe to a particular MVPD (or class of MVPDs) relative to the total number of households that subscribe to any MVPD in a given market is a competition metric that the Commission historically has utilized, we conclude that this is the most reasonable reading of the relevant phrase. We also believe, as noted in the NPRM, that adopting the alternative interpretation would create practical problems given that the statute provides no guidance as to which MVPD in a given market should serve as the benchmark for the relevant threshold.

8. Finally, we adopt our proposals: (i) To codify in § 76.65 the provisions governing negotiation of retransmission consent between qualified MVPD buying groups and large station groups set forth in section 325(b)(3)(C)(vi)(I)–(III) of the Act, as added by section 1003(a)(3) of the TVPA and the definitions of ''local market'' and ''multichannel video programming distributor'' set forth in section 325(b)(7)(E) and (F) of the Act, as added by section 1003(b)(3) of the TVPA; and (ii) to delete the phrase ''as defined in 17 U.S.C. 122(j)'' in § 76.65(b)(1)(viii) and (ix). Commenters uniformly support

[4] Section 1003(b) also amended section 325(b)(7) of the Act by adding subsections (b)(7)(E) and (F), which define the terms ''local market'' and ''multichannel video programming distributor,'' respectively.

[5] These parties are: ACA Connects—America's Communications Association (ACA Connects); the National Association of Broadcasters (NAB); and NTCA—the Rural Broadband Association (NTCA).

[6] As we noted in the NPRM, this interpretation also is harmonious with the Commission's ownership restrictions.

[7] We do not find that the presence of the term ''collectively'' in the statutory definition of ''qualified MVPD buying group,'' as contrasted with the absence of that term in the definition of ''large station group,'' compels a different reading of the statute. In particular, we agree with ACA Connects's assertion that the structure of the respective definitions required that Congress insert the word ''collectively'' in the former definition, but not in the latter.

these revisions to § 76.65, and no party has opposed them.[8]

9. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) concerning the possible significant economic impact on small entities by the rules adopted in the attached Order. The Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Order and FRFA (or summaries thereof) will be published in the **Federal Register**.

10. In this Order, pursuant to section 325(b)(3)(C) of the Act, as amended by section 1003 of the Television Viewer Protection Act of 2019 (TVPA), we revise our retransmission consent rules to specify, among other things, that certain small multichannel video programming distributors (MVPDs) may satisfy their obligation to negotiate retransmission consent in good faith by negotiating with a large broadcast station group through a qualified MVPD buying group. In particular, we revise § 76.65 of our rules to define: (i) The term ''large station group'' as used in section 1003 of the TVPA to mean, in relevant part, an entity whose individual television station members *collectively* have a national audience reach of more than 20 percent; and (ii) the term ''qualified MVPD buying group'' as used in section 1003 to mean, in relevant part, an entity that negotiates on behalf of MVPDs that collectively serve no more than 25 percent of all households receiving service from *any* MVPD in a given local market. In addition, we codify in § 76.65 the provisions governing negotiation of retransmission consent between qualified MVPD buying groups and large station groups, as well as the definitions of ''local market'' and ''multichannel video programming distributor'' set forth in section 1003(b)(3). We also make minor conforming changes to § 76.65.

11. The action in this Order is authorized pursuant to sections 4(i), 4(j), 303(r), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 325, and section 1003 of the Television Viewer Protection Act of 2019.

12. Without mentioning the IRFA, a couple of parties commented on the impact of the rules adopted in this Order on small entities. For example, NTCA asserts that a major challenge faced by smaller MVPDs in negotiating retransmission consent is the unequal bargaining power they possess due to their size relative to the bargaining power of programmers. NTCA argues that large MVPDs are able to obtain more favorable retransmission consent rates because they provide broadcasters with a larger number of potential viewers that, in turn, generates additional advertising revenue. By contrast, NTCA contends, broadcasters are able to extract higher per-subscriber rates from smaller MVPDs because the broadcaster stands to lose little by denying the smaller MVPD access to programming. According to NTCA, smaller MVPDs often do not have the option of discontinuing video programming because a substantial portion of their customers cannot receive an over-the-air broadcast signal, and thus rely on their MVPD to carry broadcast stations that serve as a principal source for local news and weather reports. NTCA argues that allowing smaller MVPDs to negotiate retransmission consent agreements through a larger buying group will enable them to obtain access to programming at more reasonable rates. ACA Connects argues that swift adoption of the proposed rules will enable smaller MVPDs to utilize the TVPA's new protections promptly.

13. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below is a list of such small entities:

- Cable Companies and Systems
- Cable System Operators
- Open Video Services.
- Satellite Master Antenna Television (SMATV) Systems
- Direct Broadcast Satellite (DBS) Service
- Television Broadcasting

14. The Order does not adopt any reporting or recordkeeping requirements. The Order revises the Commission's rules to permit certain small MVPDs to meet their statutory obligation to negotiate retransmission consent in good faith by designating a qualified MVPD buying group to negotiate on their behalf with a large broadcast station group. In particular, the Order revises such rules by clarifying the meaning of the statutory terms ''large station group'' and ''qualified MVPD buying group'' so as to facilitate smaller MVPDs' use of the new collective bargaining provisions consistent with Congressional intent. These rule revisions impose no new regulatory compliance burdens on small television broadcast stations.

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

16. In this Order, the Commission implements section 1003 of the TVPA in a way that will reduce burdens on smaller MVPDs that negotiate retransmission consent against large broadcast station groups with greater bargaining leverage by allowing such MVPDs to negotiate collectively as a buying group. As noted, the rule revisions adopted in the Order will not have an adverse economic impact on any small entities, and would have a positive economic impact on smaller MVPDs that choose to avail themselves of the TVPA's new collective bargaining provisions in their negotiations with large broadcast station groups that possess market power.

17. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

18. This document does not contain proposed new or revised information

[8] Although NTCA—the Rural Broadband Association ''supports the Commission's proposal as an initial first step toward fixing the broken retransmission consent process,'' it asserts that the Commission must go further to address anticompetitive behavior by content providers, including forced tying, tiering, and other unfair bargaining tactics. Those issues, however, were not discussed in the NPRM and are therefore beyond the scope of this proceeding.

collection requirements subject to the Paperwork Reduction Act of 1995. In addition, therefore, it does not contain any new or modified ''information burden for small business concerns with fewer than 25 employees'' pursuant to the Small Business Paperwork Relief Act of 2002.

19. Accordingly, it is ordered that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 325, and section 1003 of the Television Viewer Protection Act of 2019, this Report and Order is adopted, effective thirty (30) days after the date of publication in the **Federal Register**. It is ordered that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 325, and section 1003 of the Television Viewer Protection Act of 2019, the Commission's rules are hereby amended. It is further ordered that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 20–31 shall be terminated, and its docket closed. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. It is further ordered that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission shall send a copy of the Report and Order to Congress and the Government Accountability Office.

List of Subjects in 47 CFR Part 76

Cable television, Communications.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

For the reasons discussed in the preamble, the Federal Communications Commission amends part 76 of title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.65 by revising paragraphs (b)(1)(viii) and (ix) and (b)(2) and adding paragraphs (b)(3) and (4) to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

* * * * *

(b) * * *

(1) * * *

(viii) Coordination of negotiations or negotiation on a joint basis by two or more television broadcast stations in the same local market to grant retransmission consent to a multichannel video programming distributor, unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission.

(ix) The imposition by a television broadcast station of limitations on the ability of a multichannel video programming distributor to carry into the local market of such station a television signal that has been deemed significantly viewed, within the meaning of § 76.54 of this part, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under 47 U.S.C. 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

(2) *Negotiation of retransmission consent between qualified multichannel video programming distributor buying groups and large station groups.* (i) A multichannel video programming distributor may satisfy its obligation to negotiate in good faith for retransmission consent with a large station group by designating a qualified MVPD buying group to negotiate on its behalf, so long as the qualified MVPD buying group itself negotiates in good faith in accordance with this section.

(ii) It is a violation of the obligation to negotiate in good faith for a qualified MVPD buying group to disclose the prices, terms, or conditions of an ongoing negotiation or the final terms of a negotiation to a member of the qualified MVPD buying group that is not intending, or is unlikely, to enter into the final terms negotiated by the qualified MVPD buying group.

(iii) A large station group has an obligation to negotiate in good faith for retransmission consent with a qualified MVPD buying group.

(A) ''Qualified MVPD buying group'' means an entity that, with respect to a negotiation with a large station group for retransmission consent—

(*1*) Negotiates on behalf of two or more multichannel video programming distributors—

(*i*) None of which is a multichannel video programming distributor that serves more than 500,000 subscribers nationally; and

(*ii*) That do not collectively serve more than 25 percent of all households served by multichannel video programming distributors in any single local market in which the applicable large station group operates; and

(*2*) Negotiates agreements for such retransmission consent—

(*i*) That contain standardized contract provisions, including billing structures and technical quality standards, for each multichannel video programming distributor on behalf of which the entity negotiates; and

(*ii*) Under which the entity assumes liability to remit to the applicable large station group all fees received from the multichannel video programming distributors on behalf of which the entity negotiates.

(B) ''Large station group'' means a group of television broadcast stations that—

(*1*) Are directly or indirectly under common de jure control permitted by the regulations of the Commission;

(*2*) Generally negotiate agreements for retransmission consent under this section as a single entity; and

(*3*) Include only television broadcast stations that collectively have a national audience reach of more than 20 percent;

(3) *Definitions.* For purposes of this section and section 76.64 of this subpart, the following definitions apply:

(i) ''Local market'' has the meaning given such term in 17 U.S.C. 122(j); and

(ii) ''Multichannel video programming distributor'' has the meaning given such term in 47 U.S.C. 522.

(4) *Totality of the circumstances.* In addition to the standards set forth in paragraphs (b)(1) and (2) of this section, a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith as set forth in paragraph (a) of this section.

* * * * *

[FR Doc. 2020–11130 Filed 6–17–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200529–0151]

RIN 0648–BJ66

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder Fishery; Fishing Year 2020

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

ACTION: Final rule.

SUMMARY: NMFS announces management measures for the 2020 summer flounder recreational fishery. The implementing regulations for this fishery require NMFS to publish recreational measures for the fishing year. The intent of this action is to achieve, but not exceed, the 2020 summer flounder recreational harvest limit and thereby prevent overfishing on the summer flounder stock.

DATES: This rule is effective June 18, 2020.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) jointly manage summer flounder. The Council and Commission's Summer Flounder Management Board meet jointly each year to recommend recreational management measures for summer flounder.

In this final rule, NMFS is implementing conservation equivalency to manage the 2020 summer flounder recreational fishery, as proposed on April 6, 2020 (85 FR 19126). The approval of conservation equivalency means that we are waiving Federal summer flounder recreational measures in Federal waters and to all federally permitted summer flounder party/charter vessels, regardless of where they fish. States, through the Commission, are collectively implementing measures designed to constrain landings to the 2020 recreational harvest limit. Vessels fishing in Federal waters, and Federal party/charter vessels are subject to the regulations in the state they land. These measures are consistent with the recommendations of the Council and the Commission. Additional information on the development of these measures is provided in the proposed rule and not repeated here.

Conservation equivalency, as established by Framework Adjustment 2 (66 FR 36208; July 11, 2001), allows each state to establish its own recreational management measures (possession limits, fish size, and fishing seasons) to achieve its state harvest limit established by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as Federal coastwide measures. Framework Adjustment 6 (71 FR 42315; July 26, 2006) allows states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

Similar to the 2016–2019 program, the 2020 management program adopted by the Commission divides the recreational fishery into six management regions: (1) Massachusetts; (2) Rhode Island; (3) Connecticut-New York; (4) New Jersey; (5) Delaware-Virginia; and (6) North Carolina. Each state within a region must implement identical or equivalent measures (fish size, bag limit, and fishing season length), and the combination of those measures must be sufficient to achieve, but not exceed, the recreational harvest limit.

Based on the Commission's recommendation, we find that the 2020 recreational fishing measures required to be implemented in state waters are, collectively, the conservation equivalent of the season, fish size, and possession limit prescribed in 50 CFR 648.104(b), 648.105, and 648.106(a). According to § 648.107(a)(1), vessels subject to the recreational fishing measures are not subject to Federal measures, and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended through this final rule to recognize state-implemented measures as the conservation equivalent of the Federal coastwide recreational management measures for 2020.

Given the anticipated lower recreational fishery participation this spring, the Commission made additional revisions to state/regional 2020 recreational measures to afford additional fishing opportunity in late summer and fall. Any changes considered would be required to maintain projected harvest levels consistent with the state harvest limits.

In addition, this action reaffirms the default coastwide measures (a 19-inch (48.3-cm) minimum size, four-fish possession limit, and May 15 through September 15 open fishing season), that becomes effective January 1, 2021, upon the expiration of the 2020 conservation equivalency program.

Regulatory Corrections

Additionally, this final rule makes a revision, consistent with section 305(d) of the Magnson-Stevens Act, which provides authority to the Secretary of Commerce to implement regulations that are necessary to ensure they are consistent with the fishery management plan (FMP) and Magnuson-Stevens Act. The regulation at § 648.102(d)(2) describes conservationally equivalent measures that states or regions would develop for summer flounder. In a prior action issuing regulations for Framework Adjustment 14 (84 FR 65699; November 29, 2019), we intended to replace ''minimum fish sizes'' in this regulation with ''minimum and/or maximum fish sizes'' to reflect Framework Adjustment 14's addition of maximum size limits as a management measure available for summer flounder recreational fisheries. This change was inadvertently left out of the rule. To correct this error this action replaces ''minimum fish sizes'' with ''minimum and/or maximum fish sizes.''

Changes From the Proposed Rule

There are no changes from the proposed rule.

Comments and Responses

NMFS received four comments on the proposed rule. Two comments were related to state-specific measures outside the scope of this action, offered concerns over commercial fishing limits, and relayed general complaints over the management of summer flounder. One comment supported the previously approved addition of ''maximum fish size'' to the potential management measures that states may implement under conservation equivalency. The final comment was not relevant to the proposed rule. No changes to the final rule are made based on the submitted comments.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that these management measures are necessary for the conservation and management of the summer flounder fishery and are consistent with the Magnuson-Stevens Act and other applicable laws.

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

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final management measures are in place as soon as possible.

The Federal coastwide regulatory measures for recreational summer flounder fishing that were codified last year (84 FR 31743; July 3, 2019) remain in effect until the decision to waive Federal measures for 2020 is made effective by this final rule. Many states have already implemented their conservationally equivalent 2020 measures; a delay in implementing the measures of this rule will increase confusion on what measures are in place in Federal waters. Inconsistencies between the states' measures and the Federal measures could lead to potential confusion and misunderstanding of the applicable regulations and could increase the likelihood of noncompliant landings. Additionally, the Federal measures currently in place are more restrictive than many of the measures in state waters, which unnecessarily disadvantages federally permitted vessels who are subject to these more restrictive measures until this final rule is effective.

In response to this action, unlike actions that require an adjustment period to comply with new rules, recreational and charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the published management measures for summer flounder while the recreational and charter/party operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay of effectiveness period and to implement this rule upon publication in the **Federal Register**.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. A final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 1, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.102, paragraph (d)(2) introductory text is revised to read as follows:

§ 648.102 Summer flounder specifications.

* * * * *

(d) * * *

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.,* multi-state conservation equivalency regions), may implement different combinations of minimum and/or maximum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

* * * * *

■ 3. In § 648.107, paragraph (a) introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2020 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

[FR Doc. 2020–12069 Filed 6–17–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200610–0156]

RIN 0648–BJ53

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2020 Harvest Specifications for Pacific Whiting, Cowcod and Shortbelly Rockfish and 2020 Pacific Whiting Tribal Allocation

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to establish 2020 harvest specifications and management measures for Pacific whiting, shortbelly rockfish, and cowcod caught in the U.S. Exclusive Economic Zone off the coasts of Washington, Oregon, and California consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Whiting Act of 2006, and other applicable laws. For Pacific whiting, this rule establishes the 2020 adjusted U.S. Total Allowable Catch level, tribal and non-tribal allocations, and research and bycatch set-asides. This final rule also adjusts the 2020 harvest specifications for shortbelly rockfish and cowcod. The catch limits in this rule are intended to ensure the long-term sustainability of the Pacific whiting, shortbelly rockfish, and cowcod stocks.

DATES: Effective June 18, 2020.

ADDRESSES: This final rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents including an integrated analysis for this action (Analysis), which addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Environmental Policy Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act are available at the NMFS website at *https://www.fisheries.noaa.gov/action/2020-harvest-specifications-pacific-whiting-cowcod-and-shortbelly-rockfish-and-2020-pacific* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

The final environmental impact statement regarding Harvest

Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter, and the Final Environmental Assessment for Pacific Coast Groundfish Fishery 2019–20 Harvest Specifications, Yelloweye Rebuilding Plan Revisions, and Management Measures, are available on the NMFS West Coast Region website at: *www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html.*

FOR FURTHER INFORMATION CONTACT:

Stacey Miller, phone: 503–231–6290, and email: *Stacey.Miller@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule includes actions for the Pacific whiting tribal and non-tribal fisheries, shortbelly rockfish, and cowcod. These actions are combined into one final rule because they all relate to establishing catch limits and management measures for Pacific Coast groundfish stocks in 2020. This rule announces the 2020 Pacific whiting coastwide Total Allowable Catch (TAC), establishes the Pacific whiting U.S. TAC based on the coastwide TAC, tribal allocation, allocations for three commercial whiting sectors, and set-asides for research and incidental mortality of Pacific whiting as recommended by the Pacific Fishery Management Council (Council); increases the 2020 annual catch limit (ACL) for shortbelly rockfish; and eliminates the 2020 annual catch target (ACT) and reduces the research set-aside for cowcod. The allocations for Pacific whiting are effective until December 31, 2020. The adjusted catch limits for cowcod and shortbelly supersede those put in place for 2020 through the 2019–2020 Pacific Coast Groundfish Biennial Harvest Specifications and Management Measures (83 FR 63970; December 12, 2018), and are being analyzed as part of the 2021–2022 Pacific Coast Groundfish Biennial Harvest Specifications and Management Measures, which are anticipated to be effective on January 1, 2021. Additional background information on each of the measures included in this final rule are included in the proposed rule, published on April 17, 2020 (85 FR 21372), and is not repeated here.

Pacific Whiting

2020 Pacific Whiting Harvest Specifications, Tribal Allocation and Non-Tribal Allocation

The transboundary stock of Pacific whiting is managed through the Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003, Nov. 21, 2003, T.I.A.S. 08–625 (Agreement). NMFS issued a proposed rule on April 17, 2020 (85 FR 21372) that describes the Agreement, including the establishment of F–40 percent default harvest rate, explicit allocation of Pacific whiting coastwide TAC to the U.S. (73.88 percent) and Canada (26.12 percent), the bilateral bodies to implement the terms of the Agreement, and the process used to determine the coastwide TAC.

The 2020 Joint Management Committee (JMC) and Advisory Panel (AP) met March 11–13, 2020, via the internet, but did not reach a bilateral agreement on the coastwide TAC. The Agreement does not specify a procedure for when the JMC does not agree on a coastwide TAC. However, the 2006 Pacific Whiting Act (16 U.S.C. 7006(c)) identifies procedures for when the JMC does not recommend a final TAC. The Pacific Whiting Act states that NMFS (as delegated by the Secretary of Commerce) should establish the Pacific whiting TAC, taking into account recommendations from the Pacific whiting treaty advisory bodies, and Council. The Pacific Whiting Act requires NMFS to base the TAC decision on the best scientific information available, and use the default harvest rate unless scientific information indicates a different rate is necessary to sustain the Pacific whiting resource. The Pacific Whiting Act also requires NMFS to establish the U.S. share of the TAC based on the U.S./Canada percentage split and adjustments specified in the Agreement. Finally, the Pacific Whiting Act requires NMFS to make the necessary adjustments to the TAC specified in the Agreement (Paragraph 5 of Article II). The Agreement (Paragraph 5 of Article II) requires adjustments to the coastwide TAC to account for overages if either U.S. or Canadian catch in the previous year exceeded its individual TAC, or carryovers, if U.S. or Canadian catch was less than its individual TAC in the previous year. Both the U.S. and Canada harvested less than their individual TACs in 2019, and therefore carryover is applied to the 2020 individual TACs.

Taking into account the percentage shares for each country (26.12 percent for Canada and 73.88 percent for the U.S.) and the adjustments for uncaught fish, as required by the Pacific Whiting Act, this final rule announces a final adjusted coastwide TAC of 575,000 metric tons (mt) and a final adjusted TAC for the U.S. of 424,810 mt (367,202 mt + 57,608 mt carryover adjustment). Following the Act's criteria, NMFS analyzed a range of alternatives in the proposed rule (85 FR 21372; April 17, 2020) and determined a final adjusted coastwide TAC of 575,000 mt maintains the sustainability of the Pacific whiting stock and balances the economic needs of coastal communities. This TAC is well below the default level of F–40 percent and is supported by the recommendations from the JMC and its advisory bodies, and is consistent with the best available scientific information, provisions of the Agreement, and the Whiting Act.

Tribal Allocations

This final rule establishes the tribal allocation of Pacific whiting for 2020 as described in the proposed rule (85 FR 21372; April 17, 2020). Since 1996, NMFS has been allocating a portion of the U.S. TAC of Pacific whiting to the tribal fishery. Regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) specify that the tribal allocation is subtracted from the total U.S. Pacific whiting TAC. The tribal Pacific whiting fishery is managed separately from the non-tribal Pacific whiting fishery and is not governed by limited entry or open access regulations or allocations. NMFS is establishing the 2020 tribal allocation as 74,342 mt (17.5 percent of the U.S. TAC) in this final rule. In 2009, NMFS, the states of Washington and Oregon, and the tribes with treaty rights to harvest Pacific whiting started a process to determine the long-term tribal allocation for Pacific whiting; however, no long-term allocation has been determined. While new scientific information or discussions with the relevant parties may impact that decision, the best available scientific information to date suggests that 74,342 mt is within the likely range of potential treaty right amounts. As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of Pacific whiting to which the Tribes are entitled under their treaty right. Rather, this rule adopts an interim allocation. The long-term tribal treaty amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and the states of Washington and Oregon.

Harvest Guidelines and Allocations

This final rule also establishes the fishery harvest guideline (HG), also called the non-tribal allocation, as described in the proposed rule published on April 17, 2020 (85 FR 21372). The 2020 fishery HG for Pacific whiting is 348,968 mt. This amount was determined by deducting the 74,342 mt tribal allocation and the 1,500 mt allocation for scientific research catch and fishing mortality in non-groundfish fisheries from the total U.S. TAC of 424,810 mt. The Council recommends the research and bycatch set-aside on an annual basis, based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries. The regulations further allocate the fishery HG among the three non-tribal sectors of the Pacific whiting fishery: The catcher/processor (C/P) Coop Program, the Mothership (MS) Coop Program, and the Shorebased Individual Fishing Quota (IFQ) Program. The C/P Coop Program is allocated 34 percent (118,649 mt for 2020), the MS Coop Program is allocated 24 percent (83,752 mt for 2020), and the Shorebased IFQ Program is allocated 42 percent (146,567 mt for 2020). The fishery south of 42° N lat. may not take more than 7,328 mt (5 percent of the Shorebased IFQ Program allocation) prior to May 15, the start of the primary Pacific whiting season north of 42° N lat.

The environmental assessment for the 2019–2020 harvest specifications rule (see **ADDRESSES**) analyzed a range of TAC alternatives for 2020, and the final 2020 TAC falls within this analyzed range. In addition, via the 2019–2020 harvest specifications rulemaking process, the public had an opportunity to comment on the 2019–2020 TACs for Pacific whiting, along with all other species in the groundfish FMP with catch limits set through that action. NMFS follows this process because, unlike for all other groundfish species, the TAC for Pacific whiting is typically decided in a highly abbreviated annual process from February through April of every year, and the normal rulemaking process would not allow for the fishery to open with the new TAC on the annual season opening date of May 15.

TABLE 1—2020 U.S. PACIFIC WHITING TOTAL ALLOWABLE CATCH AND ALLOCATIONS IN METRIC TONS

	2020 Pacific whiting harvest specifications (mt)
U.S. TAC	424,810
Research and Incidental Mortality Set-Aside	1,500
Tribal Allocation	74,342
Catcher/Processor (C/P) Coop Program Allocation	118,649
Mothership (MS) Coop Program Allocation	83,752
Shorebased IFQ Program Allocation	146,567

Shortbelly Rockfish (*Sebastes jordani*)

This final rule implements the Council recommendation from its November 2019 meeting, to increase the 2020 ACL for shortbelly rockfish to 3,000 mt. The remaining shortbelly rockfish catch limits for 2020, including the OFL and ABC, are unchanged from those implemented in the 2019–2020 Pacific Coast Groundfish Biennial Harvest Specifications (83 FR 63970; December 12, 2018). The changes are summarized in Table 2 below.

TABLE 2—2020 HARVEST SPECIFICATIONS AND MANAGEMENT MEASURES FOR SHORTBELLY ROCKFISH IN METRIC TONS

	Limits in mt
OFL	6,950
ABC	5,789
ACL	3,000
Fishery Harvest Guideline	2,983

Shortbelly rockfish (*Sebastes jordani*) is one of the most abundant rockfish species and an important forage species in the California Current Ecosystem. Historically, shortbelly rockfish was most abundant off central California from Monterey Bay to Point Reyes, common in southern California, and only rarely encountered north of Cape Mendocino, California. In recent years, shortbelly rockfish distribution has extended north of Cape Mendocino, California and into Oregon and Washington waters, the principal fishing areas the midwater trawl fishery operates in to harvest Pacific whiting. While shortbelly rockfish bycatch was historically low in the Pacific whiting fishery, the recent expansion in distribution and a likely increase in abundance, is resulting in increased bycatch of shortbelly rockfish in the Pacific whiting midwater trawl fishery.

Increasing the shortbelly rockfish ACL to 3,000 mt for the final half of the 2020 fishing year will accommodate incidental bycatch of the shortbelly rockfish stock given recent high bycatch in groundfish trawl fisheries, while continuing to minimize bycatch, discourage development of a targeted fishery for shortbelly rockfish, and continuing to protect the availability of shortbelly rockfish as important forage in the California Current Ecosystem.

As described in the proposed rule (85 FR 21372; April 17, 2020) the increase of the 2020 ACL is not anticipated to induce targeting of shortbelly and continues to protect the availability of shortbelly rockfish as important forage in the California Current Ecosystem. Scientific information currently available provides evidence of above average forage conditions in the California Current Ecosystem with higher abundances of forage species such as anchovy and a high overall shortbelly rockfish population in 2018–2019. Further, the higher ACL is well below the shortbelly rockfish OFL of 6,950 mt, and ABC of 5,789 mt.

The final rule is an accountability measure that addresses the operational issue of a low ACL that resulted in ACL overages in 2018 and 2019. National Standard 1 Guidelines state: ''On an annual basis, the Council must determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded, AMs must be implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known.''

The final rule will improve the performance and effectiveness of the ACL by increasing the ACL to reflect new information regarding shortbelly rockfish abundance and bycatch rates in the groundfish fishery. This will reduce the risk of an ACL overage in 2020, which would potentially close midwater trawl fisheries and cause adverse economic impacts to West Coast fishing communities while continuing to protect the availability of shortbelly rockfish as important forage in the California Current Ecosystem.

The Council is considering harvest specifications and management measures for shortbelly rockfish as part of the 2021–2022 groundfish biennial harvest specifications cycle. The Council adopted a shortbelly rockfish ACL of 2,000 mt as its final preferred alternative for the 2021–2022 groundfish biennial harvest specifications cycle during its April 2020 meeting. The Council is also considering accountability measures such as ACTs to address any potential ACL overage as part of the 2021–2022 groundfish biennial harvest specifications and management measures and is anticipated to adopt the final preferred shortbelly rockfish management measures during its June 2020 meeting.

Cowcod (*Sebastes levis*) South of 40°10′ N Latitude

This final rule removes the cowcod ACT of 6 mt and reduces the research catch set-aside to 1 mt for cowcod south of 40°10′ N latitude in 2020. The ACL will remain at 10 mt. Cowcod allocations increase from 2.2 mt to 3.2 mt to the trawl sectors, and from 3.8 mt to 5.8 mt to the non-trawl sectors. The 2020 cowcod annual vessel limit increases from 858 pounds (0.4 mt) to 1,264 pounds (0.6 mt) for affected participants in the limited entry trawl fishery south of 40°10′ N latitude. The measures are summarized in Table 3 below.

TABLE 3—SUMMARY OF THE FEATURES FOR COWCOD SOUTH OF 40°10′ N LATITUDE IN METRIC TONS, EXCEPT WHERE NOTED AS POUNDS

	2020 Harvest specifications [1]
OFL	76.
ABC	68.
ACL	10.
Research Set-aside	1.
Fishery HG	9.
ACT	Removed.
Non-Trawl Allocation (64 percent of the Fishery HG)	5.8.
Trawl Allocation (36 percent of the Fishery HG)	3.2.
Annual Vessel Limit (17.7 percent of trawl allocation)	0.6 (1,264 pounds).
Increase in vessel limit	0.2 (406 pounds).
Increase in vessel limit (percent)	47.

[1] Table presents allocation and annual vessel limit values rounded to the nearest tenth of a metric ton.

The Pacific Coast Groundfish Trawl Catch Share Program (75 FR 60868; October 1, 2010 and 75 FR 78343; December 15, 2010) issued IFQ to limited entry trawl participants. In addition to IFQ, the program established annual vessel limits for IFQ species to prevent any one entity from having excessive control of a stock during a fishing year. The low overall catch limits of cowcod have prevented the Shorebased IFQ bottom trawlers from accessing healthy co-occurring groundfish stocks and in some years have resulted in vessels ending their fishing season early.

Although the cowcod stock is now rebuilt, the timing of the biennial groundfish specification cycle means that the fleet would not benefit from less restrictive cowcod catch limits until 2021. This measure will reduce the risk that vessels fishing south of 40°10′ N lat. in the groundfish trawl IFQ program would reach their annual vessel limit for cowcod in 2020 and have to cease fishing in the trawl IFQ program for the remainder of the year, which would result in severe adverse economic impacts for those vessels and the fishing communities reliant on the trawl fishery south of 40°10′ N lat.

In addition, the action may also benefit the non-trawl sectors including sport, limited entry fixed gear, and open access because the non-trawl allocation will increase by 2 mt (4,409 lbs) compared to the limit initially implemented for 2020. This could create additional flexibility for these fleets.

Comments and Responses

On April 17, 2020, NMFS published a proposed rule in the **Federal Register** for the 2020 harvest specifications and management measures for Pacific whiting, shortbelly rockfish and cowcod (85 FR 21372). The comment period on the proposed rule closed on May 4, 2020. NMFS received seven unique comment letters during the comment period on the proposed rule. There were three letters from private citizens, two letters from the Pacific Whiting Conservation Cooperative (PWCC) and West Coast Seafood Processors Association (WCSPA)—organizations representing participants in the non-tribal whiting fishery, one letter from the Quinault Indian Nation, and one letter from the California Department of Fish and Wildlife (CDFW).

NMFS received one comment from a private citizen in support of the entire action, and has addressed all summarized comments related to specific aspects of the proposed rule below.

Comment 1: The PWCC and WCSPA supported the process NMFS used to set the coastwide Pacific whiting TAC, as well as the resulting allocations.

Response: NMFS agrees. This was the first time JMC did not reach a bilateral agreement on the coastwide TAC for Pacific whiting. The Agreement between the Governments of the United States and Canada on Pacific Whiting/Hake does not specify a procedure for when the JMC does not agree on a coastwide TAC. Therefore, NMFS followed the procedures identified in the 2006 Pacific Whiting Act to set a coastwide TAC. The coastwide TAC of 575,000 mt is well below the default level of F–40 percent and is consistent with the best available scientific information, provisions of the Agreement, and the Whiting Act, and provides adequate opportunity for both Canadian and U.S. fleets, while sustainably managing the Pacific whiting resource.

Comment 2: The PWCC and WCSPA commented that it is critical NMFS implement a final rule to set the Pacific whiting allocations rule prior to May 15, 2020, because delays will cause economic harm and significant operational disruption.

Response: NMFS recognizes that delays in setting a Pacific whiting allocation in time for the start of the season on May 15, 2020 could impact the Pacific whiting fleet. NMFS worked to implement this final rule as quickly as possible. However, the overall rulemaking process was delayed because the JMC did not reach agreement on the coastwide TAC, and NMFS was unable to publish a final rule before the start of the 2020 Pacific whiting fishery on May 15, 2020. To ensure the Pacific whiting fishery would be able to operate at the start of the season, NMFS used existing regulatory provisions to issue interim Pacific whiting allocations for the Shorebased IFQ Program and the at-sea MS Coop and C/P Coop sectors. NMFS notified these sectors on May 1, 2020, that the interim allocations would be available to fish at the start of the Pacific whiting fishery on May 15, 2020. The interim allocations are based on the lowest value of the coastwide TAC (555,000 mt) analyzed in the proposed rule (84 FR 20578; April 17, 2020). With this final rule, NMFS is allocating additional Pacific whiting to each sector to match the allocations set in this action.

Comment 3: The Quinault Indian Nation expressed concern that the language used in the proposed rule mischaracterized the 2020 Pacific whiting tribal allocation to the Treaty Tribes as an allocation exclusively for the Makah Indian Tribe, and requested NMFS change language in the rulemaking to clarify that the allocation is to all four of the Treaty Tribes.

Response: NMFS agrees the tribal allocation is an interim, annual allocation to the four Washington coastal Indian tribes, including the Makah Indian Tribe, Quileute Indian Tribe, Quinault Indian Nation, and the Hoh Indian Tribe. As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of whiting to which the Tribes are entitled under their treaty right. Rather, this rule implements an interim allocation. The long-term tribal treaty amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and the states of Washington and Oregon.

Comment 4: The PWCC commented that it is critical to consider the potential economic impacts, overall and to specific non-tribal sectors, of the proposed allocation, especially because the regulations make reapportionment of tribal whiting to non-tribal sectors dependent upon fishery-wide Chinook salmon bycatch performance.

Response: The economic analysis supporting the annual Pacific whiting TAC action outlines the economic impacts of the proposed tribal allocation. The purpose of the tribal allocation is to facilitate the tribes exercising their treaty right to harvest fish in their usual and accustomed fishing areas in U.S. waters. NMFS must take the necessary steps to ensure that this opportunity is available to those tribes. In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish, including Pacific whiting, in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes usual and accustomed fishing areas. These treaty rights are implemented by the Secretary following the procedures outlined in 50 CFR 660.60.

Regulations governing reapportionment give the Secretary discretion, but do not impose an obligation, to reapportion Pacific whiting from the tribal sector of the Pacific whiting fishery to non-tribal sectors. The reapportioning process allows the non-tribal fleet to fish unharvested tribal allocations of Pacific whiting. The economic analysis for this rule does not consider the benefits of reapportioning the tribal allocation, which is consistent with the economic analysis discussed in the 2019 final rule for Pacific whiting (84 FR 20578; May 10, 2019).

In the economic analysis for this rule, the benefits from the tribal allocation are assumed to accrue to the tribal sector, and the benefits from the non-tribal allocation are assumed to accrue to the non-tribal sectors. Reapportionment flexibility is an additional potential benefit to the non-tribal sector, only in years when the tribal sector does not prosecute the entirety of its allocation. In the economic analysis, no portion of the benefits from the tribal allocation are assumed to accrue to the non-tribal sector, which would double-count the value of the benefit of this allocation to the tribal sector.

The requirement to consider salmon bycatch as part of reapportionment is a term and condition in the 2017 Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion on the effects of the Pacific Coast Groundfish FMP on listed salmonids. Term and Condition 2c of the Biological Opinion requires that NMFS consider the level of Chinook bycatch when determining whether to reapportion whiting and the Pacific Coast Groundfish regulations were amended to require this consideration (84 FR 20578; May 10, 2019). This consideration does not remove NMFS's obligation to consider economic impacts to the entities affected by this action. However, because of the unique nature of reapportionment, NMFS's treaty trust obligations to the Pacific Coast treaty Indian tribes and ESA considerations are the ultimate drivers of that decision, rather than the economic considerations.

Comment 5: PWCC commented that economic harm can occur in the non-tribal whiting sectors if NMFS does not use the re-apportionment process to effectively balance the needs of the tribal and non-tribal fisheries. PWCC further noted it is important that re-apportionment of tribal whiting to the non-tribal sectors include consideration of sector-specific Chinook bycatch and that NMFS provide re-apportionment of tribal whiting to specific non-tribal sectors based on their ability to harvest additional whiting.

Response: These management suggestions are outside of the scope of the measure discussed in the proposed rule but could be achieved through the Council process. In most years, NMFS has allocated reapportioned tribal Pacific whiting allocation to the non-tribal sectors based on the allocations in the Pacific Coast Groundfish FMP (*i.e.,* 34 percent for the C/P Coop; 24 percent for the MS Coop; and 42 percent for the Shorebased IFQ Program). NMFS has also distributed reapportioned tribal whiting to specific non-tribal sectors based on concerns about Chinook salmon bycatch in 2014 (80 FR 7390; February 10, 2015), based on recommendation by the Council. In that reapportionment action, NMFS distributed reapportioned fish to the MS and C/P sectors, but not to the Shorebased IFQ sector. That action was based on voluntary bycatch reduction measures that were taken by the MS and C/P sectors in conjunction with projected higher bycatch rates in the Shorebased IFQ sector, and the fact that the Shorebased IFQ sector had not yet attained its existing allocation. In addition, the regulations now explicitly require NMFS to consider salmon bycatch as part of the reapportionment process, based on a requirement from the 2017 ESA Section 7(a)(2) Biological Opinion on the effects of the Pacific Coast Groundfish FMP on listed salmonids (84 FR 20578; May 10, 2019). However, NMFS has only adjusted reapportionment between non-tribal sectors to address salmon bycatch considerations, and has not made adjustments based on other considerations, such as the various non-tribal sectors' ability to harvest reapportioned Pacific whiting.

NMFS notes there are many factors than can affect the non-tribal sectors' ability to harvest reapportioned Pacific whiting. The Council would need to make recommendations on the specific criteria NMFS should use to adjust reapportionment based on these factors. The Council is considering developing management alternatives to increase Pacific whiting utilization in the MS Sector. This may provide an opportunity for other considerations about allocations to non-tribal sectors during the tribal whiting reapportionment process.

Comment 6: The PWCC commented that it is critical that re-apportionment of tribal whiting to the non-tribal sectors occur no later than September 15th.

Response: Current regulations provide NMFS with flexibility in the timing of reapportionment and allow for reapportionment to occur prior to September 15, but do not require reapportionment to happen on or before a specific date. Revisions to the timing of the reapportionment to require it before September 15 are beyond the scope of the action discussed in the proposed rule. NMFS is responsible for consulting with the tribes to ensure that reapportionments, should they occur, will not limit tribal harvest opportunities. As explained in the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), the timing of reapportionment in regulations was intended to allow for the tribal fishery to proceed to a point where it could likely be determined whether the full allocation would be used, while reallocating in time to allow the non-treaty sectors to catch the reallocated fish prior to the onset of winter weather conditions. In some years, the participating tribes may determine prior to September 15 that they will not use a portion of the tribal allocation.

As noted in the 2019 final rule for Pacific whiting (84 FR 20578; May 10, 2019), based on a review of reapportionment actions in 2012–2018, it does not appear that the timing of the reapportionment impacted operational decisions during that time period. For reference, in 2012 the non-tribal sector caught 24,142 mt more than its initial allocation, of 28,000 mt reapportioned on October 4. In 2013, after a 30,000 mt reallocation on September 18 (16 days earlier than in 2012), the non-tribal fishery caught 24,146 mt more than its initial allocation. The 16-day earlier reapportionment yielded 4 mt more catch (valued at $1,210 in real dollars). In 2014, a 25,000 mt initial reapportionment on September 12 resulted in only 4,564 mt attained over the initial non-tribal allocation. From 2015–2018, the non-tribal fishery as a whole did not catch its initial allocation, which implies that the timing of reallocations did not likely impact operational decisions during that period. NMFS notes that in 2019, reapportionment action occurred on September 13, 2019.

Comment 7: The PWCC and WCSPA support the increase to the 2020 shortbelly rockfish ACL. They pointed to the strong justification in proposed rule and draft Environmental Assessment regarding the necessity of this action, the negligible environmental and ecosystem impacts of the increase to the shortbelly rockfish ACL, and the economic impacts of potential closure.

Response: NMFS agrees and notes increasing the 2020 ACL for shortbelly rockfish to 3,000 mt accommodates incidental bycatch of the shortbelly rockfish stock given recent high bycatch in groundfish trawl fisheries, while continuing to minimize bycatch and discourage development of a targeted fishery for shortbelly rockfish. The increase is based on the best scientific information available as described in the Analytical Document and Environmental Assessment.

Comment 8: CDFW commented in support of eliminating the 2020 ACT of 6 mt for cowcod south of 40°10′ N latitude and reducing the research set-aside amount to 1 mt.

Response: NMFS agrees and notes that low catch limits of cowcod have prevented the IFQ bottom trawlers from accessing healthy groundfish stocks and, in some years, have resulted in trawl vessels ending their fishing season early. The 2019 cowcod assessment indicates stock biomass has exceeded the rebuilding target. However, because of the timing of the biennial groundfish specification cycle, the fleet would not benefit from less restrictive catch limits until 2021. This measure reduces the risk that vessels in the trawl IFQ bottom trawl fishery reach their annual vessel limit for cowcod in 2020 and have to cease fishing in the IFQ bottom trawl fishery for the remainder of the year.

Comment 9: CDFW commented that in addition to benefits of the trawl sector, eliminating the cowcod ACT may positively benefit non-trawl sectors because this change also increases the non-trawl cowcod allocation. The increase to the non-trawl allocation reduces the likelihood of the non-trawl fisheries exceeding this new limit.

Response: NMFS agrees there are benefits to both the trawl and non-trawl sectors of eliminating the ACT of 6 mt for cowcod south of 40°10′ N latitude and reducing the research set-aside amount to 1 mt. NMFS notes this information was included in the RIR/IRFA and was considered by the Council and NMFS in the decision-making process.

Comment 10: A private citizen commented that if NMFS wants to loosen restrictions on fishing, NMFS needs science, not political pressure, to prove fish stocks are back to full capacity and need to keep monitoring the situation.

Response: NMFS is committed to following Magnuson-Stevens Act National Standards, including National Standard 2 which states conservation and management measures shall be based on the best scientific information available. The actions in this rule are based on the most up-to-date stock assessments of Pacific whiting, cowcod south of 40°10′ N lat. and shortbelly rockfish, as well as recent fishery-independent survey data, California Current Ecosystem Status Reports, and monitoring of fishery operations off the West Coast.

NMFS is also committed to following mandates including the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), which requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality to the extent practicable.

Changes From the Proposed Rule

No substantive changes from the proposed rule were made based on comments NMFS received. NMFS is making a technical correction to remove incorrect footnotes in Table 2B to Part 660, Subpart C consistent with the final rule for Amendment 21–4 to the Pacific Coast Groundfish FMP, published December 17, 2019 (84 FR 68799), that changed the within-trawl allocation structure for darkblotched rockfish, Pacific ocean perch, and widow rockfish. This correction also brings the table and footnotes into consistency with existing regulations concerning trawl and non-trawl allocations at § 660.55(c).

Classification

The Administrator, West Coast Region, NMFS, determined that the final rule is necessary for the conservation and management of the Pacific whiting and Pacific coast groundfish fisheries and that it is consistent with section 304(b)(1)(A) and 305(d), and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Coast Groundfish FMP, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in the date of effectiveness for this final rule because such a delay would be contrary to the public interest. If this final rule were delayed by 30 days, Pacific coast groundfish fishermen would not be able to fish under the revised, increased, catch limits for Pacific whiting, shortbelly rockfish and cowcod south of 40°10′ N lat. for that time period, and not be able to realize the full level of economic opportunity this rule provides. Waiving the 30-day delay in the date of effectiveness will allow this final rule to more fully benefit the fishery through increased fishing opportunities as described in the Integrated Analysis and preamble of this rule.

In addition, because this rule increases catch limits for Pacific whiting, shortbelly rockfish and cowcod, it relieves a restriction, and therefore also falls within the 5 U.S.C. 553(d)(1) exception to the 30-day delay in the date of effectiveness requirement. The Pacific whiting fishery season began fishing on May 15, 2020 under interim allocations based on the lowest coastwide TAC analyzed in the proposed rule. This final rule implements a higher TAC for Pacific whiting and implementing the rule upon publication provides the whiting fleet more opportunity and greater flexibility to harvest the optimal yield. Additionally, the increased shortbelly rockfish ACL is critical to implement immediately because the Pacific whiting fishery is underway and is encountering high levels of shortbelly rockfish bycatch. The higher ACL for shortbelly rockfish implemented with this rule allows the Pacific whiting fishery access to a higher bycatch allocation for a longer duration of the fishing season and allows them to make business plans with the higher allocation. Finally, removal of the cowcod ACT and decrease of the research set-aside removes current constraints on the groundfish fishery in that area.

Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Making this rule effective immediately would also serve the best interests of the public because it will allow for the longest possible fishing season for Pacific whiting and cowcod south of 40°10′ N, and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is effective upon publication in the **Federal Register**.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Final Regulatory Flexibility Analysis

NMFS published a proposed rule on April 17, 2020 (85 FR 21372), for the 2020 Harvest Specifications for Pacific Whiting, shortbelly rockfish, and cowcod, and 2020 tribal allocation for Pacific whiting. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on May 4, 2020. NMFS received seven comment letters on the proposed rule. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments on the IRFA or the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. A final regulatory flexibility analysis (FRFA) was prepared and incorporates the IRFA and response to the public comments, which are summarized in the *Comments and Responses* section of this final rule. NMFS also prepared a RIR for this action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, per the requirements of 5 U.S.C. 604 follows.

Under the Regulatory Flexibility Act (RFA), the term ''small entities'' includes small businesses, small organizations, and small governmental jurisdictions. The SBA has established size criteria for entities involved in the fishing industry that qualify as small businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts, not in excess of $11 million for all its affiliated operations worldwide (see 80 FR 81194; December 29, 2015). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For purposes of rulemaking, NMFS is also applying the seafood processor standard to catcher processors because Pacific whiting Catcher-Processors (C/Ps) earn the majority of the revenue from processed seafood product.

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

NMFS received comments from the PWCC, an organization representing the non-tribal sector of the Pacific whiting fishery, reiterating comments submitted last year regarding the economic importance of the re-apportionment of unharvested tribal allocations to the non-tribal fishery, and concerns regarding the timing and considerations driving the re-apportionment process. Our response to the comments received on the proposed rule, including those that commented on the economic analyses summarized in the IRFA, can be found in the *Comment and Response* section of this rule. As outlined in that section, Comment 4 discusses the economic analysis of the proposed allocation, especially given the requirement to consider Chinook salmon bycatch during the re-apportionment process. Comment 5 discusses the importance of the re-apportionment process to balance the needs of the tribal and non-tribal fisheries as well as sector-specific considerations when re-apportioning tribal whiting to non-tribal fisheries. Comment 6 discusses the timing of re-apportionment of tribal whiting to the non-tribal sectors. Detailed responses are provided to each of these specific comments in the preamble of this rule and are not repeated here. There were no other comments directly related to the IRFA; the Chief Counsel for the Office of Advocacy of the SBA did not file any comments. No changes to the proposed rule measures were necessary as a result of these public comments.

Description and Estimate of the Number of Small Entities To Which the Rule Applies, and Estimate of Economic Impacts by Entity Size and Industry

This rule affect how Pacific whiting is allocated to the following sectors/programs: Tribal, Shorebased IFQ Program Trawl Fishery, MS Coop Program Whiting At-sea Trawl Fishery, and C/P Coop Program Whiting At-sea Trawl Fishery. The amount of Pacific whiting allocated to these sectors is based on the U.S. TAC.

NMFS expects one tribal entity to fish for Pacific whiting in 2020. Tribes are not considered small entities for the purposes of RFA. Impacts to tribes are nevertheless considered in this analysis. As of January 2020, the Shorebased IFQ Program is composed of 167 Quota

Share (QS) permits/accounts (134 of which were allocated whiting quota pounds), and 41 first receivers, 2 of which are designated as whiting-only receivers and 15 that may receive both whiting and non-whiting. These regulations also directly affect participants in the MS Co-op Program, a general term to describe the limited access program that applies to eligible harvesters and processors in the MS sector of the Pacific whiting at-sea trawl fishery. This program currently consists of 6 MS processor permits, and a catcher vessel fleet currently composed of a single co-op, with 34 Mothership/Catcher Vessel (MS/CV) endorsed permits (with three permits each having two catch history assignments). These regulations also directly affect the C/P Co-op Program, composed of 10 C/P endorsed permits owned by three companies that have formed a single co-op. These co-ops are considered large entities from several perspectives; they have participants that are large entities and have in total more than 750 employees worldwide including affiliates. Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. As part of the permit application processes for the non-tribal fisheries, based on a review of the SBA size criteria, permit applicants are asked if they considered themselves a ''small'' business, and they are asked to provide detailed ownership information. Data on employment worldwide, including affiliates, are not available for these companies, which generally operate in Alaska as well as the West Coast and may have operations in other countries as well. NMFS has limited entry permit holders self-report size status. For 2020, all 10 C/P permits reported they are not small businesses, as did 8 MS/CV. There is substantial, but not complete overlap between permit ownership and vessel ownership so there may be a small number of additional small entity vessel owners who will be impacted by this rule. After accounting for cross participation, multiple QS permit/account holders, and affiliation through ownership, NMFS estimates that there are 106 non-tribal entities directly affected by these regulations, 85 of which are considered ''small'' businesses.

This rule allocates Pacific whiting between tribal and non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries consist of a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests may be delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportionment process. If the tribes do not harvest their entire allocation, there are opportunities during the year to reapportion unharvested tribal amounts to the non-tribal fleets. For example, in 2019 NMFS reapportioned 40,000 mt of the original 77,251 mt tribal allocation. This reapportionment was based on conversations with the tribes and the best information available at the time, which indicated that this amount would not limit tribal harvest opportunities for the remainder of the year. The reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities. The revised Pacific whiting allocations for 2019 following the reapportionment were: Tribal 37,251 mt, C/P Co-op 136,912 mt; MS Co-op 96,644 mt; and Shorebased IFQ Program 169,126 mt.

The prices for Pacific whiting are largely determined by the world market because most of the Pacific whiting harvested in the U.S. is exported. The U.S. Pacific whiting TAC is highly variable, as have subsequent harvests and ex-vessel revenues. For the years 2015 to 2019, the total Pacific whiting fishery (tribal and non-tribal) averaged harvests of approximately 281,205 mt annually. The 2019 U.S. non-tribal fishery had a catch of approximately 312,500 mt, and the tribal fishery landed approximately 4,000 mt.

Impacts to tribal catcher vessels who elect to participate in the tribal fishery are measured with an estimate of ex-vessel revenue. In lieu of more complete information on tribal deliveries, total ex-vessel revenue is estimated with the 2019 average shoreside ex-vessel price of Pacific whiting, which was $200 per mt. At that price, the 2020 tribal allocation of 74,342 mt would have an ex-vessel value of $14.9 million.

Shortbelly Rockfish

The rule primarily affects limited entry trawl vessels, especially midwater trawl vessels targeting Pacific whiting and semi-pelagic rockfish (*i.e.,* non-whiting) north of 40°10′ N latitude given the sectors and gear experiencing the highest bycatch of shortbelly rockfish in recent years. The entities fishing for Pacific whiting (described in detail above), and the 14–20 vessels fishing in the non-whiting midwater trawl fishery in 2017–2018, would be affected. The shortbelly rockfish alternative will have neutral to positive impacts for limited entry trawl participants fishing in the Pacific whiting and non-whiting midwater fisheries.

Cowcod South of 40°10′ N Latitude

The rule directly impacts two groups: Quota share owners of cowcod south of 40°10′ N latitude and catcher vessel owners who operate vessels south of 40°10′ N latitude and have the potential to encounter cowcod. There are 62 entities that own 2020 cowcod quota and 7 vessels that caught cowcod south of 40°10′ N latitude in 2019 that would be impacted by this rule. The cowcod alternative will have neutral to positive impacts for limited entry trawl participants who own quota for this species and/or fish south of 40°10′ N latitude. Quota owners that are able to sell increased quota amounts may benefit. Most IFQ vessels do not operate south of 40°10′ N latitude and would experience no impacts from the preferred alternative.

Regulatory Flexibility Act (RFA) Determination of No Significant Impact

NMFS determined this rule does not adversely affect small entities. The reapportioning process allows unharvested tribal allocations of Pacific whiting, fished by small entities, to be fished by the non-tribal fleets, benefitting both large and small entities. The shortbelly and cowcod measures will assist small entities by reducing the risk of early closures due to bycatch. The shortbelly rockfish and cowcod measures are temporary and will be in effect for less than 1 year.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no reporting, recordkeeping or other compliance requirements in the final rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

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

Pacific Whiting

This action determines the 2020 coastwide TAC of 575,000 mt, with a corresponding U.S. TAC of 424,810 mt. NMFS considered a range of alternatives for the Pacific whiting coastwide TAC, including a lower coastwide TAC of 555,000 mt and higher coastwide TACs of 597,500 mt and 666,480 mt. The lower coastwide TAC (555,000 mt) would have greater economic impacts for 2020 than the coastwide TAC of 575,000 mt. The higher coastwide TACs considered in the range (597,500 mt and 666,480 mt) would have less economic impact for 2020. However, 2020 stock assessment projections indicate these higher catch levels (*e.g.* 597,500 mt and 666,480 mt) may result in near-term stock biomass declines below target levels. This is contrary to the Whiting Act and Agreement, which requires sustainable management of the Pacific whiting resource.

NMFS considered two alternatives for the tribal allocation action: The ''No-Action'' and the ''Proposed Action.'' NMFS did not consider a broader range of alternatives to the proposed tribal allocation. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for Pacific whiting. Under the Action alternative, NMFS set the tribal allocation percentage at 17.5 percent, as requested by the tribes. This would yield a tribal allocation of 74,342 mt for 2020. Consideration of a percentage lower than the tribal request of 17.5 percent is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty rights. However, a higher percentage would unnecessarily limit the non-tribal fishery.

Under the No-Action alternative, NMFS would not make an allocation to the tribal sector. This alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, the no-action alternative would result in no allocation of Pacific whiting to the tribal sector in 2020, which would be inconsistent with NMFS's responsibility to manage the fishery consistent with the tribes' treaty rights. Given that there is a tribal request for allocation in 2020, this alternative received no further consideration.

Shortbelly Rockfish

This action establishes the 2020 ACL of 3,000 mt. The Council and NMFS considered two additional alternatives for shortbelly rockfish: No action and specifying a 2020 ACL of 4,184 mt. Under the no action alternative, NMFS would not change the 2020 ACL for shortbelly rockfish. This no action alternative has the highest risk of an early fishery closure and lost revenue for Pacific whiting and limited entry non-whiting midwater trawl fisheries and communities. The range of predicted impacts in terms of foregone income is $4.6 million to $175.2 million depending on whether there is a late season closure in December or an earlier closure in June. The measure for shortbelly rockfish would reduce the risk of an early closure for midwater trawl fisheries due to the possibility of high bycatch of shortbelly rockfish in 2020, and avoid the adverse economic impacts to West Coast fishing communities that would result from such closures or constraints. The measure to establish the 2020 ACL at 3,000 mt, rather than the alternative of 4,184 mt, should be sufficient to avoid constraining the midwater trawl fishery while continuing to ensure more than adequate shortbelly rockfish as forage.

Cowcod South of 40°10′ N Latitude

This action eliminates the 2020 ACT of 6 mt for cowcod south of 40°10′ N latitude and reduces the research set-aside amount to 1 mt. The measure increases the annual vessel limit for cowcod from 858 lbs (0.4 mt) to 1,264 lbs (0.6 mt). This measure meets the stated purpose and need to reduce the risk that IFQ vessels south of 40°10′ N latitude will reach their individual vessel limits of cowcod in 2020 and have to cease fishing in the IFQ fishery for the remainder of the year, which would result in adverse economic impacts on those vessels and fishing communities in the area.

The Council and NMFS considered no action and alternatives to provide relief on limited entry trawl participants fishing south of 40°10′ N latitude, including removing the ACT and varying adjustments to the research set-aside amounts. Under the no action alternative, NMFS would not change the ACT or research set-aside amounts. This no action alternative would result in potential loss of revenue if vessels reach their cowcod individual vessel limit and are required to cease fishing for the remainder of the year.

The Council considered an alternative to remove the ACT of 6 mt and reduce the research set-aside to 0.5 mt. This alternative may have resulted in a lesser economic impact on vessels and fishing communities, but it did not provide an adequate amount of cowcod for research.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this and the related 2019–2020 Biennial Specifications and Management Measures for the Pacific Coast Groundfish Fishery (83 FR 63970; December 12, 2018) rulemaking process, a small entity compliance guide was sent to stakeholders, and copies of the final rule and guides (*i.e.,* information bulletins) are available from NMFS at the following website: *https://www.fisheries.noaa.gov/species/pacific-whiting#management.*

Consultation and Coordination With Indian Tribal Governments

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the Pacific Coast Groundfish FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state, ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.'' The tribal management measures in this final rule have been developed following these procedures.

With this final rule, NMFS, acting on behalf of the Secretary, determined that the FMP is implemented in a manner consistent with treaty rights of four Treaty Tribes to fish in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens. *United States* v. *Washington,* 384 F. Supp. 313 (W.D. Wash. 1974).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: June 11, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2020 will be 74,342 mt.

* * * * *

■ 3. Revise table 2a to part 660, subpart C, to read as follows:

TABLE 2a TO PART 660, SUBPART C—2020, AND BEYOND, SPECIFICATION OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES

[Weights in metric tons]

Stocks/stock complexes	Area	OFL	ABC	ACL [a]	Fishery HG [b]
COWCOD [c]	S of 40°10′ N lat	76	68	10	9
COWCOD	(Conception)	62	57	NA	NA
COWCOD	(Monterey)	13	11	NA	NA
YELLOWEYE ROCKFISH [d]	Coastwide	84	77	49	43
Arrowtooth Flounder [e]	Coastwide	15,306	12,750	12,750	10,655
Big Skate [f]	Coastwide	541	494	494	452
Black Rockfish [g]	California (S of 42° N lat.)	341	326	326	325
Black Rockfish [h]	Washington (N of 46°16′ N lat.)	311	297	297	279
Bocaccio [i]	S of 40°10′ N lat	2,104	2,011	2,011	1,965
Cabezon [j]	California (S of 42° N lat.)	153	146	146	146
California Scorpionfish [k]	S of 34°27′ N lat	331	307	307	305
Canary Rockfish [l]	Coastwide	1,431	1,368	1,368	1,301
Chilipepper Rockfish [m]	S of 40°10′ N lat	2,521	2,410	2,410	2,325
Darkblotched Rockfish [n]	Coastwide	853	815	815	781
Dover Sole [o]	Coastwide	92,048	87,998	50,000	48,404
English Sole [p]	Coastwide	11,101	10,135	10,135	9,919
Lingcod [q]	N of 40°10′ N lat	4,768	4,558	4,541	4,263
Lingcod [r]	S of 40°10′ N lat	977	934	869	858
Longnose Skate [s]	Coastwide	2,474	2,365	2,000	1,852
Longspine Thornyhead [t]	N of 34°27′ N lat	3,901	3,250	2,470	2,420
Longspine Thornyhead [u]	S of 34°27′ N lat	....	....	780	779
Pacific Cod [v]	Coastwide	3,200	2,221	1,600	1,094
Pacific Whiting [w]	Coastwide	666,458	([w])	([w])	348,968
Pacific Ocean Perch [x]	N of 40°10′ N lat	4,632	4,229	4,229	4,207
Petrale Sole [y]	Coastwide	2,976	2,845	2,845	2,524
Sablefish [z]	N of 36° N lat	8,648	7,896	5,723	See Table 2c
Sablefish [aa]	S of 36° N lat	....	....	2,032	2,028
Shortbelly Rockfish [bb]	Coastwide	6,950	5,789	3,000	2,983
Shortspine Thornyhead [cc]	N of 34°27′ N lat	3,063	2,551	1,669	1,604
Shortspine Thornyhead [dd]	S of 34°27′ N lat	....	....	883	882
Spiny Dogfish [ee]	Coastwide	2,472	2,059	2,059	1,726
Splitnose Rockfish [ff]	S of 40°10′ N lat	1,810	1,731	1,731	1,714
Starry Flounder [gg]	Coastwide	652	452	452	433
Widow Rockfish [hh]	Coastwide	11,714	11,199	11,199	10,951
Yellowtail Rockfish [ii]	N of 40°10′ N lat	6,261	5,986	5,986	4,941
Black Rockfish/Blue Rockfish/Deacon Rockfish [jj]	Oregon (Between 46°16′ N lat. and 42° N lat.)	670	611	611	609
Cabezon/Kelp Greenling [kk]	Oregon (Between 46°16′ N lat. and 42° N lat.)	216	204	204	204
Cabezon/Kelp Greenling [ll]	Washington (N of 46°16′ N lat.)	12	10	10	10
Nearshore Rockfish [mm]	N of 40°10′ N lat	92	82	82	79
Shelf Rockfish [nn]	N of 40°10′ N lat	2,302	2,048	2,048	1,971
Slope Rockfish [oo]	N of 40°10′ N lat	1,873	1,732	1,732	1,651
Nearshore Rockfish [pp]	S of 40°10′ N lat	1,322	1,165	1,163	1,159
Shelf Rockfish [qq]	S of 40°10′ N lat	1,919	1,626	1,625	1,546
Slope Rockfish [rr]	S of 40°10′ N lat	855	743	743	723
Other Flatfish [ss]	Coastwide	8,202	6,041	6,041	5,792
Other Fish [tt]	Coastwide	286	239	239	230

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Cowcod south of 40°10′ N lat. 1 mt is deducted from the ACL to accommodate EFP fishing (less than 0.1 mt) and research activity, resulting in a fishery HG of 9 mt. Any additional mortality in research activities will be deducted from the ACL.

[d] Yelloweye rockfish. The 49 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 6.1 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.62 mt), EFP catch (0.24 mt) and research catch (2.92 mt), resulting in a fishery HG of 43 mt. The non-trawl HG is 39.5 mt. The non-nearshore HG is 2.1 mt and the nearshore HG is 6.2 mt. Recreational HGs are: 10.2 mt (Washington); 9.1 mt (Oregon); and 11.9 mt (California). In addition, there are the following ACTs: Non-nearshore (1.7 mt), nearshore (4.9 mt), Washington recreational (8.1 mt), Oregon recreational (7.2 mt), and California recreational (9.4 mt).

[e] Arrowtooth flounder. 2,094.9 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (40.8 mt), EFP fishing (0.1 mt), and research catch (13 mt), resulting in a fishery HG of 10,655 mt.

[f] Big skate. 41.9 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), the incidental open access fishery (21.3 mt), EFP fishing (0.1 mt), and research catch (5.5 mt), resulting in a fishery HG of 452 mt.

[g] Black rockfish (California). 1.3 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt) and the incidental open access fishery (0.3 mt), resulting in a fishery HG of 325 mt.

[h] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 279 mt.

[i] Bocaccio south of 40°10′ N lat. The stock is managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 46.1 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt), EFP catch (40 mt) and research catch (5.6 mt), resulting in a fishery HG of 1,965 mt. The California recreational fishery has an HG of 827.2 mt.

[j] Cabezon (California). 0.3 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 146 mt.

[k] California scorpionfish south of 34°27′ N lat. 2.4 mt is deducted from the ACL to accommodate the incidental open access fishery (2.2 mt) and research catch (0.2 mt), resulting in a fishery HG of 305 mt.

[l] Canary rockfish. 67.1 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.3 mt), EFP catch (8 mt), and research catch (7.8 mt), resulting in a fishery HG of 1,301 mt. Recreational HGs are: 44.3 mt (Washington); 66.5 mt (Oregon); and 119.7 mt (California).

[m] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 84.9 mt is deducted from the ACL to accommodate the incidental open access fishery (11.5 mt), EFP fishing (60 mt), and research catch (13.4 mt), resulting in a fishery HG of 2,325 mt.

[n] Darkblotched rockfish. 33.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (24.5 mt), EFP catch (0.6 mt), and research catch (8.5 mt) resulting in a fishery HG of 781 mt.

[o] Dover sole. 1,595.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (49.3 mt), EFP fishing (0.1 mt), and research catch (49.2 mt), resulting in a fishery HG of 48,404 mt.

[p] English sole. 216.2 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (8.1 mt), EFP fishing (0.1 mt), and research catch (8 mt), resulting in a fishery HG of 9,919 mt.

[q] Lingcod north of 40°10′ N lat. 278 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (9.8 mt), EFP catch (1.6 mt) and research catch (16.6 mt), resulting in a fishery HG of 4,263 mt.

[r] Lingcod south of 40°10′ N lat. 11.3 mt is deducted from the ACL to accommodate the incidental open access fishery (8.1 mt) and research catch (3.2 mt), resulting in a fishery HG of 858 mt.

[s] Longnose skate. 148.3 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), incidental open access fishery (5.7 mt), EFP catch (0.1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,852 mt.

[t] Longspine thornyhead. 50.4 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (6.2 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,420 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 1.4 mt is deducted from the ACL to research catch, resulting in a fishery HG of 779 mt.

[v] Pacific cod. 506.2 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), EFP catch (0.1 mt), research catch (5.5 mt), and the incidental open access fishery (0.6 mt), resulting in a fishery HG of 1,094 mt.

[w] Pacific whiting. The 2020 OFL of 666,458 mt is based on the 2020 assessment with an F40% of FMSY proxy. The 2020 coastwide adjusted Total Allowable Catch (TAC) is 575,000 mt. The U.S. TAC is 73.88 percent of the coastwide TAC. The 2020 adjusted U.S. TAC is 424,810 mt (367,202 mt unadjusted TAC + 57,608 mt carryover adjustment). From the adjusted U.S. TAC, 74,342 mt is deducted to accommodate the Tribal fishery, and 1,500 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a 2020 fishery HG of 348,968 mt. The TAC for Pacific whiting is established under the provisions of the Agreement with Canada on Pacific Hake/Whiting and the Pacific Whiting Act of 2006, 16 U.S.C. 7001–7010, and the international exception applies. Therefore, no ABC or ACL values are provided for Pacific whiting.

[x] Pacific ocean perch north of 40°10′ N lat. 22.4 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (10 mt), EFP fishing (0.1 mt), and research catch (3.1 mt)-resulting in a fishery HG of 4,207 mt.

[y] Petrale sole. 320.6 mt is deducted from the ACL to accommodate the Tribal fishery (290 mt), the incidental open access fishery (6.4 mt), EFP catch (0.1 mt), and research catch (24.1 mt), resulting in a fishery HG of 2,524 mt.

[z] Sablefish north of 36° N lat. The 40–10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N lat., using the 2003–2014 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.8 percent apportioned north of 36° N lat. and 26.2 percent apportioned south of 36° N lat. The northern ACL is 5,723 mt and is reduced by 572 mt for the Tribal allocation (10 perceN of the ACL north of 36° N lat.). The 572 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 2c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 2,032 mt (26.2 percent of the calculated coastwide ACL value). 4.2 mt is deducted from the ACL to accommodate the incidental open access fishery (1.8 mt) and research catch (2.4 mt), resulting in a fishery HG of 2,028 mt.

[bb] Shortbelly rockfish. 17.2 mt is deducted from the ACL to accommodate the incidental open access fishery (8.9 mt), EFP catch (0.1 mt), and research catch (8.2 mt), resulting in a fishery HG of 2,983 mt.

[cc] Shortspine thornyhead north of 34°27′ N lat. 65.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (4.7 mt), EFP catch (0.1 mt), and research catch (10.5 mt), resulting in a fishery HG of 1,604 mt for the area north of 34°27′ N lat.

[dd] Shortspine thornyhead south of 34°27′ N lat. 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt) and research catch (0.7 mt), resulting in a fishery HG of 882 mt for the area south of 34°27′ N lat.

[ee] Spiny dogfish. 333 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (22.6 mt), EFP catch (1.1 mt), and research catch (34.3 mt), resulting in a fishery HG of 1,726 mt.

[ff] Splitnose rockfish south of 40°10′ N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N lat. 16.6 mt is deducted from the ACL to accommodate the incidental open access fishery (5.8 mt), research catch (9.3 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,714 mt.

[gg] Starry flounder. 18.8 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research catch (0.6 mt), and the incidental open access fishery (16.1 mt), resulting in a fishery HG of 433 mt.

[hh] Widow rockfish. 248.4 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (3.1 mt), EFP catch (28 mt) and research catch (17.3 mt), resulting in a fishery HG of 10,951 mt.

[ii] Yellowtail rockfish north of 40°10′ N lat. 1,045.1 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (4.5 mt), EFP catch (20 mt) and research catch (20.6 mt), resulting in a fishery HG of 4,941 mt.

[jj] Black rockfishBlue rockfishDeacon rockfish (Oregon). 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.3 mt) and EFP catch (0.9 mt), resulting in a fishery HG of 609 mt.

[kk] CabezonKelp greenling (Oregon). 0.2 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 204 mt.

[ll] CabezonKelp greenling (Washington). There are no deductions from the ACL so the fishery HG is equal to the ACL of 10 mt.

[mm] Nearshore Rockfish north of 40°10′ N lat. 2.8 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP catch (0.1 mt), research catch (0.3), and the incidental open access fishery (0.9 mt), resulting in a fishery HG of 79 mt.

[nn] Shelf Rockfish north of 40°10′ N lat. 76.9 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (17.7 mt), EFP catch (4.5 mt), and research catch (24.7 mt), resulting in a fishery HG of 1,971 mt.

[oo] Slope Rockfish north of 40°10′ N lat. 80.8 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (21.7 mt), EFP catch (1.5 mt), and research catch (21.6 mt), resulting in a fishery HG of 1,651 mt.

[pp] Nearshore Rockfish south of 40°10′ N lat. 4.1 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.7 mt), resulting in a fishery HG of 1,159 mt.

[qq] Shelf Rockfish south of 40°10′ N lat. 79.1 mt is deducted from the ACL to accommodate the incidental open access fishery (4.6 mt), EFP catch (60 mt), and research catch (14.5 mt), resulting in a fishery HG of 1,546 mt.

[rr] Slope Rockfish south of 40°10′ N lat. 20.2 mt is deducted from the ACL to accommodate the incidental open access fishery (16.9 mt), EFP catch (1 mt), and research catch (2.3 mt), resulting in a fishery HG of 723 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the 40–10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 159 mt.

[ss] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. MoS of the species in the Other Flatfish complex are unassessed and include: Butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 249.5 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (161.6 mt), EFP fishing (0.1 mt), and research catch (27.8 mt), resulting in a fishery HG of 5,792 mt.

[tt] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 8.9 mt is deducted from the ACL to accommodate the incidental open access fishery (8.8 mt) and research catch (0.1 mt), resulting in a fishery HG of 230 mt.

■ 4. Revise table 2b to part 660, subpart C, to read as follows:

TABLE 2b TO PART 660, SUBPART C—2020, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT [a]	Trawl		Non-trawl	
			%	Mt	%	Mt
Arrowtooth flounder	Coastwide	10,655.1	95	10,122.3	5	532.8
Big skate [a]	Coastwide	452.1	95	429.5	5	22.6
Bocaccio [a]	S of 40°10′ N lat	1,964.9	39	767.1	61	1,197.8
Canary rockfish [a]	Coastwide	1,300.9	72	940.3	28	360.6
Chilipepper rockfish	S of 40°10′ N lat	2,325.1	75	1,743.8	25	581.3
COWCOD [a]	S of 40°10′ N lat	9.0	36	3.2	64	5.8
Darkblotched rockfish	Coastwide	781.2	95	742.1	5	39.1
Dover sole	Coastwide	48,404.4	95	45,984.2	5	2,420.2
English sole	Coastwide	9,918.8	95	9,422.9	5	495.9
Lingcod	N of 40′10° N lat	4,263.0	45	1,918.4	55	2,344.7
Lingcod	S of 40′10° N lat	857.7	45	386.0	55	471.7
Longnose skate [a]	Coastwide	1,851.7	90	1,666.5	10	185.2
Longspine thornyhead	N of 34°27′ N lat	2,419.6	95	2,298.6	5	121.0
Pacific cod	Coastwide	1,093.8	95	1,039.1	5	54.7
Pacific whiting [b]	Coastwide	348,968	100	348,968	0	0
Pacific ocean perch	N of 40°10′ N lat	4,206.6	95	3,996.3	5	210.3
Petrale sole	Coastwide	2,524.4	95	2,398.2	5	126.2
Sablefish	N of 36° N lat	NA	See Table 2c			
Sablefish	S of 36° N lat	2,027.8	42	851.7	58	1,176.1
Shortspine thornyhead	N of 34°27′ N lat	1,603.7	95	1,523.5	5	80.2
Shortspine thornyhead	S of 34°27′ N lat	881.8	NA	50.0	NA	831.8
Splitnose rockfish	S of 40°10′ N lat	1,714.4	95	1,628.7	5	85.7
Starry flounder	Coastwide	433.2	50	216.6	50	216.6
Widow rockfish	Coastwide	10,950.6	91	9,965.0	9	985.6
YELLOWEYE ROCKFISH	Coastwide	42.9	8	3.4	92	39.5
Yellowtail rockfish	N of 40°10′ N lat	4,940.9	88	4,348.0	12	592.9
Minor Shelf Rockfish North	N of 40°10′ N lat	1,971.1	60.2	1,186.6	39.8	784.5
Minor Shelf Rockfish South	S of 40°10′ N lat	1,545.9	12.2	188.6	87.8	1,357.3
Minor Slope Rockfish North	N of 40°10′ N lat	1,651.2	81	1,337.5	19	313.7
Minor Slope Rockfish South	S of 40°10′ N lat	722.8	63	455.4	37	267.4
Other Flatfish	Coastwide	5,791.5	90	5,212.4	10	579.2

[a] Allocations decided through the biennial specification process.

[b] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 Percent (118,649 mt) for the C/P Coop Program; 24 percent (83,752 mt) for the MS Coop Program; and 42 percent (146,567 mt) for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation (7,328 mt) may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

■ 5. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) *Pacific whiting and non-whiting QP shorebased trawl allocations.* For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

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

IFQ species	Area	2019 Shorebased trawl allocation (mt)	2020 Shorebased trawl allocation (mt)
Arrowtooth flounder	Coastwide	12,735.1	10,052.3
Bocaccio	South of 40°10′ N lat	800.7	767.1
Canary rockfish	Coastwide	953.6	894.3
Chilipepper	South of 40°10′ N lat	1,838.3	1,743.8
COWCOD	South of 40°10′ N lat	2.2	3.2
Darkblotched rockfish	Coastwide	658.4	703.4
Dover sole	Coastwide	45,979.2	45,979.2
English sole	Coastwide	9,375.1	9,417.9
Lingcod	North of 40°10′ N lat	2,051.9	1,903.4
Lingcod	South of 40°10′ N lat	462.5	386.0
Longspine thornyhead	North of 34°27′ N lat	2,420.0	2,293.6
Minor Shelf Rockfish complex	North of 40°10′ N lat	1,155.2	1,151.6
Minor Shelf Rockfish complex	South of 40°10′ N lat	188.6	188.6
Minor Slope Rockfish complex	North of 40°10′ N lat	1,248.8	1,237.5
Minor Slope Rockfish complex	South of 40°10′ N lat	456.0	455.4
Other Flatfish complex	Coastwide	5,603.7	5,192.4
Pacific cod	Coastwide	1,034.1	1,034.1
Pacific ocean perch	North of 40°10′ N lat	3,697.3	3,602.2
Pacific whiting	Coastwide	152,326.5	146,567
Petrale sole	Coastwide	2,453.0	2,393.2
Sablefish	North of 36° N lat	2,581.3	2,636.8
Sablefish	South of 36° N lat	834.0	851.7
Shortspine thornyhead	North of 34°27′ N lat	1,506.8	1,493.5
Shortspine thornyhead	South of 34°27′ N lat	50.0	50.0
Splitnose rockfish	South of 40°10′ N lat	1,646.7	1,628.7
Starry flounder	Coastwide	211.6	211.6
Widow rockfish	Coastwide	9,928.8	9,387.1
YELLOWEYE ROCKFISH	Coastwide	3.4	3.4
Yellowtail rockfish	North of 40°10′ N lat	4,305.8	4,048.0

* * * * *

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Proposed Rules

Federal Register

Vol. 85, No. 118

Thursday, June 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0572; Product Identifier 2017–SW–056–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2007–26–51, which applies to certain Airbus Helicopters Deutschland GmbH Model EC135 helicopters. AD 2007–26–51 requires an inspection of the tail rotor control rod (control rod) and ball pivot and, depending on findings, replacing these parts. Since the FAA issued AD 2007–26–51, the manufacturer developed a new control rod, which the FAA has determined must be installed in order to address the identified unsafe condition. This proposed AD would require an inspection of certain ball pivots, application of corrosion preventative compound on the ball pivot, and corrective action, as applicable. This proposed AD would also require replacement of the control rod with the newly developed control rod. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 3, 2020.

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

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

For service information identified in this NPRM, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0572; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5116; email *David.Hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0572; Product Identifier 2017–SW–056–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA issued AD 2007–26–51, Amendment 39–15357 (73 FR 6008, February 1, 2008) (''AD 2007–26–51''), for certain Airbus Helicopters Deutschland GmbH (type certificate previously held by Eurocopter Deutschland GmbH) Model EC 135 helicopters. AD 2007–26–51 requires an inspection of the control rod and ball pivot for discrepancies and depending on findings, replacing these parts. AD 2007–26–51 resulted from a report of an accident involving the failure of a control rod. The FAA issued AD 2007–26–51 to address failure of a control rod and subsequent loss of control of the helicopter.

Actions Since AD 2007–26–51 Was Issued

Since the FAA issued AD 2007–26–51, Airbus Helicopters Deutschland GmbH developed a new control rod. The FAA determined this new control rod must be installed in order to address the identified unsafe condition.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2010–0227R1, dated April 7, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Model EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC 135 T2, and EC135 T2+ helicopters; and Model EC635 T1, EC635 P2+, and EC635 T2+ helicopters.

EASA advises that in 2007, an accident occurred with an EC135 helicopter in Japan. Preliminary investigation results indicated that loss of control was due to failure of the control rod. EASA issued EASA Emergency AD 2007–0301–E to inspect the affected control rod, part number (P/N) L672M2005207, and the ball pivot (which correspond to the actions required by AD 2007–26–51). EASA AD 2007–0301–E was subsequently superseded by EASA AD 2007–0313, to require repetitive inspections and, depending on findings, the replacement of the control rod and ball pivot, only for helicopters not equipped with an automatic flight control system (AFCS). After review of the inspection results, EASA issued EASA AD 2008–0064 (later revised) to apply the requirements to helicopters equipped with an AFCS.

EASA also advises that after EASA AD 2008–0064R1 was issued, Eurocopter Deutschland GmbH developed a new control rod P/N L672M2006101, installation of which constituted terminating action for the repetitive inspections. Consequently, EASA issued EASA AD 2010–0227, retaining the requirements of EASA AD 2008–0064R1, and requiring the replacement of control rod P/N L672M2005207 with the new control rod P/N L672M2006101.

In addition, EASA advises that following a review of data and feedback received from in-service helicopters, it has been determined that the repetitive inspections of the ball pivot are no longer required to address the unsafe condition. The repetitive inspections of the ball pivot are now included in Chapter 05 of the aircraft maintenance manual. Therefore, EASA issued EASA AD 2010–0227R1 to remove the requirement for repetitive inspections of the control rod and of the ball pivot.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0572.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Alert Service Bulletin ASB EC135–67A–017, Revision 4, dated April 3, 2017, including the Appendix (watermarked as Appendix to SB EC135–67A–017 Revision 4). This service information describes procedures for, among other actions, an inspection of ball pivots, P/Ns 92–201–00 and 92–207–00, for freedom of movement, and for damage (*e.g.,* cracks, missing hardware, loose bearing, or play), application of corrosion preventative compound, and corrective actions. Corrective actions include replacing the ball pivot and the control rod with serviceable parts, and applying corrosion preventative compound.

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

Other Related Service Information

Eurocopter has issued Service Bulletin EC135–67–018, Revision 01, dated May 15, 2008, which describes procedures for replacing the control rod having P/N L672M2005207 with a control rod having P/N L672M2006101.

Eurocopter has also issued Alert Service Bulletin EC135–67A–017, Revision 03, dated July 26, 2010, which describes procedures for ball pivot inspections and replacements.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI includes a compliance time of 50 flight hours for the inspection of a certain ball pivot; 100 flight hours or 43 days for the inspection of a certain other ball pivot; and 400 flight hours or 12 months for the replacement of the control rod. This proposed AD would require all actions to be accomplished within a compliance time of 50 hours time-in-service.

The MCAI applies to Airbus Helicopters Deutschland GmbH Model EC635 T1, EC635 P2+, and EC635 T2+ helicopters. Model EC635 T1, EC635 P2+, and EC635 T2+ helicopters are not certified by the FAA and are not included on the U.S. type certificate data sheet except where the U.S. type certificate data sheet explains that the Model EC635T2+ helicopter having serial number 0858 was converted from Model EC635T2+ to Model EC135T2+; this proposed AD therefore does not include those Model EC 635 helicopters in the applicability.

Additionally, although the MCAI and service information specify to contact the manufacturer, this proposed AD does not include that requirement.

Costs of Compliance

The FAA estimates that this proposed AD affects 311 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$800	$1,140	$354,540

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 6 work-hours × $85 per hour = Up to $510	Up to $2,150	Up to $2,660.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–26–51, Amendment 39–15357 (73 FR 6008, February 1, 2008), and adding the following new airworthiness directive (AD):

Airbus Helicopters Deutschland GmbH: Docket No. FAA–2020–0572; Product Identifier 2017–SW–056–AD.

(a) Comments Due Date

The FAA must receive comments by August 3, 2020.

(b) Affected ADs

This AD replaces AD 2007–26–51, Amendment 39–15357 (73 FR 6008, February 1, 2008) (''AD 2007–26–51'').

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, EC135T2+, EC135P3, and EC135T3 helicopters, certificated in any category, all serial numbers.

(d) Subject

Joint Aircraft Service Component (JASC) Code 6700, Rotorcraft Flight Control.

(e) Reason

This AD was prompted by an accident involving the failure of a tail rotor control rod. The FAA is issuing this AD to address failure of a tail rotor control rod and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Definitions

(1) *Group 1:* Helicopters that, on the effective date of this AD, have a tail rotor control rod installed having part number (P/N) L672M2005207.

(2) *Group 2:* Helicopters that, on the effective date of this AD, do not have a tail rotor control rod installed having P/N L672M2005207.

(h) Ball Pivot Inspection

Within 50 hours time-in-service after the effective date of this AD: Inspect the ball pivot, P/N 92–201–00 and P/N 92–207–00, for damage and freedom of movement, in accordance with step 3.C.(3) or step 3.D.(3), as applicable, of the Accomplishment Instructions of the Appendix (watermarked as Appendix to SB EC135–67A–017 Revision 4) to Airbus Helicopters Alert Service Bulletin ASB EC135–67A–017, Revision 4, dated April 3, 2017. For purposes of this inspection, damage to the ball pivot may be indicated by cracks, missing hardware, loose bearings, or play.

(i) Corrective Action

If, during the inspection required by paragraph (h) of this AD, there is any damage on any ball pivot or the ball pivot cannot be moved: Before further flight, replace the ball pivot in accordance with step 3.C.(3) or step 3.D.(3), as applicable, of the Accomplishment Instructions of the Appendix (watermarked as Appendix to SB EC135–67A–017 Revision 4) to Airbus Helicopters Alert Service Bulletin ASB EC135–67A–017, Revision 4, dated April 3, 2017, and the tail rotor control rod as required by paragraph (j) of this AD.

(j) Tail Rotor Control Rod Replacement:

Group 1: Unless already done as required by paragraph (i) of this AD, within 50 hours time-in-service after the effective date of this AD, replace the tail rotor control rod having P/N L672M2005207 with a tail rotor control rod having P/N L672M2006101.

Note 1 to paragraph (j): Guidance for replacing the tail rotor control rod can be found in Eurocopter Service Bulletin EC135–67–018, Revision 01, dated May 15, 2008.

(k) Parts Installation Prohibition

(1) *Group 1:* After modification of a helicopter as required by paragraph (i) or (j) of this AD, no person may install on any helicopter a tail rotor control rod having P/N L672M2005207.

(2) *Group 2:* As of the effective date of this AD, no person may install on any helicopter a tail rotor control rod having P/N L672M2005207.

(l) Credit for Previous Actions

This paragraph provides credit for the inspection and ball pivot replacements required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using Eurocopter Alert Service Bulletin EC135–67A–017, Revision 03, dated July 26, 2010.

(m) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(n) No Reporting Requirement

Although the Appendix (watermarked as Appendix to SB EC135–67A–017 Revision 4) to Airbus Helicopters Alert Service Bulletin ASB EC135–67A–017, Revision 4, dated April 3, 2017, specifies to contact the manufacturer, this AD does not include that requirement.

(o) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5116; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(p) Related Information

(1) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2010–0227R1, dated April 7, 2017. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0572.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

Issued on June 12, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–13050 Filed 6–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–631]

Schedules of Controlled Substances: Temporary Placement of Isotonitazene in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (commonly known as isotonitazene), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I of the Controlled Substances Act. When it is issued, the temporary scheduling order will impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle isotonitazene.

DATES: June 18, 2020.

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

SUPPLEMENTARY INFORMATION: This document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order (in the form of a temporary amendment) to add isotonitazene to schedule I under the Controlled Substances Act (CSA).[1] The temporary scheduling order will be published in the **Federal Register** on or after July 20, 2020.

Legal Authority

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of DEA (Administrator). 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.[2] The Acting Administrator transmitted notice of his intent to place isotonitazene in schedule I on a temporary basis to the Assistant Secretary for Health of HHS (Assistant Secretary) by letter dated March 2, 2020. The Assistant Secretary responded to this notice by letter dated March 31, 2020, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications (INDs) or approved new drug applications (NDAs) for isotonitazene. The Assistant Secretary also stated that HHS had no objection to the temporary placement of isotonitazene in schedule I of the CSA. Isotonitazene is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for isotonitazene under section 505 of the FDCA, 21 U.S.C. 355.

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Isotonitazene

The availability of synthetic opioids in the illicit drug market continues to pose an imminent hazard to the public safety. Adverse health effects associated with the abuse of synthetic opioids and the continued evolution and increased popularity of these substances have been a serious concern in recent years. As the United States continues to experience an unprecedented epidemic of opioid misuse and abuse, the presence of new synthetic opioids with no approved medical use exacerbates the epidemic. The trafficking and abuse of new synthetic opioids are deadly new trends.

The identification of isotonitazene in the illicit drug market has been reported in Canada, Estonia, Germany, Latvia, Sweden, and the United States (see Factor 4 below). Data obtained from preclinical pharmacology studies show that isotonitazene has the pharmacological profile similar to that of the potent synthetic opioid etonitazene, a schedule I controlled substance. Because of the pharmacological similarities of isotonitazene to etonitazene, the use of isotonitazene presents a high risk of abuse and may negatively affect users and communities. The abuse of isotonitazene has been associated with at least 19 fatalities in the United States (see Factor 5 below). The positive identification of this substance in post-mortem cases is a serious concern for public safety. Thus, isotonitazene poses an imminent hazard to public safety.

Available data and information for isotonitazene, as summarized below, indicates that this substance has a high potential for abuse, no currently accepted medical use in treatment in the

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

[2] The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

United States, and a lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–631.

Factor 4. History and Current Pattern of Abuse

The chemical syntheses of isotonitazene (a benzimidazole derivative) and other benzimidazole derivatives (including schedule I substances such as synthetic opioids etonitazene and clonitazene) were first reported in the scientific literature in 1957. Isotonitazene is not an approved pharmaceutical product and is not approved for medical use anywhere in the world. As discussed in the background section, the Assistant Secretary stated in a March 31, 2020 letter to DEA that there are no INDs or FDA-approved NDAs for isotonitazene in the United States. Hence, DEA notes there is no legitimate channel for isotonitazene as a marketed drug product.

Since 2014, numerous synthetic opioids structurally related to fentanyl and several opioids from other structural classes have begun to emerge in the illicit drug market as evidenced by the identification of these drugs in forensic drug exhibits and toxicology samples. Beginning in April 2019, isotonitazene emerged on the illicit synthetic drug market in the United States as evidenced by its identification in drug seizures and in biological samples collected and submitted to National Medical Services (NMS) Laboratory [3] in August 2019. In August 2019, isotonitazene was first reported in a drug case in Belgium and toxicology casework in Canada (toxicological sample was collected in March 2019). In the United States, the Center for Forensic Science Research and Education (under the novel psychoactive substances discovery program) first reported isotonitazene in November 2019.

According to a report by the European Monitoring Center for Drugs and Drug addiction and Europol,[4] between April 2019 and January 2020, four member states (Estonia, Latvia, Germany, and Sweden) have reported 24 isotonitazene cases involving 109.6 g of powder (22 cases) and 4.5 g of liquid (two cases). Isotonitazene has been encountered by US law enforcement primarily in powder form. In March 2020, Canada law enforcement also encountered isotonitazene in tablet form as a white triangular tablet with 'M' logo on one side and '8' logo on the other side and as a blue tablet in Dilaudid counterfeit pills. Identification of isotonitazene in counterfeit pills is deeply concerning because the identity, purity, and quantity of isotonitazene in this formulation are uncertain, thus presenting additional safety concerns for unsuspecting users.

In the United States, isotonitazene has been identified as a single substance or in combination with other substances. In April 2019, the United States Customs and Border Protection (CBP) seized 1.6 grams of isotonitazene in California. In addition, Wisconsin State Crime Laboratories identified isotonitazene mixed with heroin and bromazolam, a nonscheduled benzodiazepine, in seized powder. Further, isotonitazene was identified in a substance obtained from the scene of a death investigation case in Iowa. Evidence suggests that individuals are using isotonitazene as a replacement to heroin or other opioids, either knowingly or unknowingly.

Factor 5. Scope, Duration, and Significance of Abuse

Isotonitazene, similar to etonitazene (schedule I), has been described as a potent synthetic opioid and evidence suggests it is being abused for its opioidergic effects (see Factor 6). The abuse of isotonitazene, similar to other synthetic opioids, has resulted in adverse health effects. Isotonitazene has been positively identified in 18 death investigation cases spanning between August 2019 and January 2020. These reports were from four states—Illinois (9), Indiana (7), Minnesota (1), and Wisconsin (1). Most (n = 12) of the decedents were male. The ages ranged from 24 to 66 years old with an average age of 41. Other substances identified in postmortem blood specimens obtained from these decedents include etizolam (6); flualprazolam, a nonscheduled benzodiazepine (7); fentanyl (6); heroin (3); tramadol, a schedule IV substance (2); and U–47700, a schedule I substance (1). The average concentration of isotonitazene in these biological samples (blood) was 2.2 ± 2.1 nanogram/milliliter (ng/ml) (range 0.4 to 9.5 ng/ml). Isotonitazene was detected as the only opioid in 50 percent (n = 9) of the specimens for these decedents. DEA is aware of another postmortem case in Pennsylvania where isotonitazene was identified in a biological sample. In total, isotonitazene has been positively identified in 19 postmortem cases.

Law enforcement data indicate that isotonitazene has appeared in the United States' illicit drug market. According to the National Forensic Laboratory Information System (NFLIS) [5] database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State and local forensic laboratories, there have been eight encounters of isotonitazene in the United States (queried March 5, 2020). These eight encounters were in 2019 and in two states, Tennessee (7) and California (1). One of these encounters consisted of 1.6 grams of isotonitazene seized by the CBP in California in April 2019.

The population likely to abuse isotonitazene appears to be the same as those abusing prescription opioid analgesics, heroin, tramadol, fentanyl, and other synthetic opioid substances. This is evidenced by the types of other drugs co-identified in isotonitazene fatal overdose cases. Because abusers of isotonitazene are likely to obtain it through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. The misuse and abuse of opioids have been demonstrated and are well characterized. According to the most recent data from the National Survey on Drug Use and Health (NSDUH),[6] as of 2018, an estimated 10.3

[3] NMS Labs, in collaboration with the Center for Forensic Science Research and Education at the Fredric Rieders Family Foundation and the Organized Crime Drug Enforcement Task Force at the U.S. Department of Justice, has received funding from the Centers for Disease Control and Prevention to develop systems for the early identification and notification of novel psychoactive substances in the drug supply within the United States.

[4] European Monitoring Centre for Drugs and Drug Addiction and Europol (2020), EMCDDA initial report on the new psychoactive substance N,N-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1H-benzimidazole-1-ethanamine (isotonitazene). In accordance with Article 5b of Regulation (EC) No. 1920/2006 (as amended), Publications Office of the European Union, Luxembourg.

[5] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently 98.5 percent. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011. NFLIS data was queried on March 5, 2020.

[6] The National Survey on Drug Use and Health (NSDUH), formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by HHS' Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of

million people aged 12 years or older had misused opioids in the past year, including 9.9 million prescription pain reliever misusers and 808,000 heroin users. In 2018, an estimated 2.0 million people had an opioid use disorder which included 1.7 million people with a prescription pain reliever use disorder and 0.5 million people with heroin use disorder. This population abusing opioids is likely to be at risk of abusing isotonitazene. Individuals who initiate (*i.e.,* use a drug for the first time) use of isotonitazene are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.). Law enforcement and toxicology reports demonstrate that isotonitazene is being illicitly distributed and abused.

Factor 6. What, if Any, Risk There Is to the Public Health

The increase in opioid overdose deaths in the United States has been exacerbated recently by the availability of potent synthetic opioids in the illicit drug market. Data obtained from pre-clinical studies demonstrate that isotonitazene exhibits a pharmacological profile similar to that of etonitazene and other mu-opioid receptor agonists. In an *in vivo* (in mice) study, isotonitazene was 500 times more potent than morphine as an analgesic in a tail-flick assay. The tail-flick assay is useful in evaluating antinociceptive effect. Data from *in vitro* studies showed that isotonitazene activated the mu-opioid receptor and acted as a mu-opioid receptor agonist. Isotonitazene, similar to hydromorphone and fentanyl, activated the mu-opioid receptor and acted as an agonist via interaction at the mu-opioid receptor with β-arrestin-2, a regulatory protein, in a live cell-based receptor assay. Naloxone, an opioid receptor antagonist, blocked isotonitazene's activation of the mu-opioid receptor. Substances that act as an agonist at the mu-opioid receptors have a high potential for addiction and can induce dose-dependent respiratory depression.

As with any mu-opioid receptor agonist, the potential health and safety risks for users are high. The public health risks attendant to the abuse of heroin and other mu-opioid receptor agonists are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses. According to the Centers for Disease Control and Prevention (CDC), opioids, mainly synthetic opioids other than methadone, are predominantly responsible for drug overdose deaths in recent years. A CDC report shows that from 2013 to 2018,[7] opioid-related overdose deaths in the United States increased from 25,052 to 46,802. Of the drug overdose death data for 2018, opioids were involved in about 69.5 percent of all drug-involved overdose deaths.

Isotonitazene has been co-identified with other substances in 18 postmortem cases and DEA is aware of an additional death case that occurred in January 2020 involving isotonitazene in the United States. These deaths associated with isotonitazene occurred in five states-Illinois (9), Indiana (7), Minnesota (1), Pennsylvania (1), and Wisconsin (1). Information gathered from case histories and autopsy findings shows that isotonitazene use is similar to that of classic opioid agonists. Evidence obtained from reported cases of death scenes suggests that isotonitazene, similar to heroin, can be used intravenously.[8]

The introduction of potent synthetic opioids such as isotonitazene into the illicit market is a portal to problematic opioid use for those seeking these powerful opioids. As documented by a published toxicology report, poly-substance abuse remains common in fatalities associated with the abuse of isotonitazene.[9]

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of isotonitazene pose an imminent hazard to the public safety. DEA is not aware of any currently accepted medical uses for isotonitazene in the United States. A substance meeting the statutory requirements for temporary scheduling, found in 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for isotonitazene indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by 21 U.S.C. 811(h)(4), the Acting Administrator, through a letter dated March 2, 2020, notified the Assistant Secretary for Health of DEA's intention to temporarily place isotonitazene in schedule I.

Conclusion

This notice of intent provides the 30-day notice pursuant to 21 U.S.C. 811(h)(1) of DEA's intent to issue a temporary scheduling order. In accordance with 21 U.S.C. 811(h)(1) and (3), the Acting Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule isotonitazene in schedule I of the CSA, and finds that placement of this substance in schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

The temporary placement of isotonitazene in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before July 20, 2020. Because the Acting Administrator hereby finds that it is necessary to temporarily place isotonitazene in schedule I to avoid an imminent hazard to the public safety, the temporary order scheduling this substance will be effective on the date the order is published in the **Federal Register,** and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Acting Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon publication of the temporary order, isotonitazene will then be subject to the CSA's schedule I

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pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.,* ever used), past year, and past month abuse or dependence. The 2018 NSDUH annual report is available at *https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf* (last accessed April 9, 2020).

[7] CDC—National Center for Health Statistics (NCHS), National Vital Statistics System, Mortality. NCHS Data Brief, Number 356, January 2020.

[8] Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK (2020). Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. *Journal of Analytical Toxicology.* [Epub ahead of print].

[9] *Id.*

regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Analyses

21 U.S.C. 811(h) provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, including the requirement of a publication in the **Federal Register** of a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this Notice of Intent. The APA expressly differentiates between an order and a rule, as it defines an ''order'' to mean a ''final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making*.'' 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an *order* instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in 21 U.S.C. 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice-and-comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Acting Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

In accordance with the principles of Executive Orders 12866, 13563, and 13771, this action is not a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this is not a rulemaking action, this is not a significant regulatory action as defined in Section 3(f) of Executive Order 12866. In addition, this action does not meet the definition of an Executive Order 13771 regulatory action, and the repeal and cost offset requirements of Executive Order 13771 have not been triggered.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(48) to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(48) *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: Isotonitazene) 9614

* * * * *

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–12304 Filed 6–17–20; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0048; FRL–10010–93–Region 1]

Air Plan Approval; Rhode Island; Reasonably Available Control Technology for the 2008 and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. The SIP revision consists of a demonstration that Rhode Island meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQSs or standards). Additionally, we are proposing approval of specific regulations that implement the RACT requirements by limiting air emissions of NO_X and VOC pollutants from sources within the State. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before July 20, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0048 at *https://www.regulations.gov,* or via email to *mackintosh.david@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail Code 05–2), Boston, MA 02109–3912, tel. 617–918–1584, email *Mackintosh.David@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background

Rhode Island is part of the Ozone Transport Region (OTR) under Section 184(a) of the CAA. Sections 182(b)(2), 182(f) and 184 of the CAA require states with ozone nonattainment areas that are classified as moderate or above, as well as areas in the OTR, to submit a SIP revision requiring the implementation of VOC RACT for sources covered by a control techniques guideline (CTG) and for all major sources of VOC and NO_X. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] The CTGs usually identify a particular control level which EPA recommends as being RACT. States are required to address RACT for the source categories covered by CTGs through adoption of rules as part of the SIP.

On October 5, 2006 (71 FR 58745), EPA issued four new CTGs: Industrial Cleaning Solvents; Offset Lithographic Printing and Letterpress Printing; Flexible Package Printing; and Flat Wood Paneling Coatings, and applicable areas were required to address them by October 5, 2007. On October 9, 2007 (72 FR 57215), EPA issued three more CTGs: Paper, Film, and Foil Coatings; Large Appliance Coatings; and Metal Furniture Coatings, and applicable areas were required to address them by October 9, 2008. On October 7, 2008 (73 FR 58841), EPA issued an additional four CTGs: Miscellaneous Metal and Plastic Parts Coatings; Fiberglass Boat Manufacturing Materials; Miscellaneous Industrial Adhesives; and Automobile and Light-Duty Truck Assembly Coatings. Applicable areas were required to address these CTGs by October 7, 2009. Lastly, on Oct 27, 2016 (81 FR 74798), EPA issued a new CTG for the Oil and Natural Gas Industry, and applicable areas were required to address it by October 27, 2018.

On March 27, 2008 (73 FR 16436), EPA revised the health-based NAAQS for ozone to 0.075 parts per million (ppm), averaged over an 8-hour timeframe. EPA determined that the revised 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma.

On March 6, 2015 (80 FR 12264), EPA published a final rule outlining the obligations for areas in nonattainment with the 2008 ozone standard, as well as obligations for areas in the OTR. This rule, referred to as the ''2008 Ozone Implementation Rule,'' contains a description of EPA's expectations for states with RACT obligations, and required states in the OTR to certify RACT requirements by July 20, 2014. The 2008 Ozone Implementation Rule gives states several options for meeting RACT requirements for the 2008 ozone

[1] See Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, U.S. EPA, to Regional Administrators, U.S. EPA, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas'' (Dec. 9, 1976); see also 44 FR 53761, 53762 (September 17, 1979).

standard. States may (1) establish new or more stringent rules that meet RACT control levels for the 2008 standard; (2) certify, where appropriate, that previously adopted RACT rules approved by EPA under a prior ozone standard represent adequate RACT control levels for the 2008 ozone NAAQS; or (3) submit a negative declaration in instances where there are no sources in the state covered by a specific CTG source category. States may use these options alone or in combination to demonstrate compliance with RACT requirements.

On October 26, 2015 (80 FR 65291), EPA revised the health-based NAAQS for ozone, setting it at 0.070 ppm averaged over an 8-hour time frame. On December 6, 2018 (83 FR 62998), EPA published a final rule that outlines the obligations for areas in nonattainment with the 2015 ozone standard, as well as obligations for areas in the OTR. This rule, referred to as the ''2015 Ozone Implementation Rule,'' requires states in the OTR to certify RACT requirements by August 3, 2020.

On February 3, 2017 (82 FR 9158), EPA published a final rule finding that Rhode Island, as well as 14 other states and the District of Columbia, had failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 ozone NAAQS. With respect to Rhode Island, EPA found that the State had failed to submit three required SIP elements: NO_X RACT for Major Sources; Non-CTG VOC RACT for Major Sources; and CTG VOC RACT. *Id.* at 9162. This finding became effective March 6, 2017, and started a SIP sanctions clock, which required the missing SIP elements to be submitted and deemed complete before September 6, 2018. *Id.* at 9160–61.

II. Summary of Rhode Island's SIP Revision

On September 20, 2019, Rhode Island submitted to EPA a SIP revision to address its RACT requirements set forth by the CAA for the 2008 and 2015 8-hour ozone NAAQSs (*i.e.,* RACT Certifications). On September 23, 2019, EPA determined Rhode Island's SIP submittal was administratively and technically complete for the 2008 ozone NAAQS. This completeness determination ended the offset sanctions identified in Clean Air Act Section 179(b)(2), which began on September 6, 2018, as described in the Findings of Failure to Submit SIP Submittals for the 2008 ozone NAAQS (82 FR 9158, February 3, 2017).

The Rhode Island RACT Certification submittal is based on (1) newly required RACT controls, for both major sources of NO_X and VOCs as well as for VOC sources subject to CTGs, that have been implemented in Rhode Island, and will be part of the Rhode Island SIP upon final approval of this EPA action; (2) previously EPA-approved RACT controls, including regulations and source-specific requirements, that represent RACT control levels under the 2008 and 2015 ozone NAAQSs; and (3) the fact that Rhode Island has no sources subject to RACT for several source categories, for which negative declarations are described in Section III.

Specifically, the Rhode Island September 2019 SIP revision contains a certification that Rhode Island has met all RACT requirements for the 2008 and 2015 8-hour ozone NAAQSs and updates the SIP with the following changes to Title 250 Rhode Island Code of Regulations (RICR), Chapter 120 Air Resources, Subchapter 05 Air Pollution Control: Part 0 General Definitions Regulation; Part 11 Petroleum Liquids Marketing and Storage; Part 15 Control of Organic Solvent Emissions; Part 19 Control of Volatile Organic Compounds from Coating Operations; Part 21 Control of Volatile Organic Compound Emissions from Printing Operations; Part 25 Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt; Part 26 Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products; Part 27 Control of Nitrogen Oxide Emissions; Part 35 Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations; Part 36 Control of Emissions from Organic Solvent Cleaning; Part 44 Control of Volatile Organic Compounds from Adhesives and Sealants; and Part 51 Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing.

On November 22, 2019, Rhode Island revised its September 20, 2019, RACT Certifications SIP by letter to EPA. Rhode Island requested the withdrawal of the ''Application'' paragraph from each Air Pollution Control Regulations, specifically Parts 0.2, 11.2, 15.2, 19.2, 21.2, 25.2, 26.2, 27.2, 35.2, 36.2, 44.2, and 51.2.

III. EPA's Evaluation of the Submittal

A. NO_X RACT for Major Sources

Sections 182(f) and 184 of the CAA require that RACT be applied to any major existing stationary source of NO_X in the OTR. In Rhode Island, the major source threshold for NO_X is the potential to emit 50 tons or greater per year. Rhode Island's NO_X RACT regulation, Part 27 Control of Nitrogen Oxide Emissions, applies to all sources with potential NO_X emissions of 50 tons per year, or greater, unless they are already subject to a more stringent level of NO_X control (*i.e.,* new source review) under Part 9 Air Pollution Control Permits. EPA proposes that Part 9 and Part 27 continue to represent RACT for applicable major stationary sources of NO_X in Rhode Island for the 2008 and 2015 ozone standards.

Rhode Island Part 27, Control of Nitrogen Oxide Emissions, includes specific emissions limits for utility boilers, industrial-commercial-institutional boilers, and internal combustion engines which are consistent with EPA guidance. Rhode Island's SIP revision, Table 1 RIDEM 2008/2015 8-Hour Ozone Standard RACT Certification (pages 26 to 29) identifies the pertinent EPA guidance for NO_X RACT source categories and indicates whether Part 27 applies or Rhode Island has no applicable sources. EPA last approved Part 27 into the Rhode Island SIP on July 22, 2016 (81 FR 47708). In addition to Part 27, individual sources in Rhode Island may be subject to more stringent technology control measures such as lowest achievable emissions rate (LAER) or best available control technology (BACT) under Rhode Island's new source review rule, Part 9 Air Pollution Control Permits, which was last approved into the Rhode Island SIP on October 24, 2013 (78 FR 63383).

Rhode Island has determined it has four operating major NO_X sources subject to source-specific requirements under Part 27, which are described in its RACT Certification in Table 2, Single Source 8-Hour Ozone Standard Certification. The source specific requirements for these four facilities (University of Rhode Island; Rhode Island Hospital; Algonquin Gas Transmission Co.; and Naval Station Newport) were previously approved into the Rhode Island SIP on September 20, 1997 (62 FR 46202).

After reviewing EPA-approved regulations controlling NO_X sources and source-specific NO_X control requirements described in 40 CFR part 52.2070(c), EPA-approved regulations, EPA agrees with Rhode Island's determination that requirements for major sources of NO_X meet, or are more stringent than, the CAA's RACT requirements. Herein, EPA proposes that the above controls represent RACT for these NO_X sources in Rhode Island for the 2008 and 2015 ozone standards because no new control technologies are known to be reasonably available considering technological and economic feasibility for these sources since our last approval.

B. Non-CTG VOC RACT for Major Sources

Section 184(b)(2) of the CAA requires RACT be applied to any major existing stationary source with the potential to emit 50 tons or greater per year of VOCs. Rhode Island's Part 15, Control of Organic Solvent Emissions applies to all sources with potential VOC emissions of 50 tons per year, or greater, that are not regulated under a CTG specific regulation. In 2012 (77 FR 14691), EPA approved Part 15 as satisfying RACT requirements for the 1997 ozone NAAQS. Rhode Island revised Part 15 with non-substantive recodification changes and also removed definitions for terms that are now provided for in Part 0 General Definitions, which we are also proposing to approve as described in Section III.C. EPA proposes to approve revised Part 15 because it continues to compel major stationary sources of VOCs in Rhode Island to implement RACT for the 2008 and 2015 ozone standards.

Rhode Island's RACT SIP references two major VOC emitting facilities subject to source-specific requirements under Part 15, which are described in its RACT Certification in Table 2, Single Source 8-Hour Ozone Standard Certification. The requirements for these two facilities, Providence Metalizing and Quality Spray and Stenciling, were previously approved into the Rhode Island SIP in 1990 (55 FR 36635) and 1999 (64 FR 67495), respectively. The Providence Metalizing permit (File No. 87–2–AP) contains VOC emission limitations for certain metal and plastic coating operations for which the categories and corresponding VOC content limits are consistent with the CTG for Miscellaneous Metal and Plastic Parts coatings. The Quality Spray and Stenciling consent agreement (A.H. File No. 97–04–AP) contains general coating and solvent VOC limits and recordkeeping requirements. However, the document does not relieve the facility from complying with the Rhode Island regulations being proposed, which contain updated coating and solvent requirements and constitute RACT for the 2008 and 2015 ozone standard.

After reviewing existing stationary VOC sources in Rhode Island, the EPA agrees with Rhode Island's determination that the requirements for major sources of VOCs meet the CAA's RACT requirements. EPA proposes that the operating facilities with source-specific requirements continue to represent RACT for major VOC sources in Rhode Island for the 2008 and 2015 ozone standards because no new control technologies are known to be reasonably available considering technological and economic feasibility for these sources since our last approval.

C. CTG VOC RACT

Sections 182(b)(2)(A) and 184 of the CAA require that RACT be applied to VOC source categories for which EPA has issued a CTG. In Rhode Island's SIP revision, Table 1 RIDEM 2008/2015 8-Hour Ozone Standard RACT Certification identifies the source categories for which EPA CTGs were issued prior to the submittal of this SIP revision, which includes all CTGs issued by EPA at the time of this proposal. For each CTG, Rhode Island identifies the corresponding requirement that satisfies RACT for which Rhode Island generally took action to either revise an existing regulation, add new regulations, certify existing regulations, certify source specific permit requirements, or certify that no such sources exist (negative declaration).

The revisions to Part 19 Control of Volatile Organic Compounds from Coating Operations, meet the requirements contained in the following several EPA CTGs: Miscellaneous Metal and Plastic Parts Coatings; Flat Wood Paneling Coatings; Paper, Film, and Foil Coatings; Metal Furniture Coating; and Large Appliance Coating. The amendments include revised and new VOC content limitations for paper, film and foil coating, metal furniture coating, large appliance coating, miscellaneous metal and plastic parts coating, and flatwood paneling. The miscellaneous metal and plastic parts coating category contains new specific VOC content limitations for automotive/transportation, business machines, and pleasure craft coatings. The VOC content limitations meet current EPA requirements. The applicability threshold for these categories generally apply to VOC emissions that are greater than or equal to 2.7 tons per rolling 12-month period, except the paper, film and foil coating category which has an applicability threshold of the potential to emit 25 tons of VOC per year from an individual coating line. Work practice standards for surface coating and cleaning operations have also been added to the rule to minimize VOC emissions.

The revisions to Part 21 Control of Volatile Organic Compound Emissions from Printing Operations limit VOC emissions from printing operations to satisfy the requirements contained in two CTGs: Offset Lithographic Printing and Letterpress Printing; and Flexible Package Printing. New requirements for offset lithographic and letterpress printing are added in 21.7.2, which include VOC content limits for fountain solutions, provisions for adding air pollution capture and control equipment, and VOC content limits for cleaning solutions. New flexible package printing requirements are added in 21.7.3, which generally control VOC emissions by either limiting the VOC content of inks, coatings, and adhesives or by adding air pollution capture and control equipment.

The revisions to Part 36 Control of Emissions from Organic Solvent adds 36.16 Requirements for Industrial Cleaning Solvents to satisfy the requirements contained in the CTG for Industrial Cleaning Solvents. Part 36 generally applies to facilities whose industrial solvent cleaning VOC emissions are equal to or greater than 2.7 tons in any twelve-month period, before application of control equipment. The rule exempts cleaning activities associated with several CTG source categories provided such activities are controlled by other Rhode Island air pollution control regulations. The regulation contains work practices and three options for compliance with the VOC content of the industrial cleaning solvent: (1) Use of materials that meet the specific VOC content limitations; (2) use of industrial cleaning solvents that have a VOC composite partial pressure equal to or less than eight mm Hg at 20 °C (68 °F); or (3) achievement of an overall VOC capture control efficiency of at least 85% by weight using add-on air pollution capture and control equipment.

The addition of Part 51 Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing adds a new regulation to the SIP to satisfy the requirements of the CTG for Fiberglass Boat Manufacturing Materials. Part 51 applies to any facility that manufactures fiberglass boat hulls or decks or related parts, builds molds to make fiberglass boat hulls or decks or related parts, or makes polyester resin putties or assembling fiberglass boats, whose total actual VOC emissions, before controls, are greater than or equal to 2.7 tons per rolling 12-month period. The regulation includes work practices and four options for compliance with the monomer (the basic building block of fiberglass resins) VOC content limitations for open molding resins and gel coats, as follows: (1) Use materials which meet the specific VOC content limitations; (2) emissions of no more than a calculated facility-wide emissions average VOC emissions cap;

(3) use of add-on air pollution capture and control equipment to emit no more than a numerical monomer VOC emission limitation that is determined for each facility; or (4) apply for alternative RACT approved by Rhode Island and EPA.

Rhode Island has determined four of its existing regulations continue to constitute RACT for 11 CTGs, which were all approved as RACT by EPA in 2012 (77 FR 14691) with respect to the 1997 ozone standard. Rhode Island did however include these four regulations in this SIP revision to update recodification changes Rhode Island introduced since they were last approved by EPA. Thus, this SIP revision proposes to revise these Rhode Island regulations with non-substantive changes and revise the SIP to include revised Part 0 General Definitions Regulation, Part 11 Petroleum Liquids Marketing and Storage, Part 15 Control of Organic Solvent Emissions, Part 25 Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt, Part 26 Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products, Part 35 Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations, and Part 44 Control of Volatile Organic Compounds from Adhesives and Sealants.

One CTG, Shipping Building and Ship Repair Operation, is addressed in Rhode Island by two source specific permit requirements issued to Senseco and General Dynamics that were last approved by EPA as constituting RACT in 2012 (77 FR 14691) with respect to the 1997 ozone standard. The CTG requirements have not changed, thus EPA agrees with Rhode Island's determination that these permits continue to constitute RACT.

Rhode Island has determined that there are no applicable stationary sources of VOC in Rhode Island for the following twelve CTG categories: (1) Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds; (2) Leaks from Petroleum Refinery Equipment; (3) Manufacture of Pneumatic Rubber Tires; (4) Large Petroleum Dry Cleaners; (5) Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins; (6) Equipment Leaks from Natural Gas/Gasoline Processing Plants; (7) Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment; (8) Air Oxidation Processes in Synthetic Organic Chemical Manufacturing; (9) Reactor Processes and Distillation operations Processes in Synthetic Organic Chemical Manufacturing; (10) Coating Operations at Aerospace Manufacturing and Rework Operations; (11) Surface Coating of Automobiles and Light-Duty Trucks; and (12) Oil and Natural Gas Industry. These negative declarations mean that Rhode Island has no applicable stationary sources of VOC that are covered by these CTGs.

EPA has evaluated Rhode Island' CTG VOC regulations, which the State certifies as meeting RACT for the 2008 and 2015 ozone standards, and EPA finds that the regulations are sufficiently consistent with recommendations in the respective EPA CTGs and are based on currently available technologically and economically feasible controls. Therefore, EPA proposes that the regulations being added and revised in this action, along with the past approved VOC CTG regulations, represent RACT in Rhode Island for the 2008 and 2015 ozone standards.

IV. Proposed Action

EPA is proposing to approve the Rhode Island SIP revision as meeting the State's RACT obligations for the 2008 and 2015 8-hour ozone NAAQSs as set forth in sections 182(b), 182(f) and 184(b)(2) of the CAA, and to add ''Reasonably Available Control Technology State Implementation Plan Revision 2008 and 2015 Ozone National Ambient Air Quality Standards'' dated September 20, 2019, which also includes twelve negative declarations for CTG source categories, to the Rhode Island SIP. EPA is also proposing to approve Subchapter 05 Air Pollution Control changes to the Rhode Island SIP. Specifically, revisions to Part 0 General Definitions Regulation, Part 11 Petroleum Liquids Marketing and Storage, Part 15 Control of Organic Solvent Emissions, Part 19 Control of Volatile Organic Compounds from Coating Operations, Part 21 Control of Volatile Organic Compound Emissions from Printing Operations, Part 25 Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt, Part 26 Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products, Part 27 Control of Nitrogen Oxide Emissions, Part 35 Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations, Part 36 Control of Emissions from Organic Solvent Cleaning, Part 44 Control of Volatile Organic Compounds from Adhesives and Sealants, and addition of Part 51 Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing, with paragraphs 0.2, 11.2, 15.2, 19.2, 21.2, 25.2, 26.2, 27.2, 35.2, 36.2, 44.2, and 51.2 stricken from the regulations. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing changes to the Rhode Island SIP as described in the Proposed Action section above. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 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 Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide 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 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 10, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–12958 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 85, No. 118
Thursday, June 18, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 15, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 these information collections are best assured of having their full effect if received by July 20, 2020. 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.

Agricultural Marketing Service

Title: Tobacco Reports.

OMB Control Number: 0581–0004.

Summary of Collection: Authority for the mandatory collection of information on form TB–26 ''Tobacco Stocks Report'' is the Tobacco Statistics Act of 1929 (7 U.S.C. 501–508). The Act provides for the collection and publication of statistics of tobacco by USDA with regard to quantity of leaf tobacco in all forms in the United States and Puerto, owned by or in the possession of dealers, manufacturers, growers' cooperative associations, and others with the exception of the original growers of the tobacco. The information furnished under the provisions of this Act is used only for statistical purposes for which it is supplied.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes USDA to collect, tabulate, and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality and condition of such products in various positions in the marketing channel, utilization of sub-products, shipment, and unloads.

Need and Use of the Information: The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products. This data is also used for the calculation of production quotas for individual types of tobacco and for price support calculations.

Without the information, USDA would not be able to disseminate marketing information as directed and authorized in the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 47.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 166.

Agricultural Marketing Service

Title: Pistachios Grown in California, Arizona and New Mexico.

OMB Control Number: 0581–0215.

Summary of Collection: The Pistachio Marketing Order, (7 CFR part 983), covering pistachios grown in California, Arizona and New Mexico is established and regulated under the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended, (7 U.S.C. 601–674), herein referred to as the Act. The Act authorizes the formation of marketing orders for certain agricultural commodities to provide orderly marketing conditions in interstate and intrastate commerce and to improve producer returns. The order regulates the handling of pistachios, authorizes grade and size requirements, as well as a requirement for aflatoxin testing on domestic shipments only. The Secretary is authorized to oversee the order operations and issue regulations recommended by representatives from the Pistachio Committee.

Need and Use of the Information: The Agricultural Marketing Service has developed forms as a convenience for handlers and producers who are required to file certain information with the Committee relating to pistachio supplies, shipments, dispositions, and other information needed to effectively implement the requirements of the order and carry out the purposes of the Act. If the information collection herein was not collected, the Secretary could not ascertain the support level for the order, nor in fact, carry out obligations required by the Act. Use of the forms is required by regulations governing marketing order administration. Collecting data less frequently would also eliminate the Secretary's ability to administer the order.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 1,200.

Frequency of Responses: Reporting: On occasion; Weekly; Monthly; Quarterly; Biennially; Semi-annually; Annually.

Total Burden Hours: 541.

Agricultural Marketing Service

Title: Christmas Tree Promotion, Research, and Information Order.

OMB Control Number: 0581–0268.

Summary of Collection: A Christmas Tree Promotion, Research and Information Order created under the Commodity Promotion, Research, and Information Act of 1996 (Pub. L. 104–127, 110 Stat. 1032, April 4, 1996, 7 U.S.C. 744–7425) requires collection of information to carry out the program. This legislation is hereinafter referred to as the 1996 Act. Under the enabling legislation, Congress has delegated the

Department of Agriculture (USDA) the responsibility of establishing and overseeing agricultural commodity research and promotion orders, which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments.

The program includes projects relating to research, information, advertising, sales promotion, market development and production research to assist, improve, or promote the marketing, distribution, competitive position and stimulate sales of Christmas trees.

Need and Use of the Information: The Christmas tree program will be administered by the Christmas Tree Promotion Board appointed by the Secretary of Agriculture and financed by a mandatory assessment on producers and importers of fresh cut Christmas trees. The program will provide for an exemption for producers and importers that cut and sell or import fewer than 500 Christmas trees annually. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the program, and their use is essential to carry out the intent of the Order. If the information collection herein were not collected, the Board could not carry out the coordinated research, promotion, consumer education, and industry information program on Christmas trees, ensure compliance with the mandatory program or ensure proper assessment collection. Collecting data less frequently also would limit the Secretary's ability to oversee the Order.

Description of Respondents: Producers and Importers.

Number of Respondents: 7,500.

Frequency of Responses: Reporting: Annually; Recordkeeping.

Total Burden Hours: 6,106.

Agricultural Marketing Service

Title: Information Collection for the Domestic Hemp Production Program.

OMB Control Number: 0581–0318.

Summary of Collection: The Agricultural Improvement Act of 2018 (2018 Farm Bill) amended the Agricultural Marketing Agreement of 1946 and was signed into law December 20, 2018, as Public Law 115–334. Sec. 10113 of the 2018 Farm Bill amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) by adding Subtitle G—Hemp Production. The law required U.S. Department of Agriculture (USDA) to promulgate regulations and guidelines to develop and oversee a program for the production of hemp in the United States. The 2018 Farm Bill directs that this will include state and tribal plans, and a USDA plan for those States, including territories of Indian tribes, that choose not to submit their own plan. The proposed information collection and reporting requirements will facilitate the effective administration and oversight of the Domestic Hemp Production Program.

Need and Use of the Information: This Program requires licensed producers and approved State and Tribal governments to maintain information on the land where hemp is produced, hemp testing results for delta-9 tetrahydrocannabinol, and disposal of plants not meeting necessary requirements. Additionally, all licensed producers must report hemp crop acreage to the USDA Farm Service Agency (FSA). The information on all reports must be kept for a minimum of three years. This new information collection created seven new reporting forms and one already existing form. The information reported for data collected under State and Tribal plans incorporates the burden to producers licensed under State and Tribal plans associated with providing the required information.

The State and Tribal Hemp Producer Report, State and Tribal Hemp Disposal Report and the State and Tribal Hemp Annual Report forms will require States and Tribes to provide USDA with contact information, a legal description of land, the disposal information for any non-compliant hemp and harvest information for each producer.

Producers under the USDA program complete the USDA Hemp Plan Producer License Application, the USDA Hemp Plan Producer Disposal Form, and the USDA Hemp Plan Producer Annual Report. Every producer under a State, Tribal or the USDA program completes the Report of Acreage. Laboratory personnel complete the Laboratory Test Results Report.

The Agricultural Marketing Service will use the information from these forms to ensure that each producer and approved State and Tribe is properly complying with the regulations. If the information collection herein was not collected, the Secretary could not adequately administrate the Domestic Hemp Production Program.

Description of Respondents: Hemp producers, States and Tribal governments with approved hemp production plans; Laboratory personnel.

Number of Respondents: 9,100.

Frequency of Responses: Reporting: On occasion; Monthly; Annually.

Total Burden Hours: 17,363.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–13181 Filed 6–17–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Alimentarius Commission

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a public meeting on June 25, 2020. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions for the 43rd Session of the of the Codex Alimentarius Commission (CAC). The CAC will not be meeting physically during its previously scheduled dates in July 2020 due to the COVID–19 pandemic, and it is currently preparing for the possibility of convening for a virtual Commission session. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 43rd Session of the CAC and to address items on the agenda.

DATES: The public meeting is scheduled for June 25, 2020, from 1:00–4:00 p.m. EDT.

ADDRESSES: If you wish to participate in the public meeting for the 43rd Session of the CAC, the meeting will be conducted by conference call only to be consistent with public health guidance related to outbreaks of novel coronavirus (COVID–19). Documents related to the 43rd Session of the CAC will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CAC&session=43.*

Mary Frances Lowe, U.S. Delegate to the 43rd Session of the CAC, invites U.S. interested parties to submit their comments electronically to the following email address: *uscodex@usda.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 43rd Session of the CAC by conference call, please use the call-in-number: 1–

888–844–9904 and participant code 5126092#.

Registration: Participants should register to participate in the public meeting as described above by submitting their name and organizational affiliation to *uscodex@usda.gov.*

For further information about the 43rd Session of the CAC or the public meeting, please contact the U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250, Telephone: (202) 205–7760, Fax: (202) 720–3157, Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade; promotes coordination of all food standards work undertaken by international governmental and nongovernmental organizations; determines priorities, initiates, and guides the preparation of draft standards; finalizes the standards elaborated and publishes them in a Codex Alimentarius (food code) either as regional or worldwide standards, wherever this is practicable; and amends published standards, as appropriate, in the light of new developments.

Issues To Be Discussed at the Public Meeting

Currently, there is no agenda available for the 43rd Session of the CAC. However, the Codex Secretariat has made available the following documents to be considered, including:

- Amendments to the Procedural Manual
- Final Adoption of Codex Texts
- Adoption of Codex Texts at Step 5
- Revocation of Codex Texts
- Proposals for New Work
- Discontinuation of Work
- Amendments to the Codex Standards and Related Texts

These documents are currently available at: *http://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CAC&session=43.*

Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat before the CAC session. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the June 25, 2020, public meeting, draft U.S. positions on the anticipated agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 43rd Session of the CAC (see **ADDRESSES**). Written comments should state that they relate to activities of the 43rd Session of the CAC.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *http://www.usda.gov/codex/,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on June 12, 2020.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2020–13165 Filed 6–17–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): 2020/2021 Income Eligibility Guidelines; Correction

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice; correction.

SUMMARY: The Department of Agriculture Food and Nutrition Service published a document in the **Federal Register** of May 26, 2020 concerning income eligibility guidelines for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The document contains a mislabeled column in one of the tables.

FOR FURTHER INFORMATION CONTACT: Sara Olson, Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 1320 Braddock Place, Alexandria, Virginia 22314, (703) 605–4013.

Correction

In the **Federal Register** of May 26, 2020, in FR Doc. 2020–11251, on page 31435, in the table titled ''INCOME ELIGIBILITY GUIDELINES (effective from July 1, 2020 to June 30, 2021),'' in the first column ''Household Size,'' of the middle row ''Alaska,'' correct the numbering in the column to read: 1, 2, 3, 4, 5, 6, 7, 8, each add'l fam mem add.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–13087 Filed 6–17–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket #RHS–20–CF–0014]

Information Collection Activity; Comment Request

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an

extension for a currently approved information collection in support of the program for Fire and Rescue Loans.

DATES: Comments on this notice must be received by August 17, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Pamela Bennett, Rural Development Innovation Center, Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, STOP 0793, Room 4015 South Building, Washington, DC 20250–0793. Telephone: (202) 720–9639. Email: *pamela.bennett@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Housing Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RHS–20–CF–0014 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: Fire and Rescue Loans.

OMB Number: 0575–0120.

Type of Request: Revision of a currently approved information collection.

Abstract: The Fire and Rescue Loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas and is covered by 7 CFR 1942–C. The primary regulation for administering the Community Facilities program is 7 CFR 1942–A (OMB Number 0575–0015) that outlines eligibility, project feasibility, security, and monitoring requirements.

The Community Facilities fire and rescue program has been in existence for many years. This program has financed a wide range of fire and rescue projects varying in size and complexity from construction of a fire station with fire fighting and rescue equipment to financing a 911 emergency system. These facilities are designed to provide fire protection and emergency rescue services to rural communities.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.10 hours per response.

Respondents: Not-for-profit institutions, State, local, or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 3.75.

Estimated Number of Responses: 3,746.

Estimated Total Annual Burden on Respondents: 7,881 hours.

Copies of this information collection can be obtained from Pamela Bennett, Rural Development Innovation Center, Regulations Management Division, at (202) 720–9639. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Bruce Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2020–13182 Filed 6–17–20; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; Preliminary Determination of No Shipments; and Rescission, in Part; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain producers and exporters of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) made sales of subject merchandise at prices below normal value (NV) during the period of review (POR) August 1, 2018 through July 31, 2019.

DATES: Applicable June 18, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Dunne or Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2328 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2015, Commerce issued an antidumping duty (AD) order on passenger tires from China.[1] Several interested parties requested that Commerce conduct an administrative review of the *AD Order.* On October 7, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *AD Order* for 28 companies producers/exporters for the POR.[2] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 22, 2020.[3]

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*AD Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to Covid-19,'' dated April 24, 2020.

Scope of the AD Order

The products covered by the order are certain passenger vehicle and light truck tires from China. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. (1) Shandong Wanda Boto Tyre Co., Ltd.; (2) Cooper (Kunshan) Tire Co., Ltd.; (3) Shandong Guofeng Ruber Plastics Co., Ltd; (4) Hankook Tire China Co., Ltd; (5) Jiangsu Hankook Tire Co., Ltd.; (6) Haohua Orient International Trade Ltd.; (7) Qingdao Lakesea Tyre Co., Ltd.; (8) Riversun Industry Limited; (9) Windforce Tyre Co., Limited; (10) Qingdao Keter International Co.; (11) Shangdong Hengyu Science & Technology Co., Ltd.; (12) Shangdong New Continent Tire Co., Ltd.; (13) Pirelli Tyre Co., Ltd.; (14) Triangle Tyre Co., Ltd.; (15) Safe & Well (HK) International Trading Limited; and (16) Zhaoqing Junhong Co. Ltd. withdrew their respective requests for an administrative review within 90 days of the publication date of the notice of initiation.

No other parties requested an administrative review of the *AD Order* with respect to the aforementioned companies. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *AD Order* on passenger tires from China with respect to the 16 companies listed above.

Preliminary Determination of No Shipments

Based on an analysis of U.S. Customs and Border Protection (CBP) information, Commerce preliminarily determines that one company under review, Shandong Duratti Rubber Corporation Co., Ltd., had no shipments during the POR. Qingdao Fullrun Tyre Corp., Ltd. and Shandong Anchi Tyres Co., Ltd. each filed no-shipment certifications; however, our analysis of CBP information contradicts these claims. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with an announced refinement to its assessment practice in NME cases, Commerce is not rescinding this review, in part, but intends to complete the review with respect to the companies for which it has preliminarily found no shipments and issue appropriate instructions to CBP based on the final results of the review.[5]

China-Wide Entity

Under Commerce's current policy regarding the conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[6] Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 76.46 percent).[7]

Separate Rates

Commerce finds that: (1) Qingdao Odyking Tyre Co., Ltd. (Qingdao Odyking); (2) Shandong Longyue Rubber Co., Ltd. DBA ZODO Tire Co., Ltd. (Shandong Longyue); (3) Shandong Anchi Tyres Co., Ltd.; and (4) Qingdao Fullrun Tyre Corp., Ltd. have not established their eligibility for a separate rate and are considered to be part of the China-wide entity for these preliminary results.

The statute and Commerce's regulations do not address what rate to apply to respondents who are not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that where all rates are zero, *de minimis,* or based entirely on facts available, Commerce may use ''any reasonable method'' for assigning a rate to non-examined respondents.

However, for these preliminary results, we have not calculated any individual rates or assigned a rate based on facts available. Therefore, consistent with our recent practice,[8] we preliminarily assigned to the non-individually examined companies that demonstrated their eligibility for a separate rate the most recently assigned separate rate in this proceeding (*i.e.,* 0.00 percent).[9]

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period August 1, 2018 through July 31, 2019:

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China, Preliminary Determination of No Shipments; and Rescission, in part; 2018–2019,'' issued concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011); and the ''Assessment Rates'' section, below.

[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[7] *See AD Order,* 80 FR at 47904, n.19.

[8] *See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,* 81 FR 62717 (September 12, 2016), and accompanying Preliminary Decision Memorandum at 10–11, unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 11431 (February 23, 2017).

[9] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 22396 (April 22, 2020).

Exporter	Weighted-average dumping margin (percent)
Qingdao Fullrun Tyre Tech Corp., Ltd	0.00
Qingdao Powerich Tyre Co., Ltd	0.00
Qingdao Sentury Tire Co., Ltd	0.00
Shandong Linglong Tyre Co., Ltd	0.00
Shandong Province Sanli Tire Manufactured Co., Ltd	0.00
Shandong Yongsheng Rubber Group Co., Ltd	0.00
Shouguang Firemax Tyre Co., Ltd	0.00

Disclosure and Public Comment

Normally, Commerce will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, here, Commerce preliminary applied a separate rate [10] and the China-wide rate [11] that were established in prior segments of the proceeding. Thus, there are no calculations on this record to disclose.

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[12] Rebuttal briefs may be filed no later than seven days after case briefs are due, and may respond only to arguments raised in the case briefs.[13] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[15] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[16]

All submissions, with limited exceptions, must be filed electronically using ACCESS.[17] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time on the due date. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until July 17, 2020, unless extended.[18]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[19] For the final results, if we continue to treat the following companies as part of China-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 76.46 percent to all entries of subject merchandise during the POR that were exported by Qingdao Odyking and Shandong Longyue. For the companies receiving a separate rate, we intend to assign an assessment rate of 0.00 percent, consistent with the methodology described above. Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's CBP case number will be liquidated at the rate for the China-wide entity. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For the companies for which this review is rescinded, antidumping duties will be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions with respect to the companies for which this review is rescinded to CBP 15 days after the publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except that, if the rate is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be equal to the exporter-specific weighted-average dumping margin published of the most recently-completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, *i.e.,* 76.46 percent; and (4) for all exporters of subject merchandise which are not located in China and which are not eligible for a separate rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

[10] *Id.*

[11] *See AD Order.*

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.309(c)(2), (d)(2).

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310(d).

[17] *See generally* 19 CFR 351.303.

[18] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

[19] *See* 19 CFR 351.212(b)(1).

regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: June 11, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *AD Order*
IV. Partial Rescission of Administrative Review
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2020–13157 Filed 6–17–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–848]

Commodity Matchbooks From India: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on commodity matchbooks from India would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable June 18, 2020.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2020, Commerce published the notice of initiation of the second sunset review of the *Order* on commodity matchbooks from India [1] pursuant to section 751(c) of the Act.[2] On March 16, 2020, Commerce received a notice of intent to participate from D.D. Bean and Sons Co (D.D. Bean), within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[3] D.D. Bean claimed interested party status under section 771(9)(C) of the Act as a manufacturer, producer, or wholesaler of a domestic like in the United States.

D.D. Bean subsequently issued its adequate substantive response to the notice of initiation in accordance with 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from respondent interested parties with respect to the order covered by this sunset review.

On April 22, 2020, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(*2*), Commerce conducted an expedited (120-day) sunset review of the antidumping duty order on commodity matchbooks from India.

Scope of the Order

The scope of the order covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.[6] Commodity matchbooks typically, but do not necessarily, consist of twenty match stems which are usually made from paperboard or similar material tipped with a match head composed of any chemical formula. The match stems may be stitched, stapled or otherwise fastened into a matchbook cover of any material, on which a striking strip composed of any chemical formula has been applied to assist in the ignition process.

Commodity matchbooks included in the scope of this order may or may not contain printing. For example, they may have no printing other than the identification of the manufacturer or importer. Commodity matchbooks may also be printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, with store brands (*e.g.,* Kroger, 7-Eleven, Shurfine or Giant); product brands for national or regional advertisers such as cigarettes or alcoholic beverages; or with corporate brands for national or regional distributors (*e.g.,* Penley Corp. or Diamond Brands). They all enter retail distribution channels. Regardless of the materials used for the stems of the matches and regardless of the way the match stems are fastened to the matchbook cover, all commodity matchbooks are included in the scope of these orders. All matchbooks, including commodity matchbooks, typically comply with the United States Consumer Product Safety Commission (CPSC) Safety Standard for Matchbooks, codified at 16 CFR 1202.1 through 1202.7.

The scope of this order excludes promotional matchbooks, often referred to as ''not for resale,'' or ''specialty advertising'' matchbooks, as they do not enter into retail channels and are sold to businesses that provide hospitality, dining, drinking or entertainment services to their customers, and are given away by these businesses as promotional items. Such promotional matchbooks are distinguished by the physical characteristic of having the name and/or logo of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue or individual establishment printed prominently on the matchbook cover. Promotional matchbook cover printing also typically includes the address and the phone number of the business or establishment being promoted.[7] Also excluded are all other

[1] *See Commodity Matchbooks from India: Antidumping Duty Order,* 74 FR 65737 (December 11, 2009) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 12253 (March 2, 2020).

[3] *See* D.D. Bean's Letter, ''Five Year (''Sunset'') Review of the Antidumping Duty Order on Commodity Matchbooks from India—Notice of Intent to Participate,'' dated March 16, 2020. D.D. Bean are producers of a domestic like product, commodity matchbooks, in the United States.

[4] *See* D.D. Bean's Letter, ''Commodity Matchbooks from India: Substantive Response to Notice of Initiation,'' dated April 1, 2020.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on March 2, 2020,'' dated April 22, 2020.

[6] Such commodity matchbooks are also referred to as ''for resale'' because they always enter into retail channels, meaning businesses that sell a general variety of tangible merchandise, *e.g.,* convenience stores, supermarkets, dollar stores, drug stores and mass merchandisers.

[7] The gross distinctions between commodity matchbooks and promotional matchbooks may be summarized as follows: (1) If it has no printing, or is printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, or printed with national or regional store brands or corporate brands, it is commodity; (2) if it has printing, and the printing includes the name of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue, or

matches that are not fastened into a matchbook cover such as wooden matches, stick matches, box matches, kitchen matches, pocket matches, penny matches, household matches, strike-anywhere matches (aka ''SAW'' matches), strike-on-box matches (aka ''SOB'' matches), fireplace matches, barbeque/grill matches, fire starters, and wax matches.

The merchandise subject to this order is properly classified under subheading 3605.00.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 3605.00.0030 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum,[8] which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the order was revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://acess.trade.gov.* A list of topics discussed in the Issues and Decision Memorandum is included as an Appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the antidumping duty order on commodity matchbooks from India would be likely to lead to the continuation or recurrence of dumping at weighted-average dumping margins up to 66.07 percent.

individual establishment prominently displayed on the matchbook cover, it is promotional.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Second Sunset Review of the Antidumping Duty Order on Commodity Matchbooks from India,'' dated concurrently with this notice (Issues and Decision Memorandum).

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(f)(3).

Dated: June 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Dumping Margins Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2020–12642 Filed 6–17–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–892]

Forged Steel Fittings From India: Amended Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: On March 30, 2020, the Department of Commerce (Commerce) published in the **Federal Register** the preliminary determination of the countervailing duty (CVD) investigation on forged steel fittings from India. Commerce is amending the scope of the preliminary determination.

DATES: Applicable June 18, 2020.

FOR FURTHER INFORMATION CONTACT: Lauren Caserta, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2020, Commerce published in the **Federal Register** the preliminary determination in the CVD investigation of forged steel fittings from India.[1] On May 20, 2020, Commerce placed on the record of this investigation a preliminary decision memorandum addressing all comments received in this proceeding and the companion antidumping proceeding regarding the scope of the investigations.[2] In accordance with the comments discussed in the memorandum, we made certain changes to the scope of these investigations. The changes include the addition of paragraphs seven, eight, and nine. The revised scope is printed in its entirety below.

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions (including hammer unions), and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. The scope includes integrally reinforced forged branch outlet fittings, regardless of whether they have one or more ends that is a socket welding, threaded, butt welding end, or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS–SP–97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and it does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casings. Pursuant to the applicable

[1] *See Forged Steel Fittings from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 17536 (March 30, 2020) (*Preliminary CVD Determination*).

[2] *See* Memorandum, ''Forged Steel Fittings from India and the Republic of Korea: Scope Comments Preliminary Decision Memorandum,'' dated May 20, 2020 (Preliminary Scope Memorandum).

standards, fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of forged steel fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class rating (expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, nipples, and all fittings that have a maximum pressure rating of 300 pounds per square inch/PSI or less.

Also excluded from the scope are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B;
- American Society of Mechanical Engineers (ASME) B16.9;
- Manufacturers Standardization Society (MSS) SP–75;
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411;
- Hydraulic hose fittings (*e.g.,* fittings used in high pressure water cleaning applications, in the manufacture of hydraulic engines, to connect rubber dispensing hoses to a dispensing nozzle or grease fitting) made to ISO 12151–1, 12151–2, 12151–3, 12151–4, 12151–5, or 12151–6;
- Underwriter's Laboratories (UL) certified electrical conduit fittings;
- ASTM A153, A536, A576, or A865;
- Casing conductor connectors made to proprietary specifications;
- Machined steel parts (*e.g.,* couplers) that are not certified to any specifications in this scope description and that are not for connecting steel pipes for distributing gas and liquids;
- Oil country tubular goods (OCTG) connectors (*e.g.,* forged steel tubular connectors for API 5L pipes or OCTG for offshore oil and gas drilling and extraction);
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541; and
- International Organization for Standardization (ISO) ISO6150–B.

Also excluded from the scope are assembled or unassembled hammer unions that consist of a nut and two subs. To qualify for this exclusion, the hammer union must meet each of the following criteria: (1) The face of the nut of the hammer union is permanently marked with one of the following markings: ''FIG 100,'' ''FIG 110,'' ''FIG 100C,'' ''FIG 200,'' ''FIG 200C,'' ''FIG 201,'' ''FIG 202,'' ''FIG 206,'' ''FIG 207,'' ''FIG 211,'' ''FIG 300,'' ''FIG 301,'' ''FIG 400,'' ''FIG 600,'' ''FIG 602,'' ''FIG 607,'' ''FIG 1002,'' ''FIG 1003,'' ''FIG 1502,'' ''FIG 1505,'' ''FIG 2002,'' or ''FIG 2202''; (2) the hammer union does not bear any of the following markings: ''Class 3000,'' ''Class 3M,'' ''Class 6000,'' ''Class 6M,'' ''Class 9000,'' or ''Class 9M''; and (3) the nut and both subs of the hammer union are painted.

Also excluded from the scope are component parts for hammer union assemblies, either subs or wingnuts, marked on the wingnut and subs with ''FIG 1002,'' ''FIG 1502,'' and ''FIG 2002,'' and with pressure rating of 10,000 PSI or greater. These parts are made from AISI/SAE 4130, 4140 or 4340 steel and are 100 percent magnetic particle inspected before shipment.

Also excluded from the scope are tee, elbow, cross, adapter (or ''crossover''), blast joint (or ''spacer''), blind sub, swivel joint and pup joint which have wing nut or not. To qualify for this exclusion, these products must meet each of the following criteria: (1) Manufacturing and Inspection standard is API 6A or API 16C; and, (2) body or wing nut is permanently marked with one of the following markings: ''FIG 2002,'' ''FIG 1502,'' ''FIG 1002,'' ''FIG 602,'' ''FIG 206,'' or ''FIG any other number'' or MTR (Material Test Report) shows these FIG numbers.

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They may also be entered under HTSUS 7307.93.3010, 7307.93.3040, 7307.93.6000, 7307.93.9010, 7307.93.9040, 7307.93.9060, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Suspension of Liquidation

Pursuant to the *Preliminary CVD Determination,* Commerce previously suspended liquidation of forged steel fittings from India entered, or withdrawn from warehouse, for consumption on or after March 30, 2020 (the publication of the *Preliminary CVD Determination* in the **Federal Register**). Commerce will now instruct Customs and Border Protection (CBP) to suspend liquidation of certain forged steel fittings from India, as defined by the revised scope language included above, entered, or withdrawn from warehouse, for consumption on or after March 30, 2020, the date of publication of the *Preliminary CVD Determination* in the **Federal Register**.

Liquidation of Suspended Entries

As a result of Commerce's amended preliminary determination, for suspended entries of the excluded products, that were entered, or withdrawn from warehouse, for consumption on or after March 30, 2020 (the date on which suspension of liquidation first began), we will instruct CBP to discontinue the suspension of liquidation and liquidate such entries without regard to countervailing duties (*i.e.,* refund all cash deposits).

Public Comment

Commerce has set a separate deadline for scope comments for both the antidumping and CVD proceedings.[3] The current deadline for case briefs regarding scope issues is June 29, 2020, and the current deadline for rebuttal briefs regarding scope issues is July 6, 2020. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its amended preliminary determination. If Commerce's final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of the *CVD Preliminary Determination,*[4] or 45 days after Commerce's final determination.

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[3] *See* Memorandum, ''Clarification of Deadlines for Scope Comments,'' dated March 27, 2020; *see also Forged Steel Fittings from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 32007 (May 28, 2020).

[4] *See supra* note 1.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: June 10, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–13159 Filed 6–17–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA235]

Marine Mammals; File No. 23779

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Allyson Hindle, Ph.D., University of Nevada Las Vegas, 4505 S Maryland Parkway, MS 4004, Las Vegas, NV 89154, has applied in due form for a permit to receive, import, and export parts from marine mammals for scientific research purposes.

DATES: Written, telefaxed, or email comments must be received on or before July 20, 2020.

ADDRESSES: These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 23779 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Shasta McClenahan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export marine mammal parts for comparative research on the physiology and other biological aspects of marine mammals. Unlimited samples from up to 100 individual cetaceans and 100 individual pinnipeds (excluding walrus) are requested to be received, imported, or exported annually. These samples may be received from U.S. based research, legal subsistence hunts, incidental fisheries takes, or during routine husbandry/health assessments of curated animals. Samples may also be imported from international collaborators that were originally collected as research samples, curated animals, animal killed during subsistence hunts, animals killed incidental to fishery operations, or dead stranded animals. No live animal takes are requested. The applicant has requested a 5-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 11, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–13105 Filed 6–17–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Multistakeholder Process on Promoting Software Component Transparency

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene a virtual meeting of a multistakeholder process on promoting software component transparency on July 9, 2020.

DATES: The meeting will be held on July 9, 2020, from 12:00 p.m. to 4:00 p.m., Eastern Time.

ADDRESSES: The meeting will be held virtually, with online slide share and dial-in information to be posted at *https://www.ntia.doc.gov/SoftwareTransparency.*

FOR FURTHER INFORMATION CONTACT: Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482–4281; email: *afriedman@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This National Telecommunications and Information Administration cybersecurity multistakeholder process focuses on promoting software component transparency. Most modern software is not written completely from scratch, but includes existing components, modules, and libraries from the open source and commercial software world. Modern development practices such as code reuse, and a dynamic IT marketplace with acquisitions and mergers, make it challenging to track the use of software components. The Internet of Things compounds this phenomenon, as new organizations, enterprises, and innovators take on the role of software developer to add ''smart'' features or connectivity to their products. While the majority of libraries and components do not have known vulnerabilities, many do, and the sheer quantity of software means that some software products ship with vulnerable or out-of-date components.

The first meeting of this multistakeholder process was held on July 19, 2018, in Washington, DC.[1] Stakeholders presented multiple perspectives, and identified several inter-related work streams: Understanding the Problem, Use Cases and State of Practice, Standards and Formats, and Healthcare Proof of Concept. Since then, stakeholders have been discussing key issues and developing products such as guidance documents. NTIA acts as the convener, but stakeholders drive the outcomes. Success of the process will be evaluated by the extent to which broader findings on software component transparency are implemented across the ecosystem.

The first set of stakeholder-drafted documents on Software Bills of Materials was published by NTIA in November 2019. Those documents, and subsequent consensus-approved drafts from the community are available at: *https://www.ntia.doc.gov/SBOM.* The main objectives of the July 9, 2020, meeting are to share progress from the working groups; to give feedback on the ongoing work around technical challenges, tooling, demonstrations, and awareness and adoption; and to continue discussions around potential guidance or playbook documents. More information about stakeholders' work is available at: *https://www.ntia.doc.gov/SoftwareTransparency.*

Time and Date: NTIA will convene the next meeting of the multistakeholder process on Software Component Transparency on July 9, 2020, from 12:00 p.m. to 4:00 p.m. Eastern Time. The exact time of the meeting is subject to change. Please refer to NTIA's website, *https://www.ntia.doc.gov/SoftwareTransparency,* for the most current information.

Place: The meeting will be held virtually, with online slide share and dial-in information to be posted at *https://www.ntia.doc.gov/SoftwareTransparency.* Please refer to NTIA's website, *https://www.ntia.doc.gov/SoftwareTransparency,* for the most current information.

Other Information: The meeting is open to the public and the press on a first-come, first-served basis.

The virtual meeting is accessible to people with disabilities. Requests for real-time captioning or other auxiliary aids should be directed to Allan Friedman at (202) 482–4281 or *afriedman@ntia.doc.gov* at least seven (7) business days prior to the meeting.

[1] Notes, presentations, and a video recording of the July 19, 2018, kickoff meeting are available at: *https://www.ntia.doc.gov/SoftwareTransparency.*

Access details for the meeting are subject to change. Please refer to NTIA's website, *https://www.ntia.doc.gov/SoftwareTransparency,* for the most current information.

Dated: June 15, 2020.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2020–13161 Filed 6–17–20; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

CPSC Webinar on Improvements to SaferProducts.gov

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) will hold a public webinar to receive information from interested parties about changes to the CPSC's Publicly Available Consumer Product Safety Information Database, *www.SaferProducts.gov,* that are in development to improve the website's usefulness and navigability. All attendees should pre-register for the Webinar. After registering, you will receive a confirmation email containing information about joining the webinar.

DATES: The webinar will begin at 1:00 p.m. to 3:00 p.m. Eastern Standard Time (EST) on July 1, 2020.

ADDRESSES: To pre-register for the Webinar, please visit *https://attendee.gotowebinar.com/register/3647078277660038412* and fill in the information.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; email: *cpsc-os@cpsc.gov;* telephone: (301) 504–7479.

SUPPLEMENTARY INFORMATION:

I. Background

Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) added section 6A to the Consumer Product Safety Act (CPSA), which requires the CPSC to establish and maintain a publicly available, searchable database on the safety of consumer products and other products or substances regulated by the CPSC. 15 U.S.C. 2055a(a). The CPSIA includes specific content, procedural, and search requirements for the database. *Id.* at 2055a(b) and (c). In 2010, the Commission issued regulations regarding the database in 16 CFR part 1102, and in 2011, Congress added additional requirements to the database provisions, which were adopted in part 1102. 75 FR 76832 (Dec. 9, 2010); Sec. 7, Public Law 112–28, 125 Stat. 273 (amending 15 U.S.C. 2055a(c)).

To comply with these requirements, CPSC created the website, *www.SaferProducts.gov.* The website allows consumers and others to submit reports of harm relating to the use of consumer products, and other products or substances the Commission regulates; allows businesses to comment on such reports; and allows users to search the database for product recalls and reports of harm that are published on *www.SaferProducts.gov.* On March 6, 2019, the CPSC held a public hearing to receive information from interested parties about possible changes to the database to improve the website's usefulness and ease of use. Based, in part, on input from the public hearing, the CPSC will hold a public webinar to show the changes to the website that are in development. These changes seek to improve usability and navigability on the website; make the website more mobile friendly with other devices, including smartphones and tablets; and improve cross-browser compatibility. Participants who register for the webinar will have an opportunity to see these changes and provide feedback to the CPSC through a moderated discussion.

II. The Webinar

A. Topics for Discussion

The Commission would like to hear from webinar participants on the utility, usability, and function of the improvements to the *www.saferproducts.gov* website presented during the webinar. The goal of the webinar is to hear from the public its views on these changes and the impact the changes will have on the website's utility and usability, among other issues.

B. How To Attend and/or Provide Comments

If you would like to participate in the webinar, please register at *https://attendee.gotowebinar.com/register/3647078277660038412.* The webinar will be held online on July 1, 2020, from 1:00 p.m. to 3:00 p.m. EST. Online participant viewers will be able to interact with the presenters through the webinar software. The webinar software allows for communicating with the presenters orally and in written format. CPSC staff will take questions and comments during the webinar, as time permits.

Alberta A. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2020–13100 Filed 6–17–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3845–002]

Niggli, Michael R.; Notice of Filing

Take notice that on June 11, 2020, Michael R. Niggli, submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b), Part 45 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 45.8 (2019).

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

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.

Comment Date: 5:00 p.m. Eastern Time on July 2, 2020.

Dated: June 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13149 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2512–082]

Hawks Nest Hydro, LLC; Notice of Application Accepted for Filing and 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. *Type of Application:* Temporary variance of reservoir elevation.

b. *Project No.:* 2512–082.

c. *Date Filed:* June 1, 2020.

d. *Applicant:* Hawks Nest Hydro, LLC.

e. *Name of Project:* Hawks Nest Hydroelectric Project.

f. *Location:* The project is located on the New River in Fayette County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ashley Thomas, Hawks Nest Hydro, LLC, 11966 Midland Trail, Gauley Bridge, WV 25085, (865) 306–3069.

i. *FERC Contact:* Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. 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/doc-sfiling/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–2512–082.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary variance to maintain the reservoir surface up to 25 feet below its normal elevation of 819 feet National Geodetic Vertical Datum of 1929, beginning on July 29 and lasting until September 29, 2020. The reservoir drawdown is being proposed to allow for inspections and maintenance of project facilities.

l. 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.

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, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest 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, motions to intervene, or protests 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, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; 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. 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 385.2010.

Dated: June 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13154 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–471–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on June 1, 2020, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP20–471–000 an application pursuant to section 7(c) of the Natural Gas Act requesting a certificate of public convenience and necessity for its proposed Bailey East Mine Panel 12J Project. Specifically, Texas Eastern proposes to excavate, elevate, and replace certain segments and then re-install all segments of Lines 10, 15, 25, and 30, and appurtenant facilities due to longwall mining activities planned by CONSOL Energy, Inc. in Marshall County, West Virginia. The Bailey East Mine Panel 12J Project is designed to ensure the safe and efficient operation of Texas Eastern's existing pipeline facilities at their certificated design capacities for the duration of the planned longwall mining activities beneath Texas Eastern's pipelines. Texas Eastern estimates the cost of the Bailey East Mine Panel 12J Project to be $50,000,000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any questions concerning this application may be directed to Lisa A. Connolly, Director, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642 Houston, Texas 77251–1642, by telephone at (713) 627–4102, or by email *lisa.connolly@enbridge.com.*

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.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 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 NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

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 3 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 July 6, 2020.

Dated: June 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13155 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

[2] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6643–002]

Flexon, Robert C.; Notice of Filing

Take notice that on June 11, 2020, Robert C. Flexon, submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b), Part 45 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 45.8 (2019).

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

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.

Comment Date: 5:00 p.m. Eastern Time on July 2, 2020.

Dated: June 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13152 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2032–000]

Hardin Wind LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hardin Wind 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 July 2, 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 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13148 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8948–000]

Denecour, Jessica; Notice of Filing

Take notice that on June 11, 2020, Jessica Denecour, submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2018) and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45 (2019).

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

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.

Comment Date: 5:00 p.m. Eastern Time on July 2, 2020.

Dated: June 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13153 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–184–000.
Applicants: Hardin Wind LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hardin Wind LLC.
Filed Date: 6/11/20.
Accession Number: 20200611–5107.
Comments Due: 5 p.m. ET 7/2/20.

Docket Numbers: EG20–185–000.
Applicants: Altavista Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Altavista Solar, LLC.
Filed Date: 6/12/20.
Accession Number: 20200612–5089.
Comments Due: 5 p.m. ET 7/6/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–2387–007; ER10–1333–014; ER15–190–013; ER18–1343–006.
Applicants: Duke Energy Florida, LLC.
Description: Notice of Change in Status of the Duke MBR Sellers.
Filed Date: 6/12/20.
Accession Number: 20200612–5055.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–539–001.
Applicants: East Fork Wind Project, LLC.
Description: Supplement to May 11, 2020 Notice of Change in Status of East Fork Wind Project, LLC.
Filed Date: 6/11/20.
Accession Number: 20200611–5090.
Comments Due: 5 p.m. ET 7/2/20.

Docket Numbers: ER20–1933–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Second Revised ISA, SA No. 4608; Queue No. AE2–155 Supplement to Filing to be effective 4/30/2020.
Filed Date: 6/11/20.
Accession Number: 20200611–5113.
Comments Due: 5 p.m. ET 7/2/20.

Docket Numbers: ER20–2033–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5662; Queue No. NQ168 to be effective 5/16/2020.
Filed Date: 6/11/20.
Accession Number: 20200611–5106.
Comments Due: 5 p.m. ET 7/2/20.

Docket Numbers: ER20–2034–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–06–12_SA 3377 METC-Assembly Solar 1st Rev GIA (J796) to be effective 5/29/2020.
Filed Date: 6/12/20.
Accession Number: 20200612–5005.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2035–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2825R7 KMEA and Evergy Kansas Central Meter Agent Agreement to be effective 6/1/2020.
Filed Date: 6/12/20.
Accession Number: 20200612–5007.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2036–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–06–12_SA 3502_METC-Orion Renewable Resources GIA (J832) to be effective 6/1/2020.
Filed Date: 6/12/20.
Accession Number: 20200612–5009.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2037–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3669 Evergy Kansas Central & City Utilities Meter Agent Agr to be effective 6/1/2020.
Filed Date: 6/12/20.
Accession Number: 20200612–5016.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2038–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of Dairyland MVP5 POA and CMA to be effective 8/12/2020.
Filed Date: 6/12/20.
Accession Number: 20200612–5051.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2039–000.
Applicants: GridLiance High Plains LLC.
Description: Compliance filing: GHP ITA Compliance Filing to be effective N/A.
Filed Date: 6/12/20.
Accession Number: 20200612–5085.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2040–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Prairie Wind Transmission, LLC Order No. 864

Compliance Filing to be effective 1/27/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5092.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2041–000.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Kansas City Power & Light Company Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5101.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2042–000.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: KCP&L–GMO Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5100.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2043–000.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: Gridliance HPs WDS Oder No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5104.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2044–000.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Westar Energy, Inc. Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5106.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2045–000.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: Gridliance HPs OATT Order No 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5123.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2046–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendments to Attachment M–3 to be effective 8/11/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5124.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2047–000.

Applicants: Ormond Beach Power, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 12/31/9998.

Filed Date: 6/12/20.

Accession Number: 20200612–5141.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2048–000.

Applicants: Ellwood Power, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 12/31/9998.

Filed Date: 6/12/20.

Accession Number: 20200612–5142.

Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2049–000.

Applicants: Cedar Springs Wind III, LLC.

Description: Baseline eTariff Filing: Cedar Springs Wind III, LLC Application for MBR Authority to be effective 8/12/2020.

Filed Date: 6/12/20.

Accession Number: 20200612–5160.

Comments Due: 5 p.m. ET 7/6/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified 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 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13150 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–857–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing Reservation Charge Credits Compliance Filing to be effective 6/1/2020.

Filed Date: 6/10/20.

Accession Number: 20200610–5049.

Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: RP19–1353–008.

Applicants: Northern Natural Gas Company.

Description: Compliance filing 20200611 Compliance Filing to be effective 1/1/2020.

Filed Date: 6/11/20.

Accession Number: 20200611–5101.

Comments Due: 5 p.m. ET 6/23/20.

Docket Numbers: RP20–540–001.

Applicants: Columbia Gulf Transmission, LLC.

Description: Compliance filing TRA 2020 Waiver Extension.

Filed Date: 6/11/20.

Accession Number: 20200611–5102.

Comments Due: 5 p.m. ET 6/23/20.

Docket Numbers: RP20–953–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Contracting Process Filing to be effective 7/12/2020.

Filed Date: 6/11/20.

Accession Number: 20200611–5015.

Comments Due: 5 p.m. ET 6/23/20.

Docket Numbers: RP20–954–000.

Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) Rate Filing: Creditworthiness and Other Tariff Revisions to be effective 7/12/2020.

Filed Date: 6/11/20.

Accession Number: 20200611–5016.

Comments Due: 5 p.m. ET 6/23/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified 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 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13151 Filed 6–17–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2020–0077; FRL–10010–79]

Certain New Chemicals; Receipt and Status Information for May 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN), or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 05/01/2020 to 05/31/2020.

DATES: Comments identified by the specific case number provided in this document must be received on or before July 20, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0077, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 05/01/2020 to 05/31/2020. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this

information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 05/01/2020 TO 05/31/2020

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–16–0417A	3	5/11/2020	CBI	(G) Adhesive for open, non-descriptive use	(G) Isocyanate terminated polyurethane resin.
P–17–0002A	5	4/30/2020	CBI	(G) Printing ink applications	(G) Styrene(ated) copolymer with alkyl(meth)acrylate, and (meth)acrylic acid.
P–17–0003A	11	4/30/2020	CBI	(G) Printing ink applications	(G) Styrene(ated) copolymer with alkyl(meth)acrylate, and (meth)acrylic acid.
P–17–0026A	5	4/30/2020	CBI	(G) Industrial Ink printing applications	(G) Cycloaliphatic diamine, polymer with .alpha-hydro-.omega.-hydroxypoly(oxy-alkanediyl), .alpha-hydro-.omega.-hydroxypoly(oxy-alkanediyl), and cycloaliphatic diisocyanate.
P–17–0195A	8	5/13/2020	CBI	(G) For manufacturing modified Ethylene vinyl alcohol copolymer.	(G) 1,3-Propanediol,2-methylene-, substituted.
P–17–0324A	2	5/7/2020	Vertellus Specialties, Inc	(S) Chemical intermediate, destructive use	(S) 2,4-Hexadien-1-ol, 1-acetate, (2E,4E)-.
P–17–0333A	8	5/15/2020	Miwon North America, Inc	(S) Reactive diluent for optical film coating	(G) 2-Propenoic acid, mixed esters with hetero-cyclic dimethanol and heterocyclic methanol.
P–17–0376A	7	5/18/2020	Innovative Chemical Technologies, Inc.	(S) Textile additive	(G) 2-Propenoic acid, 2-methyl-, 2-hydroxyethyl ester polymer with hexadecyl 2-propenoate, octadecyl 2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecasubstitutedoctyl 2-propenoate.
P–17–0377A	7	5/18/2020	Innovative Chemical Technologies, Inc.	(S) Textile Additive	(G) 2-Propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with hexadecyl 2-propenoate, octadecyl 2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecasubstitutedoctyl 2-methyl-2-propenoate.
P–17–0378A	7	5/18/2020	Innovative Chemical Technologies, Inc.	(S) Textile additive	(G) 2-Propenoic acid, 2-methyl-, hexadecyl ester, polymer with 2-hydroxyethyl 2-methyl-2-propenoate, octadecyl 2-methyl-2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecasubstitutedoctyl 2-propenoate.
P–17–0379A	7	5/18/2020	Innovative Chemical Technologies, Inc.	(S) Textile Additive	(G) 2-Propenoic acid, 2-methyl-, hexadecyl ester, polymer with 2-hydroxyethyl 2-methyl-2-propenoate, octadecyl 2-methyl-2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecasubstitutedoctyl 2-methyl-2-propenoate.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 05/01/2020 TO 05/31/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0146A	3	5/19/2020	Arakawa Chemical (USA), Inc.	(G) Primer paint binders for open non-dispersive uses.	(G) Modified fat amines, polymers with bisphenol A, alkanolamines, epichlorohydrin, alkylamine and substituted isocyanato [isocyanatoalkylcarbomonocyle].
P–18–0151A	10	5/21/2020	Struers, Inc	(S) A curing agent for curing epoxy systems.	(S) Formaldehyde, reaction products with 1,3-benzenedimethanamine and p-tert-butylphenol.
P–18–0153A	3	5/20/2020	CBI	(G) Mixed metal oxide for batteries	(G) Lithium mixed metal oxide.
P–18–0170A	5	5/23/2018	CBI	(G) Textile treatment	(S) 1-Propanaminium, N,N′-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-N,N-dimethyl-, dichloride.
P–18–0178A	3	5/20/2020	CBI	(S) Stabilizer for PVC	(G) Dialkyltin dialkylcarboxylate.
P–18–0217A	4	5/20/2020	Galata Chemicals, LLC	(S) Stabilizer for PVC compound	(G) Alkyltin dodecylthioester.
P–18–0218A	4	5/20/2020	Galata Chemicals, LLC	(S) Stabilizer for PVC compound	(G) Alkyltin tetradecylthioester.
P–18–0235A	3	12/28/2018	CBI	(S) Component in automotive gasoline/transportation fuel for consumer use.	(G) Naphtha Oils.
P–18–0289A	5	5/22/2020	CBI	(G) Gas scrubbing, landfill deodorizing, and wastewater deodorizing.	(G) 2-(2(methylcaboxymonocyclic)amino)ethoxy)-alcohol.
P–18–0290A	5	5/22/2020	CBI	(G) Gas scrubbing, wastewater deoderizing, and landfill odor neutralizing.	(G) Carbomonocylic-oxazolidine.
P–18–0320A	2	5/1/2020	CBI	(G) Hardner	(G) Alkane, diisocyanato-(isocyanatoalkyl)-.
P–18–0330A	3	5/20/2020	CBI	(G) initiator	(G) Formaldehyde, polymer with alkyl aryl ketone.
P–18–0332A	2	5/21/2020	Cargill, Inc	(G) a component in building materials	(S) Canola Meal.
P–18–0333A	2	5/21/2020	Cargill, Inc	(G) a component in building materials	(S) Flaxseed Meal.
P–18–0340A	3	5/18/2020	Lanxess Solutions US, Inc	(S) One component thermoset elastomer manufacture.	(S) Poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-, polymer with 1,1′-methylenebis[4-isocyanatobenzene], caprolactam-blocked.
P–18–0348A	2	5/18/2020	Lanxess Solutions US, Inc	(S) Thermoplastic elastomer manufacture/Injection Moulding.	(S) Ethanol, 2,2′-[1,4-phenylenebis(oxy)]bis-, polymer with 1,6-diisocyanatohexane and -hydro—hydroxypoly(oxy-1,4-butanediyl).
P–18–0349A	4	5/18/2020	Lanxess Solutions US, Inc	(S) Two component adhesives and protective coatings for marine, infrastructure, etc.	(S) Oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), polymer with 2,4-diisocyanato-1-methylbenzene, branched 4-nonylphenol-blocked.
P–18–0350A	3	5/14/2020	Evonik Corporation	(S) Additive in water-borne UV-curable coatings, Filler pigment treatment, and Glass fiber treatment.	(G) Aqueous methacrylamido modified polysiloxane.
P–18–0360A	2	5/18/2020	Lanxess Solutions, US Inc	(S) Two component adhesives and protective coatings for marine, infrastructure, etc.	(S) Oxirane, 2-methyl-, polymer with 2,4-diisocyanato-1-methylbenzene, 2-methyloxirane polymer with oxirane ether with 1,2,3-propanetriol (3:1), and oxirane, cashew nutshell liq.- and Pr alc. -blocked.
P–18–0361A	4	5/18/2020	Lanxess Solutions, US Inc	(S) Electrophoretic paint	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,3,5-tris(6-isocyanatohexyl)-1,3,5-triazine-2,4,6(1H,3H,5H)-trione, 3,5-dimethyl- 1H-pyrazole-blocked.
P–18–0362A	2	5/18/2020	Lanxess Solutions, US Inc	(S) Corrosion protection coatings	(S) 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 2,4-diisocyanato-1-methyl-benzene, -hydro—hydroxypoly[oxy(methyl-1,2-ethanediyl)] and -1,2,3-propanetriyltris[-hydroxypoly[oxy(methyl-1,2-ethanediyl)]], Me Et ketone oxime -blocked.
P–18–0380A	7	5/7/2020	CBI	(G) Automotive brake parts (contained use).	(G) Butanoic acid ethyl amine.
P–18–0403A	4	5/22/2020	Clariant Plastics & Coatings USA, Inc.	(S) Dispersing agent for pigments, paints, and coatings.	(S) 2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-(dimethylamino)ethyl 2-methyl-2-propenoate and 2-ethylhexyl 2-methyl-2-propenoate.
P–18–0405A	5	5/20/2020	CBI	(G) adhesive	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 3,6,9,12-tetraoxatetradeca-1,13-diene, glycidyl ether.
P–19–0041A	3	5/1/2020	CBI	(G) Oil water separation	(G) Alkyl diester, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P–19–0042A	3	5/1/2020	CBI	(G) Oil water separation	(G) Alkyl diester, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P–19–0043A	3	5/1/2020	CBI	(G) Oil water separation	(G) Alkyl dicarboxylic acid, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P–19–0044A	3	5/1/2020	CBI	(G) Oil water separation	(G) Alkyl bis(dialkylamino alkyl) amide polymer with bis(halogenated alkyl) ether.
P–19–0053A	9	5/19/2020	Wacker Chemical Corporation.	(S) Used as a surface treatment, sealant, caulk, and coating for mineral building materials such as concrete, brick, limestone, and plaster, as well as on wood, metal and other substrates.	(S) 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 05/01/2020 TO 05/31/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0064A	7	3/27/2020	The Sherwin Williams Company.	(G) Polymeric film former for coatings	(G) 4,4′-methylenebis[2,6-dimethyl phenol] polymer with 2-(chloromethyl)oxirane, 1,4-benzyl diol, 2-methyl-2-propenoic acid, butyl 2-methyl 2-propenoate, ethyl 2-methyl 2-propenoate, and ethyl 2-propenoate, reaction products with 2-(dimethylamino) ethanol.
P–19–0064A	8	5/15/2020	The Sherwin Williams Company.	(G) Polymeric film former for coatings	(G) 4,4′-methylenebis[2,6-dimethyl phenol] polymer with 2-(chloromethyl)oxirane, 1,4-benzyl diol, 2-methyl-2-propenoic acid, butyl 2-methyl 2-propenoate, ethyl 2-methyl 2-propenoate, and ethyl 2-propenoate, reaction products with 2-(dimethylamino) ethanol.
P–19–0084A	3	5/13/2020	CBI	(S) Flame retardant	(S) DIphosphoric acid, compd. with 1,3,5-triazine-2,4,6-triamine (1:2).
P–19–0109A	10	5/6/2020	Arch Chemicals, Inc	(G) The chemical is used as a component of a cleaning formulation to improve the wettability of the overall cleaning solution on the substrate.	S) Copper, [[2,2′,2″-(nitrilo-.kappa.N)tris[ethanolato-.kappa.O]](2-)]-;(S) Copper, bis[2-(amino-.kappa.N)ethanolato-.kappa.O]-;.
P–19–0116A	5	5/26/2020	CBI	(S) Silk protein for production of fiber, Skincare use as additive in dermal moisturizing lotions.	(G) sr-(Wasp Spider Polypeptide-1 Oligopeptide-178).
P–19–0153A	6	4/30/2020	Wego Chemical Group	(S) Raw material in Flame Retardant product.	(G) Dibromoalkyl ether Tetrabromobisphenol A.
P–19–0153A	7	5/5/2020	Wego Chemical Group	(S) Raw material in Flame Retardant product.	(G) Dibromoalkyl ether Tetrabromobisphenol A.
P–20–0005A	5	5/8/2020	RMC Advanced Technologies, Inc.	(G) Additive for plastics and resins	(G) modified graphene.
P–20–0010A	7	5/8/2020	CBI	(G) Polymerization auxiliary	(G) Carboxylic acid, reaction products with metal hydroxide, inorganic dioxide and metal.
P–20–0015A	6	5/21/2020	GE Healthcare	(S) The polymer is used in the manufacture of hollow fiber products.	(G) N-alkyl heteromonocyclic diphenolamide, polymer with Bisphenol A, haloaryl-substituted sulfone, compd. with cyclic sulfonate ester, polyaryl alcohol terminated.
P–20–0036A	3	5/21/2020	Sigma-Aldrich Co., LLC	(G) Used in the manufacture of Lithium-6 Chloride.	(S) Carbonic acid, di(lithium-6Li) salt.
P–20–0037A	4	5/21/2020	Sigma-Aldrich Co., LLC	(G) The material is used in manufacturing devices for gamma and neutron radiation detection.	(S) Lithium Chloride (6LiCl).
P–20–0047	6	5/14/2020	Nanosystems, Inc	(S) Hydrophilic polyurethane prepolymer used to manufacture flexible foams.	(G) Oxirane, 2-methyl-, polymer with oxirane, ether with propanetriol (3:1), polymer with poly(oxy-1,2-ethanediyl) and methylenebis[isocyanatobenzene].
P–20–0062A	2	5/11/2020	Inabata America Corporation.	(S) Use as an electrically conductive material, an additive in field emission applications, an additive in batteries, energy storage, and electrode applications, an additive to improve physical or mechanical properties, an additive for weight reduction, a heat generation and dissipation material.	(S) Multi-walled carbon nanotubes; closed; 4.4–12.8 nm diameter; bundle length 10.6–211.1 um; Grade: Jenotube 6 (Substance-1).
P–20–0063A	2	5/11/2020	Inabata America Corporation.	(S) Use as an electrically conductive material, an additive in field emission applications, an additive in batteries, energy storage, and electrode applications, an additive to improve physical or mechanical properties, an additive for weight reduction, a heat generation and heat dissipation material.	(S) Multi-walled carbon nanotubes; closed; 5.1–11.6 nm diameter; bundle length 1.9–552.0 um; Grade: Jenotube 8 (Substance-2).
P–20–0064A	2	5/11/2020	Inabata America Corporation.	(S) Use as an additive in batteries, energy storage, and electrode applications, an additive to improve physical or mechanical properties, an additive for weight reduction, a heat generation and dissipation material, and electrically conductive material and an additive in field emission applications.	(S) Multi-walled carbon nanotubes; closed; 7.9–14.2 nm diameter; bundle length 9.4–106.4 um; Grade: Jenotube 10 (Substance-3).
P–20–0065A	2	5/11/2020	Inabata America Corporation.	(S) Use as an electrically conductive material, an additive in field emission applications, batteries, energy storage, and electrode applications. Use as an additive to improve physical or mechanical properties, an additive for weight reduction, a heat generation and heat dissipation material.	(S) Multi-walled carbon nanotubes; closed; 17.0–34.7 nm diameter; globular shape; Grade: Jenotube 20 (Substance-4).
P–20–0069A	3	5/15/2020	CBI	(G) Surface-active chemical	(G) 2-Propenoic acid, 2-methyl-, polymer with 2-hydroxyethyl 2-methyl-2-propenoate phosphate and 2-propenoic acid salt, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)- and sodium (disulfite) (2:1)-initiated.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 05/01/2020 TO 05/31/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–20–0069A	4	5/16/2020	CBI	(G) Surface-active chemical	(G) 2-Propenoic acid, 2-methyl-, polymer with 2-hydroxyethyl 2-methyl-2-propenoate phosphate and 2-propenoic acid salt, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)- and sodium (disulfite) (2:1)-initiated.
P–20–0076A	2	5/21/2020	Cytec Industries, Inc	(G) Mining chemical	(S) Glycine, reaction products with sodium O-iso-Pr carbonodithioate, sodium salts.
P–20–0085	5	5/7/2020	Luna Innovations, Inc	(S) Fluid resistant coatings	(G) Bis(triethoxysilylpropyl carbamate) perfluoropolyether.
P–20–0085A	6	5/14/2020	Luna Innovations, Inc	(S) Fluid resistant coatings	(G) Bis(triethoxysilylpropyl carbamate) perfluoropolyether.
P–20–0086A	3	5/11/2020	Daicel Chemtech, Inc	(G) Component of polymers	(G) 2-Oxepanone, homopolymer, ester with hydroxyalkyl trioxo heteromonocyclic (3:1).
P–20–0092	5	5/22/2020	CBI	(G) Coloration of fabric	(G) Napthalenesulfonic acid, amino-hydroxy-bis [sulfo-[(sulfooxy)ethyl]sulfonyl]phenyl]diazinyl]-, potassium sodium salt.
P–20–0093	2	5/4/2020	Ashland, Inc	(G) Coating	(G) Alkanoic acid, 3-hetero-atom substituted-2-(heteroatom-substituted alkyl)-2-alkyl-, polymer with 1,2-alkanediamine, alpha-hydro-omega-heteroatom-substituted poly(oxy-1,4-alkanediyl) and 5-hetero-atom substituted- 1-(heteroatom-substituted alkyl)-1, 3, 3-trialkylcycloalkane.
P–20–0093A	3	5/21/2020	Ashland, Inc	(G) Coating	(G) Alkanoic acid, 3-hetero-atom substituted-2-(heteroatom-substituted alkyl)-2-alkyl-, polymer with 1,2-alkanediamine, alpha-hydro-omega-heteroatom-substituted poly(oxy-1,4-alkanediyl) and 5-hetero-atom substituted- 1-(heteroatom-substituted alkyl)-1, 3, 3-trialkylcycloalkane.
P–20–0094	1	4/29/2020	CBI	(S) Formulation component in UV/EB coatings, inks and 3D printing/ stereolithography/additive and Formulation component in UV/EB adhesive manufacturing.	(G) Alkanedioic acid, polymer with tri-alkyl-isocyanatocarbomonocycle, dialkylglycols, ester with 2,3-dihydroxypropyl alkyl ester, 2-hydroxyethyl methacrylate-blocked.
P–20–0095	1	5/4/2020	Evonik Corporation	(S) Additive to improve melt flow, scratch resistance, demoulding and lower COF of thermoplastic compounds.	(S) Siloxanes and Silicones, di-Me, [(phenylsilylidyne)tris(oxy)]tris-, 3-(2-hydroxyethoxy)propyl group-terminated, triesters with 2-oxepanone homopolymer.
P–20–0096	2	5/19/2020	CBI	(G) Use in papermaking process	(G) Unsaturated dicarboxylic acid polymer with 2-(dialkylamino)alkyl-alkyl-alkanoate, N, N-dialkyl-alkene amide, 2-propenamide and salt of alkyl-substituted alkene sulfonate.
P–20–0097	1	5/7/2020	Nelson Brothers, LLC	(S) The PMN substance will be used as an emulsifier for applications in explosives.	(G) Butanedioic acid, monopolyisobutylene derivs., mixed dihydroxyalkyl and hydroxyalkoxyalkyl diesters.
P–20–0102	1	5/22/2020	Novihum Technologies, Inc.	(S) Fertilizer/Soil amendment	(S) Chemical Abstract (CA) index name: Coal, brown, ammoxidized.
P–20–0104	2	5/26/2020	CBI	(G) Additive	(G) Alkenoic acid, polymer with (alkyl alkenyl) polyether.
SN–19–0006A	4	5/13/2020	CBI	(G) Component for 3D Printing formulations.	(S) 2-Propen-1-one, 1-(4-morpholinyl)-.
SN–19–0006A	5	5/15/2020	CBI	(G) Component for 3D Printing formulations.	(S) 2-Propen-1-one, 1-(4-morpholinyl)-.

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90-day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED* FROM 05/01/2020 TO 05/31/2020

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–00–0536	05/27/2020	04/06/2020	N	(G) Polyoxyalkylene solution with trimethylolpropane, 1,4 cyclohexane dimethanol, cyclic aliphatic anhydrides and trimellitic anhydride.
P–08–0378	05/05/2020	04/21/2020	N	(G) Arylalkylamine, n-[4-[2-(substitutedaryl)diazinyl]arylamino]-.

TABLE II—NOCS APPROVED * FROM 05/01/2020 TO 05/31/2020—Continued

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–11–0581	05/08/2020	12/18/2011	N	(S) 1h-1,2,4-triazole-5-acetic acid, 1-acetyl-3-[4-(1,1-dimethylethyl)phenyl]-, 2,6-bis(1,1-dimethylethyl)-4-methylcyclohexyl ester.
P–11–0582	05/08/2020	12/19/2011	N	(S) 1h-1,2,4-triazole-5-acetic acid, 1-acetyl-alpha-bromo-3-[4-(1,1-dimethylethyl)phenyl]-, 2,6-bis(1,1-dimethylethyl)-4-methylcyclohexyl ester.
P–14–0342	05/07/2020	05/01/2020	N	(G) Poly[oxy(methyl-1–2-ethanedilyl)], alpha-(2-propylalkyl))-omega-hydroxy-.
P–16–0445	05/22/2020	05/21/2020	N	(G) Carboxylic acids, unsaturated, hydrogenated polymers with substituted alkanediamine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0451	05/29/2020	05/21/2020	N	(G) Siloxane binder.
P–17–0191	05/12/2020	04/12/2020	N	(G) Alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl-, reaction products with propylene oxide.
P–17–0345	05/08/2020	05/07/2020	N	(G) Alkanediol, polymer with alkylenebis(4-isocyanatocarbomoncycle), alkylaminoalkyl methacrylate-blocked.
P–17–0346	05/13/2020	05/05/2020	N	(G) Triarylalkyl phosphonium halide salt.
P–18–0092	05/22/2020	03/06/2020	N	(S) Tri-n-butyl methyl phosphonium iodide.
P–18–0098	04/30/2020	04/30/2020	N	(G) Polyphosphoric acids, polymers with (alkoxyalkoxy)alkanol and substituted heteromonocycle.
P–18–0121	05/26/2020	05/17/2020	N	(S) Benzene, 1,1′-oxybis-, branched eicosyl derivs.
P–18–0341	05/28/2020	05/12/2020	N	(G) Alkane dicarboxylic acid, polymer with alkoxylated polyalcohol, alkyl polyglycol, alkyl dialcohol, and functionalized carboxylic acid.
P–18–0342	05/27/2020	05/11/2020	N	(G) Alkane dicarboxylic acid, polymer with alkyl polyglycol, alkyl dialcohol, and functionalized carboxylic acid.
P–19–0137	05/04/2020	05/01/2020	N	(S) Octadecene, reaction products with hexadecene, hydrogenated.
P–19–0189	05/01/2020	04/21/2020	N	(S) Fatty acids, c18-unsatd., dimers, hydrogenated, polymers with 1,6-hexanediol and 1,1′-methylenebis[4- isocyanatobenzene].
P–20–0013	05/05/2020	04/14/2020	N	(S) 2-propenoic acid, 2-methyl-, (2-oxo-1,3-dioxolan-4-yl)methyl ester.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 05/01/2020 TO 05/31/2020

Case No.	Received date	Type of test information	Chemical substance
L–18–0155 ...	05/22/2020	Certificate of Analysis (Terasil Black W–S Box 25KG)	(G) Glycine, [acetylamino-[(bromo-nitroaryl)azenyl]-methoxyaryl]-(methoxy-oxoethyl), alkyl ester.
L–20–0018 ...	05/19/2020	Alga, Growth Inhibition Test with Pseudokirchneriella subcapitata, 72 hours (OECD Test Guideline 201).	(S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-[4-(ethenyloxy)butyl]-.omega.-hydroxyl-.
P–16–0462 ..	05/11/2020	Metals Analysis Report for Quarter 1 2020 (Method 6010B).	(G) Silane-treated aluminosilicate.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 8, 2020.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2020–13135 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0104; FRL–10010–97–OLEM]

Proposed Information Collection Request; Comment Request; Brownfields Program—Accomplishment Reporting (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Brownfields Program—Accomplishment Reporting (Renewal)'' (EPA ICR No. 2104.07, OMB Control No. 2050–0192 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 extension of the ICR, which is currently approved through January 31, 2021. 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 17, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2012–0104 online using *www.regulations.gov* (our preferred method), by email to *docket.superfund@epa.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:
Kelly Gorini, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1702; fax number: (202) 566–1476; email address: *gorini.kelly@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 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: This ICR covers the collection of information from those organizations that receive cooperative agreements from EPA under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Brownfields Utilization, Investment, and Local Development (BUILD) Act (Pub. L. 115–141). CERCLA, as amended, authorizes EPA to award grants or cooperative agreements to states, tribes, local governments, and other eligible entities to support the assessment and cleanup of brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For funding purposes, EPA uses the term ''brownfields property(ies)'' synonymously with the term ''brownfields sites.'' The Brownfields Amendments authorize EPA to award several types of cooperative agreements to eligible entities on a competitive basis.

Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, states, tribes, local governments, and other eligible entities can receive assessment cooperative agreements to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup cooperative agreements to carry out cleanup activities at brownfields properties; multipurpose cooperative agreements to conduct activities allowed under both assessment and cleanup cooperative agreements; cooperative agreements to capitalize revolving loan funds and provide subgrants for cleanup activities; area-wide planning cooperative agreements to develop revitalization plans for brownfields; and environmental workforce and development job training and placement programs. Under subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act, states and tribes can receive cooperative agreements to establish and enhance their response programs through the four elements and meet the public record requirements under the statute. Cooperative agreement recipients (''recipients'') have general reporting and record keeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and record keeping burden is authorized under 2 CFR part 1500 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program recipients to maintain and report additional information to EPA on the uses and accomplishments associated with funded brownfields activities. EPA uses several forms to assist recipients in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Land Revitalization Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

Form Numbers: EPA ICR No. 2104.06, OMB Control No. 2050–0192.

Respondents/affected entities: State/local/tribal governments; Non-Profits.

Respondent's obligation to respond: Required to obtain or Retain Benefits (2 CFR part 1500).

Estimated number of respondents: 5,438 (total).

Frequency of response: Bi-annual for subtitle C recipients; quarterly for subtitle A recipients.

Total estimated burden: 5,764 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $667,181 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: June 12, 2020.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2020–13168 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0635; FRL 10011–01–ORD]

Board of Scientific Counselors (BOSC) Chemical Safety for Sustainability and Health and Environmental Risk Assessment Subcommittee Meeting—June 2020; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting; correction.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), published a document in the **Federal Register** of June 2, 2020, giving notice of a meeting of the Board of Scientific Counselors (BOSC) Chemical Safety for Sustainability and Health and Environmental Risk Assessment (CSS–HERA) Subcommittee. The meeting has been postponed until June 24, 2020. Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days' notice.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO) via phone/voice mail at: (202) 564–6518 or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 2, 2020, in FR Doc. 2020–11816, on page 33,665, column 1 correct the ''**DATES**'' caption to read:

DATES: The videoconference meeting will be held on Wednesday, June 24, 2020, from 3:00 p.m. to 6:00 p.m. (EDT). Meeting times are subject to change. This meeting is open to the public. Those who wish to attend must register by June 23, 2020. Comments must be received by June 22, 2020 to be considered by the subcommittee. Requests for the draft agenda or making a presentation at the meeting will be accepted until June 22, 2020.

Dated: June 12, 2020.

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2020–13169 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0471; FRL–10010–36–OAR]

RIN 2060–AS26

Granting Petitions To Add 1-bromopropane (Also Known as 1–BP) to the List of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is granting petitions to add n-propyl bromide (nPB) (Chemical Abstract Service (CAS) No. 106–94–5) to the list of hazardous air pollutants (HAP) contained in the Clean Air Act (CAA). The EPA is taking final action to grant these petitions based on the petitioners having met the requirements contained in CAA section 112(b)(3), which allows any person to petition the Administrator to add a substance to the list of HAP. The term 1-bromopropane (1–BP), which is used throughout this document, is the common name for nPB. This is the first occasion on which the EPA is granting petitions to add a substance to the list of HAP that Congress created in 1990. Following this action, the EPA will take a separate regulatory action to add 1–BP to the list of HAP under CAA section 112(b)(1).

DATES: The petitions are granted as of June 18, 2020.

ADDRESSES: The EPA has established a docket for this document under Docket ID No. EPA–HQ–OAR–2014–0471. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. There is a temporary suspension of mail delivery to the EPA, and no hand deliveries are currently accepted. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. John Schaefer, Sector Policies and Programs Division, Policies and Strategies Group (D205–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919)–541–4991; and email address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and abbreviations. We use multiple acronyms and terms in this document. While this list may not be exhaustive, to ease the reading of this document and for reference purposes, the EPA defines the following terms and acronyms here:

1–BP 1-bromopropane (also known as n-propyl bromide (nPB))
CAA Clean Air Act
CAS Chemical Abstract Service
EPA Environmental Protection Agency
HAP hazardous air pollutant(s)
HSIA Halogenated Solvents Industry Alliance
ICL Israel Chemicals Ltd.
MOA mode of action
NESHAP national emission standards for hazardous air pollutants
NTP National Toxicology Program
NYSDEC New York State Department of Environmental Conservation
OMB Office of Management and Budget
PERC perchloroethylene
TRI Toxics Release Inventory

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

I. Background

A. How do I obtain a copy of this document and other related information?

The docket number for this final action is Docket ID No. EPA–HQ–OAR–2014–0471. In addition to being available in the docket, an electronic copy of this document will also be available on the internet. The EPA will post a copy of this final action at *https://www3.epa.gov/ttn/atw/pollutants/atwsmod.html* following official Agency signature. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same website.

B. CAA Authority: Petitions To Modify the List of HAP

The CAA section 112(b)(3)(A) specifies that any person may petition the Administrator to modify the list of HAP contained in CAA section 112(b)(1) by adding or deleting a substance. CAA section 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list, otherwise known as the HAP list, ''upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.'' The Administrator is required under the CAA section 112(b)(3)(A) to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition based solely on inadequate resources or time for review.

Finally, under the CAA section 112(e)(4), the Administrator's decision to add a pollutant to the CAA section 112(b)(1) HAP list is not a final Agency action subject to judicial review, except that any such action may be reviewed when the Administrator promulgates emission standards for the pollutant. Accordingly, this decision to grant petitions to add 1–BP to the HAP list is not subject to judicial review until the Administrator promulgates applicable the CAA section 112(d) standards addressing emissions of 1–BP. Under the CAA section 112(d) the EPA has a ''clear statutory obligation to set emissions standards for each listed HAP.'' *National Lime Association* v. *EPA,* 233 F. 3d 625, 634 (D.C. Cir. 2000). Additionally, under CAA section 112(c)(5), the EPA is required to promulgate emission standards under the CAA sections 112(d)(2) and (3) within two years of adding a new source category to the CAA section 112(c)(1) source category list.

This is the first occasion on which the EPA is granting a petition to add a substance to the list of HAP that Congress created in 1990. Since 1990, the EPA has amended the CAA section 112(b)(1) HAP list by removing four listed HAPs. They are caprolactam (61 FR 30816 (June 18, 1996)); ethylene glycol monobutyl ether (69 FR 69320 (August 2, 2000)); surfactant alcohol ethoxylates and their derivatives (these are compounds that were considered to be included in glycol ethers, which is a listed HAP; (65 FR 47342 (August 2, 2000)); and methyl ethyl ketone (MEK) (70 FR 75047 (December 19, 2005)). For more information, see *https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications#mods.* The EPA has also denied a petition to remove methanol from the CAA section 112(b)(1) HAP list. 66 FR 21929 (May 2, 2001).

C. Petitions Submitted to the EPA

Halogenated Solvents Industry Alliance (HSIA) and New York State Department of Environmental Conservation (NYSDEC) submitted petitions to add 1–BP to the CAA section 112(b)(1) HAP list on October 28, 2010, and November 24, 2011, respectively. Both HSIA and NYSDEC petitions referred to the chemical as nPB and 1–BP. In an action published on November 23, 2015, the EPA added the chemical by the name 1–BP to the Community Right-to-Know Toxic Chemical Release Reporting requirements. In addition, the chemical is listed in the EPA's Substance Registry Services, the EPA's authoritative resource for basic information about chemicals, as 1–BP. Finally, the chemical is currently undergoing an EPA Toxic Substances Control Act risk evaluation, under Docket ID No. EPA–HQ–OPPT–2015–0084 as 1–BP. Therefore, for this action and for future regulations under the CAA, the EPA will refer to the chemical identified by CAS No. 106–94–5 as 1-bromopropane or 1–BP.

On November 28, 2012, in response to the EPA's requests for additional data, HSIA supplemented its petition. Following the receipt of the petitions, the EPA conducted a review to determine whether the petitions were complete according to Agency criteria for the CAA section 112(b) actions, which we explained in the February 6, 2015, document (80 FR 6676). Specifically, after reviewing these petitions and supplemental information, the EPA determined that the petitions addressed all the necessary subject areas for the Agency to assess whether emissions, ambient concentrations, bioaccumulation, or deposition of 1–BP are known to cause or may reasonably be anticipated to cause adverse human health effects or adverse environmental effects. The EPA determined these petitions to add 1–BP to the HAP list to be complete and published a notification of receipt of a complete petition in the **Federal Register** on February 6, 2015 (80 FR 6676), and invited the public to comment on the technical merits of these petitions and to submit any information relevant to the technical review of the petitions. On March 11, 2015 (80 FR 12794), the EPA agreed to extend the comment period for the notification of receipt of complete petitions to May 7, 2015.

On January 9, 2017, the EPA published a draft document in the **Federal Register** containing the Agency's intended rationale for granting the petitions to add 1–BP to the CAA section 112(b)(1) HAP list (82 FR 2354). In the draft document, the EPA determined that these petitions met criteria specified in the CAA section 112(b): *i.e.,* 1–BP is an air pollutant and its emissions and ambient concentrations ''may reasonably be anticipated to cause adverse effects to human health.'' Subsequently, on June 6, 2017, the EPA published an action granting the request by Albemarle Corporation, a U.S.-based manufacturer of 1–BP, to extend the comment period until October 1, 2017, to provide an opportunity for prospective commenters to review the 2017 Toxics Release Inventory (TRI), which included newly required emission reporting of 1–BP (82 FR 26091). This current action is the final step in granting the petitioners' request to add 1–BP to the CAA section 112(b)(1) HAP list. Even following the granting of this petition to add 1–BP to the list, sources will remain under no regulatory or statutory obligation to reduce emissions of 1–BP until a separate regulatory action is taken. In section IV of this document, we explain the future additional regulatory actions that the EPA intends to consider either simultaneously with the addition of 1–BP to the CAA section 112(b)(1) HAP list or soon thereafter.

II. What comments were received on the draft document to grant the petitions to add 1–BP to the CAA section 112(b)(1) HAP list?

The EPA received 12 comments on the draft document to add 1–BP to the CAA section 112(b)(1) list of HAP. Two commenters opposed adding 1–BP to the CAA section 112(b)(1) HAP list, while 10 commenters supported the action. All comments are in the docket for this action. A summary of the major comments and our responses are presented in this section.

A. Comments Regarding Estimated

1–BP Emissions

Comment: Albemarle Corporation requested that the EPA extend the comment period to October 1, 2017, to ensure that data from the TRI database for 1–BP would inform the final document. Albemarle Corporation stated the extension would provide the public with an opportunity to review the TRI dataset for 1–BP usage, sources, and emissions and also to use those data to prepare meaningful comments on the draft document.

Response: The EPA also agreed that it would be useful to review reported TRI emissions releases for 1–BP prior to finalizing the document. Since January 2017, when the draft document was published, two years of emissions data had been submitted to the EPA's TRI. Specifically, one commenter provided TRI data for 1–BP for calendar year 2016 during the extended comment period. Further, according to the EPA's TRI, in 2016, 55 facilities (in 27 states) reported emissions totaling 626,659 pounds (more than 313 tons) of 1–BP into the air, with multiple sources reporting emissions in excess of 20,000 pounds (10 tons per year). Total 1–BP air emissions reported to TRI in 2017 were 746,562 pounds (more than 373 tons).

Finally, the emissions data provided supported the risk analysis submitted by HSIA. The primary risk driver for the analysis was a degreasing operation in Collegeville, Pennsylvania, where the maximum individual lifetime risk was estimated at 38-in-1 million. The emissions reported by the facility to the TRI database showed approximately 70 tons per year of 1–BP emissions, which supports the petitioner's emissions estimates and the assertion that 1–BP may present a risk to human health.

Comment: Albemarle Corporation also commented that the emission estimates used by petitioners to estimate the fenceline ambient concentration of 1–BP lacked accuracy and were ''wholly inadequate to support the petition.'' They requested an extension of the comment period to October 1, 2017, in order to resolve the significant differences between the estimates provided by the petitioner, HSIA, and the commenter's estimated emissions.

Response: The EPA agreed that resolving any differences between the commenter's emission estimates and the petitioner's estimates was an important issue that needed to be resolved prior to deciding on the petitions. Therefore, the EPA extended the comment period until October 1, 2017 (82 FR 26091, June 6, 2017). The commenter, however, did not provide additional information during the comment period extension. The EPA evaluated HSIA's emission estimates and modeling assumptions and found them to be reasonable and found their risk assessment methodology consistent with the best practices for estimating carcinogenic risk for an air pathway analysis. Given that no evidence was provided to change the EPA's previous review of the petitioner's risk assessment, the petitioner's original emission estimates used for the air pathway risk modeling were found to be acceptable and to provide the basis for a reasonable analysis of the risks associated with inhalation of 1–BP.

B. Comments on 1–BP Cancer Risk Factors

Comment: Israel Chemicals Ltd. (ICL) requested that the EPA reconsider its initial decision to add 1–BP to the HAP list. ICL made this request based on a September 2016 study titled *In Vivo Mutation Assay of n-Propyl Bromide at the cII Locus in Big Blue® Transgenic B6C3F1 Mice Exposed via Whole-Body Inhalation.*[1] Based on this study, ICL argued for removing cancer as a potential hazard from 1–BP exposure, which, in their view, would eliminate the basis for listing 1–BP as a HAP.

Response: The EPA rejects the premise that the results of a single assay for mutagenicity in a single gene locus in a transgenic (Big Blue®) mouse strain can be used to make general statements on potential mutagenicity or carcinogenicity. The EPA finds adequate support from submitted evidence and comments that 1–BP presents a potential cancer hazard and, therefore, is granting these petitions to list 1–BP as a HAP for purposes of regulatory actions based on the following considerations:

First, not all carcinogens operate via a mutagenic mode of action (MOA). In fact, many of the National Toxicology Program (NTP) substances categorized as ''Known to be a human carcinogen'' are carcinogenic via non-mutagenic mechanisms. There is mixed evidence of mutations in bacterial and mammalian cells and limited data on DNA damage in 1–BP-exposed workers. However, there is clear evidence for the carcinogenicity of 1–BP in multiple tissues in two rodent species from a 2-year cancer bioassay[2] by the NTP. The NTP's *Report on Carcinogens, 14th Edition*[3] finds 1–BP is ''reasonably anticipated to be a human carcinogen'' based on sufficient evidence of carcinogenicity from studies in experimental animals.

Second, regarding the ICL claim that if 1–BP is not a mutagen, any cancer potential will be a threshold effect. The 2005 EPA Cancer Guidelines[4] provide the latitude to apply a non-linear model when data positively establish the MOA to be non-linear. However, it is not automatically assumed that a non-linear MOA is operational if a chemical is not a mutagen.

Third, as explained in greater detail in the draft document, there is significant evidence that 1–BP poses a negative health impact for noncancer effects including reproductive toxicity and neurotoxicity in both controlled and uncontrolled environments; the evidence for these noncancer effects provides sufficient justification to list 1–BP as a HAP, regardless of the potential for a cancer effect (82 FR 2354, 2360–61, January 9, 2017).

Finally, as also explained in the draft document, the EPA ''interpret[s] the CAA section 112(b)(3)(B) as invoking the Administrator's expertise in considering information/data that addresses the potential or likelihood of harm rather than concrete proof of actual harm,'' and that the Administrator is authorized to ''act in the face of uncertainty as to the proven health effects of a substance'' and to ''draw inferences from the data'' before him. (82 FR 2357, January 9, 2017); see generally Id. at 2356–58, 2361–62.

C. Comments Requesting the Addition of 1–BP to the CAA Section 112(b)(1) HAP List

Comment: Ten commenters supported the EPA's initial decision to grant petitions to add 1–BP to the CAA section 112(b)(1) HAP list and encouraged the EPA to issue a final action granting the petitions. They also

[1] *https://www.regulations.gov/*, Docket ID Item No. EPA–HQ–OAR–2014–0471–0067.

[2] *https://ntp.niehs.nih.gov/testing/status/agents/ts-m000017.html.*

[3] *https://ntp.niehs.nih.gov/ntp/roc/content/profiles/bromopropane.pdf.*

[4] *https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf.*

stated that petitioners had provided substantial evidence to support the conclusion that 1–BP either is known to cause or can reasonably be anticipated to cause cancer and noncancer health effects in humans. Their comments generally discussed this evidence.

One commenter stated that the decision to list 1–BP as a HAP under the CAA depends only on showing potential adverse effects from a chemical, not whether exposure is at levels that cause those effects. The commenter also noted that exposures of concern for 1–BP are already occurring. The commenter likewise disagreed with the negative mutagenesis assay findings submitted by ICL, stating that results of a single assay for mutagenicity cannot be used to apply across-the-board statements on potential mutagenicity.

Response: The EPA acknowledges commenters' statements. The EPA also agrees with the comments on the availability of substantial evidence to support the addition of 1–BP to the CAA section 112(b)(1) HAP list.

III. The EPA's Decision To Grant the Petitions

Consistent with the draft document, petitioners have provided sufficient information demonstrating the adverse health effects of 1–BP that supports the EPA's determination that 1–BP is an air pollutant as defined under the CAA section 302(g) and that ''emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects'' as specified under CAA section 112(b)(3)(B). The documented known or anticipated adverse health effects of 1–BP, which are based on established sound scientific principles, include carcinogenicity, reproductive toxicity, and neurotoxicity. The EPA also concludes that petitioners' assessments regarding estimates of potential ambient concentrations of 1–BP that are likely to result at a facility's fenceline, process emissions related information, and chemical usage information that are representative of normal operating conditions are reasonable. The EPA is, therefore, granting petitions to add 1–BP to the CAA section 112(b)(1) list of HAP. This action concludes the petition process under the CAA section 112(b)(3). As previously explained, the EPA's granting of the petitions by itself, as accomplished by this document, does not impose any regulatory or statutory obligations on sources of 1–BP emissions. Following this action, the EPA will take a separate regulatory action to add 1–BP to the list of HAP under the CAA section 112(b)(1). At that time, the EPA will publish a **Federal Register** document that formally proposes the addition of 1–BP to the CAA section 112(b)(1) HAP list and assess the impacts of adding 1–BP to the HAP list on potentially affected sources.

IV. Reducing Emissions From Sources of 1–BP

The first step in this process is to grant the petitions requesting that 1–BP be listed as a HAP, which we are completing with this action. As a general matter, granting a petition to add an air pollutant to the CAA section 112(b)(1) HAP list initiates the process of bringing the air pollutant into consideration in the national emission standards for hazardous air pollutants (NESHAP) program, under the CAA section 112(d). (The CAA section 112(d) imposes a ''clear statutory obligation to set emissions standards for each listed HAP.'' *National Lime Association* v. *EPA,* 233 F. 3d 625, 634 (D.C. Cir. 2000)). As previously explained, by itself, granting the petitions will not create new regulatory or statutory obligations for sources that emit 1–BP, until further actions are taken by the Agency. During the period from when this document is published and until the next step of adding 1–BP to the CAA section 112(b)(1) HAP list is taken, sources emitting 1–BP will have no regulatory obligations related to approval of the petitions.

The second step is to publish a **Federal Register** document that formally announces the addition of 1–BP to the CAA section 112(b)(1) HAP list. In granting the petitions to list 1–BP as a HAP, the EPA has learned that most source categories emitting 1–BP will not become subject to emission standards until the EPA amends or promulgates new maximum achievable control technology standards for specific source categories. The single largest user of 1–BP is the Halogenated Solvent Cleaning source category. However, the current Halogenated Solvent Cleaning NESHAP (40 CFR part 63, subpart T) does not regulate 1–BP emissions because only emissions of methylene chloride, perchloroethylene (PERC), and trichloroethylene (TCE) are subject to the rule. Therefore, the use of 1–BP as a solvent degreaser will not be subject to regulation until such time as the EPA revises 40 CFR part 63, subpart T, issues new standards, or takes other actions to reduce 1–BP emissions from the Halogenated Solvent Cleaning source category.

Further, the EPA may need to take additional regulatory action to address 1–BP emissions from certain dry cleaning operations. The PERC Dry Cleaning source category, which sets out requirements for these operations, covers only PERC emissions. PERC is a solvent used in dry cleaning and has been identified as a probable human carcinogen. 40 CFR 63.322(o)(5)(i) requires that the existing co-residential dry cleaning subcategory phase out the use of PERC by December 21, 2020. The EPA has learned that 1–BP is currently used as a replacement solvent in this subcategory. Considering the public health effects discussed earlier in this document and the information before us, the EPA is concerned about the use of 1–BP as a substitute for PERC in the co-residential dry cleaning subcategory. Further, these public health effects may call for the need for adequate controls for 1–BP emissions from other dry cleaning subcategories other than the dry cleaning co-residential subcategory. The EPA is, therefore, planning in a future action to modify the CAA section 112(c)(1) source category list to add a new source category that would cover 1–BP emissions from all dry cleaning operations. Under the CAA section 112(c)(5), the EPA may add additional source categories to the CAA section 112(c)(1) source category list.

Beyond the Halogenated Solvent Cleaning source category and 1–BP dry cleaning operations, the EPA does not believe that other source categories need to be added to the source category list or otherwise modified to reduce emissions of 1–BP. After adding a new source category to regulate 1–BP emissions from dry cleaning operations, the EPA would be required under CAA section 112(c)(5), to promulgate emission standards under the CAA section 112(d) within two years.

Additionally, some sources could become immediately subject to existing standards once 1–BP is placed on the CAA section 112(b)(1) list given that these sources may become major sources of HAP emissions (greater than 10 tons per year of a single HAP or 25 tons per year of total HAP). For these sources, 40 CFR 63.6(c)(5) allows three years to comply after 1–BP is added to the HAP list unless the underlying rule specifies another schedule.

These future actions that the EPA intends to consider for purposes of addressing 1–BP emissions reduction, such as the listing of new source categories under the CAA section 112(c)(1), can occur either simultaneously with listing 1–BP on the HAP list or shortly thereafter. In sum, as a result of granting these petitions, the EPA intends to consider taking additional regulatory actions as a result of adding 1–BP to the CAA section 112(b)(1) HAP list.

V. Statutory and Executive Order Review

Additional information about this Executive Order can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

Andrew Wheeler,

Administrator.

[FR Doc. 2020–13145 Filed 6–17–20; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, in accordance with the provisions of Article VI of the Bylaws of the Farm Credit System Insurance Corporation (FCSIC), that a regular meeting of the Board of Directors of FCSIC will be held June 25, 2020, at 10 a.m. EDT, 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 *FCSIC.gov,* select ''News & Events,'' then ''Board Meetings.'' There you will find a description of the meeting and ''Instructions for board meeting visitors.'' See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Board of the Farm Credit System Insurance Corporation (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. *Please note that this meeting begins at 10:00 a.m. EDT with a session that is closed to the public. You may join this meeting at 11:15 a.m. EDT. We will begin the open session promptly at 11:30 a.m. EDT.*

Assistance: If you need assistance for accessibility reasons or 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:

A. Closed Session—Risk Management Reports

- FCSIC Report on Insurance Risk/Premium Risk Factors

B. Open Session

Approval of Minutes
- March 12, 2020

C. Quarterly Business Reports

- FCSIC Financial Report
- Report on Insured Obligations
- Report on Annual Performance Plan

D. New Business

- Mid-Year Review of Insurance Premium Rates

Dated: June 15, 2020.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2020–13178 Filed 6–17–20; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, June 23, 2020 at 10:00 a.m. and its continuation on June 25, 2020 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109. Matters concerning participation in civil actions or proceedings or arbitration.

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CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2020–13303 Filed 6–16–20; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED MAY 1, 2020 THRU MAY 31, 2020

05/01/2020		
20201000	G	The Carle Foundation; Advocate Aurora Health, Inc.; The Carle Foundation.
05/04/2020		
20200999	G	TPG Partners VIII, L.P.; LifeStance Health, LLC; TPG Partners VIII, L.P.
20201001	G	Quincy Health, LLC; Quorum Health Corp.; Quincy Health, LLC.

EARLY TERMINATIONS GRANTED MAY 1, 2020 THRU MAY 31, 2020—Continued

20201002	G	Mr. Len Blavatnik; DigitalOcean Holdings, Inc.; Mr. Len Blavatnik.
20201003	G	Reyes Holdings, L.L.C.; Thomas J. Louderback; Reyes Holdings, L.L.C.
20201005	G	Providence Equity Partners VIII L.P.; OUTFRONT Media Inc.; Providence Equity Partners VIII L.P.
20201006	G	Ares Special Opportunities Fund (Offshore), L.P.; OUTFRONT Media Inc.; Ares Special Opportunities Fund (Offshore), L.P.
		05/05/2020
20191732	S	AbbVie Inc.; Allergan plc; AbbVie Inc.
		05/06/2020
20200992	G	Starwood Opportunity Fund XI Global, L.P.; Extended Stay America, Inc.; Starwood Opportunity Fund XI Global, L.P.
20201008	G	ProAssurance Corporation; Norcal Mutual Insurance Company; ProAssurance Corporation.
		05/11/2020
20201012	G	IIF US Holding LP; Xcel Energy Inc.; IIF US Holding LP.
20201013	G	Eros International plc; STX Filmworks, Inc.; Eros International plc.
20201014	G	Artur Bergman; Fastly, Inc.; Artur Bergman.
20201016	G	Turning Point Brands, Inc.; Standard General Offshore Fund Ltd.; Turning Point Brands, Inc.
20201023	G	KKR Americas Fund XII, L.P.; US Foods Holding Corp.; KKR Americas Fund XII, L.P.
20201024	G	Flexpoint Fund IV–A, L.P.; TigerRisk Partners LLC; Flexpoint Fund IV–A, L.P.
		05/13/2020
20201025	G	LS Power Equity Partners IV, L.P.; Siemens Aktiengesellschaft; LS Power Equity Partners IV, L.P.
		05/14/2020
20201021	G	Ingredion Incorporated; PureCircle Limited; Ingredion Incorporated.
		05/19/2020
20201034	G	Wellspring Capital Partners VI, L.P.; Merit Mezzanine Fund VI, L.P.; Wellspring Capital Partners VI, L.P.
20201035	G	Cognizant Technology Solutions Corporation; William C. Ross, Jr. and Peri Ross; Cognizant Technology Solutions Corporation.
20201039	G	Nemo Investor Aggregator, Ltd.; OneSpaWorld Holdings Limited; Nemo Investor Aggregator, Ltd.
20201042	G	TPG Inertia Holdings, LP; Moshe Yanai; TPG Inertia Holdings, LP.
		05/20/2020
20201036	G	Adam D'Angelo; Quora, Inc.; Adam D'Angelo.
		05/21/2020
20200939	G	WillScot Corporation; Mobile Mini, Inc.; WillScot Corporation.
		05/26/2020
20201040	G	GHO Capital Fund II LP; X-Co Holdings, LP; GHO Capital Fund II LP.
20201044	G	Royal Dutch Shell plc; National Fuel Gas Company; Royal Dutch Shell plc.
20201045	G	National Fuel Gas Company; Royal Dutch Shell plc; National Fuel Gas Company.
20201050	G	USI Advantage Corp.; Associated Banc-Corp.; USI Advantage Corp.
20201053	G	Aves IA Infrastructure Limited Partnership; Newco LLC; Aves IA Infrastructure Limited Partnership.
20201054	G	Aflac Incorporated; Zurich Insurance Group Ltd.; Aflac Incorporated.
20201056	G	Clayton, Dubilier & Rice Fund X, L.P.; Randal D. Boyd; Clayton, Dubilier & Rice Fund X, L.P.
20201061	G	Change Healthcare Inc.; National Health Coalition, Inc.; Change Healthcare Inc.
20201063	G	Lyndon Lea; Prism Data, LLC; Lyndon Lea.
		05/27/2020
20201046	G	Halmont Properties Corporation; TerraForm Power NY Holdings, Inc.; Halmont Properties Corporation.
20201047	G	Brookfield Renewable Partners L.P.; TerraForm Power NY Holdings, Inc.; Brookfield Renewable Partners L.P.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry (202–326–3100), Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2020–13109 Filed 6–17–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3077]

Agency Information Collection Activities; Proposed Collection; Comment Request; Obtaining Information To Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA research in obtaining information from pharmacists and other management at outsourcing facilities as well as at related compounding businesses to support a comprehensive analysis of the outsourcing facility sector that will inform ongoing FDA work in this area.

DATES: Submit either electronic or written comments on the collection of information by August 17, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 17, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 17, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–3077 for ''Agency Information Collection Activities; Obtaining Information to Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Obtaining Information To Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities

OMB Control Number 0910–0883—Extension

This information collection supports Agency-sponsored research. Drug compounding is generally the practice of combining, mixing, or altering ingredients of a drug to create a medication tailored to the needs of an individual patient. Although compounded drugs can serve an important medical need for certain patients when an approved drug is not medically appropriate, they also present a risk to patients. Compounded drugs are not FDA-approved. Therefore, they do not undergo premarket review by FDA for safety, effectiveness, and quality. Since compounded drugs are subject to a lower regulatory standard than approved drugs, Federal law places conditions on compounding that are designed to protect the public health.

The Drug Quality and Security Act of 2013 (Pub. L. 113–54) created ''outsourcing facilities''—a new industry sector of drug compounders held to higher quality standards to protect patient health. Outsourcing facilities are intended to offer a more reliable supply of compounded drugs needed by hospitals, clinics, and other providers. Five years since its creation, this domestic industry is still relatively small and is experiencing growth and market challenges. In addition, FDA continues to find concerning quality and safety problems during inspections.

To help this industry meet its intended function, FDA intends to engage in several initiatives to address challenges and support compliance and advancement. One initiative includes conducting indepth research to understand better the challenges and opportunities encountered by the outsourcing facility sector in a number of different areas. These include: Operational barriers and opportunities related to the outsourcing facility market and business viability; knowledge and operational barriers and opportunities related to compliance with Federal policies and good quality drug production; and barriers and opportunities related to outsourcing facility interactions with FDA.

The results of this research will be used by FDA to develop a comprehensive understanding of the outsourcing facility sector, its challenges, and opportunities for advancement. The information will be essential to help identify knowledge and information gaps, operational barriers, and views on interactions with FDA. The research results will inform FDA's future approaches to communication, education, training, and other engagement with outsourcing facilities to address challenges and support advancement.

Researchers will engage pharmacists, staff, and management from outsourcing facilities and similar compounding businesses. Researchers may use surveys, interviews, and focus groups to obtain information concerning challenges and opportunities encountered by outsourcing facilities. Within this context, the following questions or similar, related questions may be posed:

1. What financial and operational considerations inform outsourcing facility operational and business model decisions?
2. What factors impact the development of a sustainable outsourcing facility business?
3. What financial and operational considerations inform outsourcing facility product decisions?
4. Do outsourcing facilities understand the Federal legislative and regulatory policies that apply to them? What, if any, knowledge gaps need to be addressed?
5. What challenges do outsourcing facilities face when implementing Federal current good manufacturing practice (CGMP) requirements?
6. How do outsourcing facilities implement quality practices at their facilities?
7. How is CGMP and quality expertise developed by outsourcing facilities? How do they obtain this knowledge, and what training do they need?
8. What are the economic consequences of CGMP non-compliance/product failures for outsourcing facilities?
9. What are outsourcing facility management and staff views on current interactions with FDA? How do they want the interactions to change?
10. What are outsourcing facilities' understanding of how to engage with FDA during and following an inspection?

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Surveys, focus groups, and interviews	300	2	600	1	600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: June 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13086 Filed 6–17–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Injury Prevention Program; Tribal Injury Prevention Cooperative Agreement Program (TIPCAP)

Announcement Type: New/Competing Continuation

Funding Announcement Number: HHS–2020–IHS–IPP–0001

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.284

Key Dates

Application Deadline Date: October 1, 2020

Earliest Anticipated Start Date: December 1, 2020

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS), Office of Environmental Health and Engineering, Division of Environmental Health Services, Injury Prevention Program (IPP) is accepting applications for the Tribal Injury Prevention Cooperative Agreement Program. This program is authorized under: 25 U.S.C. 13, Snyder Act, and Indian Health Care Improvement Act at 25 U.S.C. 1621b, 25 U.S.C. 1603(11), and 25 U.S.C. 1665a(c)(1)(J). This program is described in the Assistance Listings located at *https://beta.sam.gov* (formerly known as Catalog of Federal Domestic Assistance) under 93.284.

Background

The mission of the IHS Injury Prevention Program is to raise the health status of American Indian/Alaska Native (AI/AN) people to the highest possible level by decreasing the incidence of severe injuries and death to the lowest possible level, and by increasing the ability of Tribes to address their injury problems.

The IHS IPP categorizes injuries by intent and type. Unintentional injury types are falls, burns, drowning, poisoning, and motor vehicle related injuries. Unintentional injuries are the leading cause of death for AI/AN people between the ages of 1 and 44 years.

Intentional injury types are suicide and violence related injuries, and are also a leading cause of death. Considering only injury-specific causes of death, suicide is the third leading injury cause of death among all AI/AN. Depending on the injury type, AI/AN experience injury mortality rates that are 2.5 to 8.7 times higher than the U.S. all races rates. (Trends in Indian Health 2017 Edition, IHS, Division of Program Statistics).

Purpose

The purpose of this IHS cooperative agreement is to address the disparity in injury rates by encouraging Tribes to implement focused, community-based injury prevention programs and projects using evidence-based strategies. Injury prevention evidence-based strategies are prevention methods that have been scientifically evaluated and proven to prevent injuries, including strategic changes to the environment (for example, roadways, elder homes for fall hazards, smoke alarms) and strategies to promote behavior change (such as car seat use, float coat use). Injury prevention programs and projects are most effective when based on these model practices. The use of well-planned, promising, and innovative injury prevention strategies is also recommended.

Nationally, the leading causes of AI/AN unintentional injury deaths are due to motor vehicle crashes (Trends in Indian Health 2017 Edition, IHS, Division of Program Statistics) and falls are a leading cause of hospitalization for older adults (ages 55+) in several IHS Areas. Motor vehicle related injuries and elder falls are priority areas of the IHS IPP. To view IHS IPP supported evidence-based and promising strategies visit the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Selected Evidence-based Strategies for Preventing Injuries (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Evidence-based_Strategies.pdf*). The IHS IPP will accept applications for programs addressing the following injury types:

Unintentional Injuries

- Motor vehicle related
- Falls
- Burns
- Drowning
- Poisoning

Intentional Injuries

- Suicide
- Violence related

This cooperative agreement opportunity is available to any eligible applicant regardless of whether or not they have previously received IHS IPP Part I or II funding. The IHS will accept applications in either of the two following categories:

Part I—Injury Prevention Programs: 2,500 minimum population requirement

Part II—Evidence-based strategies or promising and innovative projects: No minimum population requirement

Part I—Injury Prevention Programs

Part I applicants must meet the IHS minimum user population of 2,500. IHS user population is defined as AI/AN people who have utilized services funded by the IHS at least once during the last three-year period. This requirement allows the IHS IPP to reach a large number of AI/AN people with the limited amount of available funding. Additionally, it is important for the determination of reliable outcomes. In order to have the statistical power needed to detect differences of relatively small events in a small community, such as annual motor vehicle crashes with an injury or death, it is necessary that there be an adequate sample size. The minimum sample size needed was determined to be 2,500 persons.

Part II—Evidence-Based Strategies or Promising and Innovative Strategy Projects

There is no IHS user population requirement.

II. Award Information

Funding Instrument

Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2020 is approximately $1,900,000. Individual award amounts for the Part I first budget year are anticipated to be from $80,000 up to $125,000 and the Part II first budget year awards are anticipated to be from $20,000 up to $32,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of funds and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 24 awards will be issued under this program announcement. Applicants may apply for more than one of the areas of funding but only one will be awarded.

Part I—Five-Year Injury Prevention Programs: Up to $125,000 will be awarded to each successful applicant each year (up to 12 awards).

Part II—Five-Year Evidence-based and Innovative Strategy Projects: Up to $32,000, for each of the five years will be awarded to successful applicants (up to 12 awards).

Applicants will only be issued one award, either for Part 1—Injury Prevention Programs or Part II—Evidence-based or Promising and Innovative Strategy Projects. Applicants must respond to the appropriate ''Criteria'' under Section VI—Application Review Information.

Period of Performance

The period of performance is for five years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. However, the funding agency (IHS) is anticipated to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for IHS.

Substantial Involvement Description for Cooperative Agreement

A. For the IHS IPP, substantial involvement includes providing reporting templates and tools and technical assistance to the Tribal Injury Prevention Coordinator grantee in program planning, implementation, and evaluation. Technical assistance includes the following activities which will be supported by an outside contractor:

1. Conduct biannual conference calls for technical assistance and program progress.
2. Assist awardee to create an annual work plan, develop an evaluation plan, write progress reports, conduct data analysis, interpret findings, and provide feedback on products developed by the awardee.
3. Produce the Tribal Injury Prevention Cooperative Agreement (TIPCAP) newsletter for information sharing and collaboration.
4. Conduct Part I annual site visits for technical assistance.
5. Develop a program guide for program implementation and injury prevention best practices.
6. Provide training and webinars for the awardee.
7. Coordinate an annual awardee workshop to build skills, share new information and innovative strategies, and to assist awardees in program implementation specific to AI/AN communities.

B. Part I—Injury Prevention Program Involvement

IHS will assign an IHS Injury Prevention Specialist (Area, District) or designee to serve as the Project Officer (technical advisor/monitor) for the Tribal Injury Prevention Program awardee. Responsibilities of the IHS Project Officers are described below:

1. Assist the Tribal Injury Prevention Coordinator with decisions regarding implementation of program activities, including evaluation (data collection, data quality, analysis, and reporting), use of public information materials, and quality assurance (adherence to evidence-based practice methods).
2. Monitor the overall progress and challenges of the awardee's program and their adherence to the terms and conditions of the cooperative agreement.
3. Provide guidance for meeting deadlines of required progress and financial reports.
4. Support contractor oversight by participating in site visits, meetings, and conference calls.
5. Provide guidance in preparing articles for publication and/or presentations of program successes, lessons learned, and new findings.
6. Recommend training and continuing education courses to develop the Tribal Injury Prevention Coordinator's competencies.
7. Attend the annual awardee workshop.

C. Part II—Evidence-Based and Promising and Innovative Strategy Projects

IHS will assign an IHS IPP Specialist or designee to serve as the local Project Officer. Responsibilities of the IHS local Project Officers are described below:

1. Provide guidance to the awardee involving strategy, evaluation (data collection, analysis, reporting, and interpretation of findings), use of public information materials, quality assurance, coordination of activities, training, reports, budget and evaluation.
2. Attend annual awardee workshop.

Technical assistance will also include the following activities which will be supported by an outside contractor:

a. Schedule biannual conference calls for technical assistance.
b. Assist awardee in writing progress reports.
c. Provide guidance on injury prevention best practices.
d. Provide training to awardees.

III. Eligibility Information

1. Eligibility

- This is a full competition. Under this announcement, an applicant must be defined as one of the following under 25 U.S.C. 1603: A federally-recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided That, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal resolutions from the Tribes to be served.
- An Urban Indian organization (UIO), as defined by 25 U.S.C. 1603(29), that currently has a grant or contract award from the IHS under the Indian Health Care Improvement Act, 25 U.S.C. 1651–1660h. A UIO is a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of non-profit status with the application, *e.g.,* 501(c)(3).

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under the Award Information, Estimated Funds Available section, or exceed the Period of Performance outlined under the Award Information, Period of Performance section will be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

The following documentation is required.

Tribal Resolution

The DGM must receive an official, signed Tribal resolution prior to issuing a Notice of Award (NoA) to any applicant selected for funding. An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official, signed Tribal resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal resolution is not in lieu of the required signed resolution, but is acceptable until a signed resolution is received. If an official signed Tribal resolution is not received by DGM when funding decisions are made, then a NoA will not be issued to that applicant and it will not receive IHS funds until it has submitted a signed resolution to the Grants Management Specialist listed in this Funding Announcement.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are hosted on *http://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
- Application forms:

1. SF–424, Application for Federal Assistance.
2. SF–424A, Budget Information—Non-Construction Programs.
3. SF–424B, Assurances—Non-Construction Programs.

- Project Narrative (not to exceed 10 pages). See Section IV.2.A Project Narrative for instructions.

1. Background information on the organization that is relevant to injury prevention.
2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.

- Budget Justification and Narrative (not to exceed 3 pages). See Section IV.2.B Budget Narrative for instructions.
- Work plan with timeframe.
- Logic model for the program/project.
- Evaluation plan for proposed strategies.
- Tribal Resolution(s).
- Letters of Support from organization's Board of Directors.
- Letters of commitment from partners with a role in the work plan.
- 501(c)(3) Certificate for Urban Indian organizations
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Organizational Chart (optional).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
2. Face sheets from audit reports. Applicants can find these on the FAC website: *https://harvester.census.gov/facdissem/Main.aspx.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements with the exception of the Discrimination Policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate document that is no more than 10 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; (4) and be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and not be reviewed. The 10-page limit for the narrative does not include the work plan, logic model, evaluation plan, standard forms, Tribal resolutions, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (limit—2 pages)

Section 1: Needs

Briefly describe the Tribe, Indian organization or Urban Indian organization and service population.

Describe the needs of the Tribe, Indian organization or Urban Indian organization by answering the following questions:

a. What is the injury problem?
b. Whom does the problem affect?
c. Why is it a problem?
d. What are the attributes (risk and contributing factors) of the problem?

Part 2: Program Planning and Evaluation (limit—5 pages)

Section 1: Program Plans

Describe the following for the Tribe, Indian organization or Urban Indian organization:

a. Design of the proposed program the applicant proposes to develop
b. Choice of each evidence-based or promising and innovative strategy to address the selected injury type(s), including a description of which intervention(s) related to the strategy will be implemented

Section 2: Program Evaluation

a. Describe fully and clearly how the proposed strategies will impact the community in minimizing or reducing severe injuries of the target population

b. Describe fully and clearly how each project indicator (objective) will be evaluated, including a sample list of data variables to be collected (*i.e.* car seat event data, responses from community surveys, home fall hazards corrected, law enforcement citations)

c. Identify anticipated or expected benefits for the Tribal community or target population

Part 3: Program Report (limit—3 pages)

Describe your organization's significant program activities over the past three years associated with the goals of this announcement, including injury prevention projects, campaigns, and results.

Describe the accomplishments of the goals established for the timeframe, or if applicable, provide justification for the lack of progress.

B. Budget Narrative (page limit—3)

Provide a budget narrative that explains the amounts requested for each line of the budget. Police enforcement services related to evidence-based strategies are allowable and should be included under the ''contractual'' category. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''other'' category is justified. For subsequent budget years, the narrative should highlight the changes from year 1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. EDT on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Acting Director, DGM, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

• Preaward costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Preaward costs are incurred at the risk of the applicant.

• The available funds are inclusive of direct and indirect costs.

• Only one cooperative agreement will be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *http://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Acting Director, DGM. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Paul.Gettys@ihs.gov.* The waiver must: (1) Be documented in writing (emails are acceptable), before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to DGM. Applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

• Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).

• Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to twenty working days.

• Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.

• Applicants must comply with any page limits described in this funding announcement.

• After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B, which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through *http://fedgov.dnb.com/webform,* or call (866) 705–5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at *https://www.sam.gov/SAM/* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge, but can take several weeks to process. Applicants may register online at *https://www.sam.gov/SAM/*.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page: *https://www.ihs.gov/dgm/policytopics/*.

V. Application Review Information

Weights assigned to each section are noted in parentheses. The 10-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

1. Criteria

Quality programs and projects are the aim of the IHS IPP. Quality programs and projects are those that are well planned and implemented, targeted, focused, well evaluated, and manageable. To achieve quality programs and projects the IHS IPP limits the injury type and number of strategies and interventions applicants may propose. For additional information on evidence-based strategies for elder fall prevention and motor vehicle related injuries visit the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Selected Evidence-based Strategies for Preventing Injuries (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Evidence-based_Strategies.pdf*). Although motor vehicle related injuries and elder fall prevention are priority areas of the IHS IPP, no advantage or bonus points will be given for proposals in these areas. The IHS IPP will accept applications for the following injury types, and evidence based, promising, and innovative strategies, and their corresponding interventions.

Unintentional Injuries

UNINTENTIONAL INJURIES—MOTOR VEHICLE RELATED

	Interventions for strategy
Evidence-based strategies:	
Seat belt use	Policy and laws, Education, Law enforcement.
Car seat use	Policy and Laws, Education with car seat distribution, Law enforcement.
Impaired driving prevention	Policy and Laws, Law enforcement.
Promising strategy:	
Distracted driving prevention	Policy and laws, Education, Law enforcement.
Innovative strategy:	
Applicant may propose innovative strategy to address motor vehicle injury prevention.	Well planned interventions for strategy.

Other motor vehicle related strategies: (1) Pedestrian safety, (2) environmental change, including addressing roadway hazards, (3) off-road vehicle safety (snow machines, all-terrain vehicle).

UNINTENTIONAL INJURIES—FALLS

	Interventions for strategy
Evidence-based strategy:	
Elder fall prevention	Home fall hazard corrections, Balance and strength exercise.
Innovative strategy:	
Applicant may propose innovative strategy to address falls	Well planned interventions for strategy.

Other strategies: Playground fall prevention, Traumatic Brain Injury Prevention.

UNINTENTIONAL INJURIES—POISONING

	Interventions for strategy
Promising strategy:	
Community opioid overdose prevention	Home lock box for medications, Use of drug deactivation bags.
Innovative strategy:	
Applicant may propose innovative strategy to prevent poisoning	Well planned interventions for strategy.

UNINTENTIONAL INJURIES—BURNS

	Interventions for strategy
Evidence-based strategy:	
Home burn prevention	Smoke alarm installation, Home escape plan development.
Innovative strategy:	
Applicant may propose innovative strategy to prevent burn injuries	Well planned interventions for strategy.

UNINTENTIONAL INJURIES—DROWNING

	Interventions for strategy
Evidence-based strategy:	
Use of personal floatation device	Device distribution and education.
Innovative strategy:	
Applicant may propose innovative strategy to prevent drowning	Well planned interventions for strategy.

Intentional Injuries

INTENTIONAL INJURIES—SUICIDE PREVENTION

	Interventions for strategy
Evidence-based strategy:	
Gatekeeper training—training to teach identification of warning signs and how to respond.	Examples include Question, Persuade and Refer (QPR) and Applied Suicide Intervention Skills Training (ASIST).
Reducing access to lethal means	Limiting access to medications and chemicals and removing or locking up firearms and other weapons.
Innovative strategy:	
Applicant may propose innovative strategy to prevent suicides	Well planned interventions for strategy.

INTENTIONAL INJURIES—VIOLENCE RELATED

	Interventions for strategy
Evidence based strategies:	
Strategies for the prevention of child abuse and neglect, youth violence, elder abuse, intimate partner violence, and sexual violence.	Varies by topic.
Innovative strategy:	
Applicant may propose innovative strategy to prevent violence related injuries.	Well planned interventions for strategy.

Part I Injury Prevention Programs

The purpose of the Part I—Injury Prevention Program (IPP) is to prevent injuries through development of a program with the following components: (1) A trained Tribal Injury Prevention Coordinator, (2) focused, well implemented project(s) with clear indicators (goals and objectives), (3) a well-executed evaluation plan, (4) established partnerships, (5) activities to sustain the IPP, and (6) reported results.

Responsibilities of the awardee are described below:

Part I—Injury Prevention Program (IPP)

The awardee will:

(1) Hire a full time Tribal Injury Prevention Coordinator.

a. Must be full-time (40 hours/week) and solely dedicated to the management and control of the IPP, and to achieving the aims of the IPP work plan.

b. The position cannot be part-time or split duties or have other duties as assigned.

c. The position may be located within an Urban Indian health organization, Tribal health program, Tribal highway safety program, or a community-based Tribal program.

(2) Develop and maintain an evaluation plan for project data collection including baseline, timeline, and outcomes. Data will be used for priority setting, program planning, and evaluation of interventions.

(3) Develop a five-year plan based on sound morbidity/mortality injury data and evidence-based or promising and innovative strategies. If baseline data are not available at the time of application, the applicant must obtain baseline data before strategies are implemented.

(4) Incorporate injury prevention evidence-based strategies that align with the IHS IPP priorities (motor vehicle related and fall injury prevention) and/or local Tribal injury priorities based on sound justification, including injury morbidity and mortality data.

(5) Tailor the IPP program educational materials with culturally relevant information to promote safe behavior and empower communities to take action in injury prevention.

(6) Develop partnerships through leading or participating in a multidisciplinary injury prevention coalition to share resources, expertise, and collaborate in planning, implementing, and evaluating projects.

(7) Attend the mandatory annual grantee workshop.

(8) Participate in IHS/contractor site visits, conference calls, and webinars.

(9) Successfully complete the IHS Introduction to Injury Prevention Course (Level I) and Intermediate Injury Prevention Course (Level II).

(10) Successfully complete certification trainings necessary for the IPP position such as Child Passenger Safety Technician, Tai Chi Instructor, etc.

(11) Engage in activities to promote sustainability of the IPP.

(12) Submit one article per year to the TIPCAP Newsletter.

Part I Injury Prevention Programs may select up to two strategies to implement in years 1 and 2, and up to three strategies in subsequent years. There is no requirement to implement all corresponding interventions for each strategy. The applicant may choose which interventions to implement. For example, an applicant may select the seat belt use strategy and implement 2 of the 3 corresponding interventions; education and law enforcement. The applicant must decide which components will be most effective in their community. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

A. Part I Introduction and Need for Assistance (20 Points)

1. Describe the following:

a. Need for funding and the injury problem using local, IHS, state, or national injury data for the community or target population, including baseline data.

b. Target population to be served by the proposed program. Provide documentation that the IHS user population is at least 2,500 people. (IHS User population is the ONLY acceptable source).

c. Choice of injury topic(s) to be addressed in the project and reasons for choosing the injury type(s)

B. Part I Project Objective(s), Work Plan and Approach (30 Points)

Goal and objective statements must be clear and concise. The methods and staffing will be evaluated on the extent to which the applicant provides:

1. A multi-year work plan with long-term and short-term goals and objectives and a logic model. The five-year plan will:

a. Contain long-term (5-year) goal statement and short term objective(s) for year 1 and year 2 that are specific, measurable, achievable, relevant, and have a timeframe (SMART). Objectives for years 3 through 5 will be developed after the IPP begins. Sample SMART goals and objectives are available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Tips for Injury Prevention Program/Project Planning (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Tips%20for_Program%20%20Project_Planning.pdf*).

b. Include a work plan that corresponds with short-term objectives. The work plan will include activities, action steps, person(s) responsible and time frame for each short-term objective. A sample work plan is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Tips for Injury Prevention Program/Project Planning (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Tips%20for_Program%20%20Project_Planning.pdf*).

c. Contain a logic model which demonstrates inputs (personnel and materials), outputs (activities and participation), and outcomes (short, medium, and long term). A sample logic model is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Tips for Injury Prevention Program/Project Planning (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Tips%20for_Program%20%20Project_Planning.pdf*).

d. Include a description of how the Tribe/applicant will maintain the IPP after the five-year funding cycle ends.

C. Part I Program Evaluation (30 Points)

An evaluation plan must be provided for quality assurance, to measure progress, and to meet the long-term goal of the program or project. The evaluation plan will be designed to measure processes and outcomes (as applicable) for each strategy, intervention, and action step. A sample evaluation plan is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Tips for Injury Prevention Program/Project Planning (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Tips%20for_Program%20%20Project_Planning.pdf*).

Applicants for the seat belt use strategy will use the IHS Seat Belt Survey Protocol for baseline use rates (if possible). The IHS Seat Belt Survey Protocol is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*).

D. Part I Organizational Capabilities, Key Personnel and Qualifications (10 Points)

1. Describe the following:

a. The program or department which will provide oversight, office space, and support for the IPP and for the coordinator

b. Organizational capabilities and key personnel, including degree of commitment

c. Partners and their role in the project or in achieving the goals of the project, including degree and proof of commitment (letter of commitment). Letters of commitment from partners with a substantial role should include specific tasks the partner will perform.

E. Part I Categorical Budget and Budget Justification (10 Points)

Project budgets must include the following:

1. A narrative
2. 1-year categorical budget
3. Justification for funding requested
4. Travel expenses for annual awardee workshop (mandatory participation) at a city and location to be determined by the IHS IPP, including airfare, per diem, lodging, etc. The first annual awardee workshop will be held in the Washington, DC area.

If indirect costs are claimed, indicate and apply the current negotiated rate to the budget.

Part II Evidence-Based and Promising and Innovative Projects

The purpose of the Part II—Evidence-based and Promising and Innovative Strategy Projects is to address injuries through implementation of a small, focused, and manageable project with clear indicators (goals and objectives) and an evaluation plan. Involving appropriate partners is encouraged as well as engaging in activities to sustain the project. Applicant may use up to 20% of total award for salary support.

The awardee will:

(1) Work in partnership with the IHS in decisions involving strategy, injury data (collection, analysis, reporting), use of public information materials, quality assurance, coordination of activities, training, progress reports, budget, and evaluation.

(2) Develop and maintain an evaluation plan for project data collection including baseline, timeline, and outcomes. Data will be used for priority setting, project planning, and evaluation.

(3) Develop a five-year plan based on sound morbidity/mortality injury data and evidence-based or promising and innovative strategies. If baseline data are not available at the time of application, the applicant must obtain baseline data before strategies are implemented.

(4) Successfully complete the IHS Introduction to Injury Prevention Course (Level I).

(5) Participate in IHS/contractor conference calls and webinars.

(6) Engage in activities to promote sustainability of the project.

(7) Attend the mandatory annual awardee workshop.

(8) Submit one article per year to the TIPCAP newsletter.

Part II Evidence-based, Promising or Innovative Projects may select one strategy to implement in years 1 and 2, and up to two strategies in subsequent years. There is no requirement to implement all corresponding interventions for each strategy. The applicant may choose which interventions to implement. For example, an applicant may select the seat belt use strategy and implement 2 of the 3 corresponding interventions; education and law enforcement. The applicant must decide which components will be most effective in their community. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

A. Part II Introduction and Need for Assistance (20 Points)

1. Describe the following:

a. Need for funding and the injury problem using local, IHS, state, or national injury data for the community or target population, including baseline data.

b. Target population to be served by the proposed project (*i.e.* children under the age of 8, individuals utilizing the community lake, impaired drivers).

c. Choice of injury topic(s) to be addressed in the project and reasons for choosing the injury type(s)

B. Part II Project Objective(s), Work Plan and Approach (30 Points)

Goals and objectives must be clear and concise. The methods and staffing will be evaluated on the extent to which the applicant provides a multi-year work plan with a 5-year goal, objectives for years 1 and 2, and a logic model.

The five-year plan will include clear and concise goal and objective statements. The methods and staffing will be evaluated on the extent to which the applicant provides:

1. A multi-year work plan with long-term and short-term goals and objectives and a logic model. The five-year plan will:

a. Contain a long-term (5-year) goal statement and short term objective(s) for year 1 and year 2 that are specific, measurable, achievable, relevant, and have a timeframe (SMART). Objectives for years 3 through 5 will be developed after the IPP begins. Sample SMART goals and objectives are available at the IHS IPP website or Tips for Injury Prevention Program/Project Planning.

b. Include a work plan that corresponds with short-term objectives. The work plan will include activities, action steps, person(s) responsible and time frame for each short-term objective. A sample work plan is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Tips for Injury Prevention Program/Project Planning (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Tips%20for_Program%20%20Project_Planning.pdf*).

c. Contain a logic model which demonstrates inputs (personnel and materials), outputs (activities and participation), and outcomes (short, medium, and long term). A sample logic model is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Tips for Injury Prevention Program/Project Planning (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Tips%20for_Program%20%20Project_Planning.pdf*).

d. Include a description of how the Tribe/applicant will maintain the IPP after the five-year funding cycle ends.

C. Part II Program Evaluation (30 Points)

An evaluation plan must be provided for quality assurance, to measure progress, and to meet the long-term goal of the program or project. The evaluation plan will be designed to measure processes and outcomes (as applicable) for each strategy, intervention, and action step. A sample evaluation plan is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*) or Tips for Injury Prevention Program/Project Planning (*https://www.ihs.gov/sites/injuryprevention/themes/responsive2017/display_objects/documents/IHS_IPP_Tips%20for_Program%20%20Project_Planning.pdf*). Applicants for the seat belt use strategy will use the IHS Seat Belt Survey Protocol for baseline use rates (if possible). The IHS Seat Belt Survey Protocol is available at the IHS IPP website (*https://www.ihs.gov/InjuryPrevention/*).

D. Part II Organizational Capabilities, Key Personnel and Qualifications (10 Points)

1. Describe the following:

a. The program or department which will provide oversight and support for the project.

b. Organizational capabilities and key personnel, including degree of commitment.

c. Partners and their role in the project or in achieving the goals and objectives of the project, including degree and proof of commitment (letter of commitment).

E. Part II Categorical Budget and Budget Justification (10 Points)

1. Project budgets must include the following:

a. A narrative.

b. 1-year categorical budget.

c. Justification for funding requested.

d. Travel expenses for annual awardee workshop (mandatory participation) at a city and location to be determined by the IHS IPP, including airfare, per diem, lodging, etc. The first annual awardee workshop will be held in the Washington, DC area.

If indirect costs are claimed, indicate and apply the current negotiated rate to the budget.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional Documents Can Be Uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model, evaluation plan, and/or time line for proposed indicators.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Injury Prevention Program within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

• Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

• HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

• Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75, subpart E.

E. Audit Requirements:

• Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75, subpart F.

2. Indirect Costs

This section applies to all recipients that request reimbursement of indirect costs (IDC) in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement, and submit it to DGM, prior to DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* or the Department of Interior (Interior Business Center) *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. Reporting templates provided by the IHS IPP must be used and will include highlights from the reporting period, a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Report (FFR or SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at *https://pms.psc.gov.* The applicant is also requested to upload a copy of the FFR (SF–425) into our grants management system, GrantSolutions. Failure to submit timely reports may result in adverse award actions blocking access to funds.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Data Collection and Reporting

Awardees will collect data for evaluation and informational purposes. Some data variables will be determined by the applicant to meet local program/project needs. However, strategies such as motor vehicle injury prevention and elder fall prevention will have standard data collection variables to allow for overall IHS IPP evaluation and summary. These data will be reported on required templates provided by the IHS IPP.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by federal agencies. The Transparency Act also includes a requirement for recipients of federal grants to report information about first-tier sub-awards and executive compensation under federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the period of performance is made up of more than one budget period) and where: (1) The period of performance start date was October 1, 2010 or after, and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy website at *https://www.ihs.gov/dgm/policytopics/.*

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex. This includes ensuring programs are accessible to persons with limited English proficiency. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.* For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53.*
- Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html.*
- HHS funded health and education programs must be administered in an environment free of sexual harassment. Please see *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html; https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html;* and *https://www.eeoc.gov/eeoc/publications/fs-sex.cfm.*
- Recipients of FFA must also administer their programs in compliance with applicable federal religious nondiscrimination laws and applicable federal conscience protection and associated anti-discrimination laws. Collectively, these laws prohibit exclusion, adverse treatment, coercion, or other discrimination against persons or entities on the basis of their consciences, religious beliefs, or moral convictions. Please see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.* Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under federal civil rights laws at *https://www.hhs.gov/ocr/about-us/contact-us/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS), at *http://www.fapiis.gov,* before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113. Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Acting Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857. (Include ''Mandatory Grant Disclosures'' in subject line). Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov.*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/.* (Include ''Mandatory Grant Disclosures'' in subject line). Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov.* Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR parts 180 & 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: CAPT Holly Billie, Injury Prevention Program Manager, IHS, OEHE, DEHS, Injury

Prevention Program, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 443–8620, Fax: (301) 443–7538, Email: *Holly.Billie@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Andrew Diggs, Grants Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2241, Fax: (301) 594–0899, Email: *Andrew.Diggs@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Acting Director, DGM, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 594–0899, EMail: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Chris Buchanan,

Assistant Surgeon General, RADM, U.S. Public Health Service Deputy Director, Indian Health Service.

[FR Doc. 2020–13180 Filed 6–17–20; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Voice, Speech, and Language Application Review.

Date: July 9, 2020.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Blvd., Ste. 8300, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Chemosensory Fellowship Application Review.

Date: July 10, 2020.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Blvd., Ste. 8300, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, (301) 496–8683, *yangshi@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 12, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13094 Filed 6–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: The National Institute of Mental Health Data Archive (NDA), NIMH

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of Mental Health (NIMH), National Institutes of Health (NIH), will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

ADDRESSES: Submit comments to Melba Rojas, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning, and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892 or email to *nimhprapubliccomments@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project, contact: Melba Rojas, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning, and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892, call 301–443–4335, or email your request, including your mailing address, to *nimhprapubliccomments@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: The National Institute of Mental Health Data Archive (NDA), NIMH, 0925–0667, expiration date 11/30/2020, EXTENSION, National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIMH Data Archive (NDA) is an infrastructure that allows for the submission and storage of human subjects' data from researchers conducting studies related to many scientific domains, regardless of the source of funding. The NIH and NIMH developed this resource to allow for the public collection of information from: (1) Individuals who seek permission to access data from the NDA for the purpose of scientific investigation, scholarship or teaching, or other forms of research and research development, via the Data Use Certification (DUC), and (2) individuals who request permission to submit data to the NDA for the purpose of scientific investigation, scholarship or teaching, or other forms of research and research development, via the Data Submission Agreement (DSA). The extensive information stored in the NDA continues to provide a rare and valuable scientific resource to the field and plays an integral part in fulfilling research objectives in multiple scientific domains. The NIH and the NIMH seek to encourage use of the NDA by investigators in the field of multiple scientific research domains to achieve rapid scientific progress. In order to take full advantage of this resource and maximize its research value, it is important that data are made broadly available, on appropriate terms and conditions, to the largest possible number of investigators.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1875.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
NDA Data Submission Agreement (DSA).	Researchers submitting data	300	1	90/60	450
NDA Data Use Certification (DUC)	Researchers requesting access to data.	950	1	90/60	1,425
Total			1,250		1,875

Dated: June 11, 2020.

Melba O. Rojas,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2020–13136 Filed 6–17–20; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; Development of Radiation/Nuclear Medical Countermeasures (MCMs).

Date: July 14, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sandip Bhattacharyya, 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 3G42, Rockville, MD 20852, *sandip.bhattacharyya@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 12, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13098 Filed 6–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Initial Review Group.

Date: June 25–26, 2020.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Rockledge Drive, Room 6187, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institute of Health, 6701 Democracy Blvd., Suite 703H, Bethesda, MD 20892, (301) 827–1499, *cheryl.nordstrom@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. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 12, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13095 Filed 6–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; NSD–B Conflict SEP.

Date: July 1, 2020.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Blvd., North Bethesda, MD 20852 (Video Assisted Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, (301)–496–9223, *joel.saydoff@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.

Date: July 6, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Blvd., North Bethesda, MD 20852 (Video Assisted Meeting).

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301–451–2854, *li.jia@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NSD–K: Clinical Trials in Neurological Disorders.

Date: July 7, 2020.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Blvd., North Bethesda, MD 20852 (Video Assisted Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, Md 20892, (301) 435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 12, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13097 Filed 6–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Specimen Resource Locator (National Cancer Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health, National Cancer Institute (NCI) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Joanne Demchok, Program Director, Cancer Diagnosis Program, Division of Cancer Treatment and Diagnosis, 9609 Medical Center Drive, Rockville, Md 20892 or call non-toll-free number 240–276–5959 or Email your request, including your address to: *peterjo@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Specimen Resource Locator (NCI), 0925–0703: Expiration Date 11/30/2020, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The availability of specimens and associated data is critical to increase our knowledge of cancer biology, and to translate important research discoveries to clinical application. The development of molecular technologies in cancer patients, with defined molecular abnormalities, advances identification and development of clinically useful biomarkers and diagnostic assays that guide treatment.

The discovery and validation of cancer prevention markers require access, by researchers, to quality clinical biospecimens. In response, to this need, NCI's Cancer Diagnosis Program developed, and is expanding, a searchable database: Specimen Resource Locator (SRL) *https://specimens.cancer.gov/tissue/default.htm.* The SRL allows scientist in the research community and the NCI to locate specimens needed for their research. The SRL lists all NCI supported and non-NCI supported biospecimens repositories and their links. It is not NCI's intent to collect the biospecimens; rather the collections are descriptions of the available data that can act as a resource and be shared with researchers and scientists who are interested. This submission does not involve any analysis.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 68.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Initial Request	State Government	70	1	30/60	35
	Federal Government	60	1	30/60	30
Annual Update	State Government	20	1	5/60	2
	Federal Government	10	1	5/60	1
Totals			160		68

Dated: June 15, 2020.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2020–13139 Filed 6–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Cell Therapies for Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Ziopharm Oncology, Inc. (''Ziopharm''), headquartered in Boston, MA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before July 6, 2020 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)–276–5484 or Email: *andy.burke@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

Group A

E–031–2020: HLA Class I-Restricted T Cell Receptors Against RAS with G12D Mutation

1. U.S. Provisional Patent Application 62/975,544, filed February 12, 2020 (E–031–2020–0–US–01).

E–074–2020: HLA Class I-Restricted T Cell Receptors Against RAS with G12V Mutation

1. U.S. Provisional Patent Application 62/976,655, filed February 14, 2020 (E–074–2020–0–US–01).

E–088–2020: HLA Class II-Restricted T Cell Receptors Against RAS with G12V Mutation

1. U.S. Provisional Patent Application 62/981,856, filed February 26, 2020 (E–088–2020–0–US–01).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the fields of use may be limited to the following:

Fields of Use Applying to Intellectual Property Group A

''Development, manufacture and commercialization of autologous, peripheral blood T cell therapy products engineered by transposon-mediated gene transfer to express T cell receptors reactive to mutated KRAS, as claimed in the Licensed Patent Rights, for the treatment of human cancers. Specifically excluded from this field of use are, a) retrovirally-engineered peripheral blood T cell therapy products for the treatment of human cancers, and b) CRISPR-engineered peripheral blood T cell therapy products for the treatment of human cancers.

Development, manufacture and commercialization of companion diagnostics approved or cleared by the FDA or equivalent foreign regulatory agency for Licensee-proprietary T cell therapy products.''

Intellectual Property Group A is primarily directed to isolated T cell receptors (TCRs) reactive to mutated Kirsten rat sarcoma viral oncogene homolog (KRAS), within the context of several human leukocyte antigens (HLAs). Mutated KRAS, which plays a well-defined driver role in oncogenesis, is expressed by a variety of human cancers, including: Pancreatic, lung, endometrial, ovarian and prostate. Due to its restricted expression in precancerous and cancerous cells, this antigen may be targeted on mutant KRAS-expressing tumors with minimal normal tissue toxicity.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 10, 2020.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2020–13137 Filed 6–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals 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/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SEP II: Step Up for Substance Use Disorders (SUD): A Drug Target Initiative for Scientists Engaged in Fundamental Research (U18—Clinical Trial Not Allowed).

Date: June 23, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Developmental Studies Biorepository and Analysis Center.

Date: July 14, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4234, Bethesda, MD 20892, (301) 402–7371, *yvonne.ferguson@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 12, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13096 Filed 6–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2020–0024]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; notice of committee charter renewal.

SUMMARY: The Secretary of Homeland Security has determined that the renewal of the Data Privacy and Integrity Advisory Committee is necessary and in the public interest in connection with the Department of Homeland Security's performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

DATES: The committee's charter is effective June 10, 2020 and expires June 10, 2022.

ADDRESSES: If you desire to submit comments on this action, they must be submitted by August 9, 2020. Comments must be identified by DHS Docket Number (DHS–2020–0024) and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2020–0024) in the subject line of the message.
- *Fax:* (202) 343–4010.
- *Mail:* Nicole Sanchez, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Privacy Office, Mail Stop 0655, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0655.

Instructions: All submissions must include the words ''Department of Homeland Security'' and DHS–2020–0024, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nicole Sanchez, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Privacy Office, Mail Stop 0655, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0655, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *privacycommittee@hq.dhs.gov.*

Responsible DHS Officials: Constantina Kozanas, Chief Privacy Officer, and Nicole Sanchez, Designated Federal Officer, 245 Murray Lane SW, Mail Stop 0655, Washington, DC 20528, *PrivacyCommittee@dhs.gov,* (202) 343–1717.

SUPPLEMENTARY INFORMATION: *Purpose and Objective:* Under the authority of 6 U.S.C. 451, this charter renewed the Data Privacy and Integrity Advisory Committee as a discretionary committee, which shall operate in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. The Committee provides advice at the request of the Secretary and the Chief Privacy Officer of the Department of Homeland Security (DHS) (hereinafter ''the Chief Privacy Officer'') on programmatic, policy, operational, security, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity, transparency, and other privacy-related matters.

Dated: June 15, 2020.

Constantina Kozanas,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–13143 Filed 6–17–20; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2020–0025]

DHS Data Privacy and Integrity Advisory Committee; Appointments

AGENCY: Department of Homeland Security Privacy Office.

ACTION: Request for applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

SUMMARY: The U.S. Department of Homeland Security seeks applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

DATES: Applications for membership must reach the Department of Homeland Security Privacy Office at the address below on or before July 12, 2020.

ADDRESSES: If you wish to apply for membership, please submit the documents described below to Nicole Sanchez, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by either of the following methods:

- *Email: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2020–0025) in the subject line of the message.
- *Fax:* (202) 343–4010.

FOR FURTHER INFORMATION CONTACT: Nicole Sanchez, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The DHS Data Privacy and Integrity Advisory Committee is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451 and provides advice at the request of the Secretary and the Chief Privacy Officer on programmatic, policy, operational, security, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity, transparency, and other privacy-related matters. The duties of the Committee are solely advisory in nature. In developing its advice and recommendations, the Committee may, consistent with the requirements of the FACA, conduct studies, inquiries, or briefings in consultation with individuals and groups in the private sector and/or other governmental entities. The Committee typically hosts two public meetings per calendar year.

Committee Membership: The DHS Privacy Office is seeking applicants for terms of three years from the date of appointment. Members are appointed by and serve at the pleasure of the Secretary of the U.S. Department of Homeland Security and must be specially qualified to serve on the Committee by virtue of their education, training, and experience in the fields of data protection, privacy, cybersecurity, and/or emerging technologies. Members are expected to actively participate in Committee and Subcommittee activities and to provide material input into Committee research and recommendations. Pursuant to the FACA, the Committee's Charter requires that Committee membership be balanced to include:

1. Individuals who are currently working in higher education, state or local government, or not-for-profit organizations;
2. Individuals currently working in for-profit organizations including at least one who shall be familiar with the data privacy-related issues addressed by small- to medium-sized enterprises; and
3. Individuals currently working in for-profit organizations, including at least one who shall be familiar with data privacy-related issues addressed by large-sized and/or multinational enterprises; and
4. Other individuals, as determined appropriate by the Secretary.

Committee members serve as Special Government Employees (SGE) as defined in section 202(a) of title 18 U.S.C. As such, they are subject to Federal conflict of interest laws and government-wide standards of conduct regulations. Members must annually file a New Entrant Confidential Financial Disclosure Reports (OGE Form 450) for review and approval by Department ethics officials. DHS may not release these reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Committee members are also required to obtain and retain at least a secret-level security clearance as a condition of their appointment. Members are not compensated for their service on the Committee; however, while attending meetings or otherwise engaged in Committee business, members may receive travel expenses and per diem in accordance with Federal regulations.

Committee History and Activities: All individuals interested in applying for Committee membership should review the history of the Committee's work. The Committee's charter and current membership, transcripts of Committee meetings, and all the Committee's reports and recommendations to the Department are posted on the Committee's web page on the DHS Privacy Office website (*www.dhs.gov/privacy*).

Applying for Membership: If you are interested in applying for membership to the DHS Data Privacy and Integrity Advisory Committee, please submit the following documents to Nicole Sanchez, Designated Federal Officer, at the address provided below within 30 days of the date of this notice:

1. A current resume; and
2. A letter that explains your qualifications for service on the Committee and describes in detail how your experience is relevant to the Committee's work.

Your resume and your letter will be weighed equally in the application review process. Please note that by Administration policy, individuals who are registered as Federal lobbyists are not eligible to serve on Federal advisory committees. If you are registered as a Federal lobbyist and you have actively lobbied at any time within the past two years, you are not eligible to apply for membership on the DHS Data Integrity and Privacy Advisory Committee. Applicants selected for membership will be required to certify, pursuant to 28 U.S.C. 1746, that they are not registered as Federal lobbyists. Please send your documents to Nicole Sanchez, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by either of the following methods:

- *Email: PrivacyCommittee@hq.dhs.gov* or
- *Fax:* (202) 343–4010.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the Federal Records Act, 44 U.S.C. 3101; the FACA, 5 U.S.C. appendix; and the Privacy Act of 1974, 5 U.S.C. 552a.

Principal Purposes: When you apply for appointment to the DHS Data Privacy and Integrity Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. We will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly-available Committee documents, membership lists, and Committee reports.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the principal purposes and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–009

Department of Homeland Security Advisory Committees System of Records Notice (October 3, 2008, 73 FR 63181).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to consider your application for appointment to the Data Privacy and Integrity Advisory Committee.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foiaandintheDHS/ALL-002* Department of Homeland Security Mailing and Other Lists System of Records referenced above.

Dated: June 12, 2020.

Constantina Kozanas,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–13108 Filed 6–17–20; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0021]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for a Stay of Deportation or Removal

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on April 16, 2020, allowing for a 60-day comment period. ICE received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 20, 2020.

ADDRESSES: Written comments and recommendations should be sent within 30 days of publication of this notice via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2008–0006; *The comments submitted via this method are visible to the Office of Management and Budget, and comply with the requirements of 5 CFR 1320.12(c).*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Patrick J. Kearns (202–732–6261), *patrick.j.kearns@ice.dhs.gov,* U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for a Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–246, ICE.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information collected on the I–246 is necessary for ICE to make a determination that the eligibility requirements for a request for a stay of deportation or removal are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* ICE estimates a total of 4,650 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,325 annual burden hours.

Dated: June 15, 2020.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2020–13146 Filed 6–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0120]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Free Training for Civics and Citizenship Teachers of Adults and Civics and Citizenship Toolkit

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until August 17, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0120 in the body of the letter, the agency name and Docket ID USCIS–2011–0001. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2011–0001. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2011–0001 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Free Training for Civics and Citizenship of Adults; Civics and Citizenship Toolkit.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1190, G–1515; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information is necessary to register for civics and citizenship of adults training and to obtain a civics and citizenship toolkit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form G–1190 is 2,500 and the estimated hour burden per response is 0.083 hours. The estimated total number of respondents for the information collection Form G–1515 is 1,200 and the estimated hour burden per response is responses is 0.166 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 407 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. The registration occurs electronically which eliminates any cost for postage, and no other costs are incurred by the respondent.

Dated: June 12, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–13099 Filed 6–17–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A51010.999900]

Land Acquisitions; Snoqualmie Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs has made a final determination to acquire 16.63 acres, more or less, into trust for the Snoqualmie Indian Tribe on March 18, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Box #44, Albuquerque, New Mexico 87104, telephone (505) 563–3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual, and is published to comply with the requirement of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly published in the **Federal Register**.

On March 18, 2020, the Assistant Secretary—Indian Affairs issued a decision to accept land in trust for the Snoqualmie Indian Tribe under the authority of the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 5108).

Legal Description

Parcel No. 780290–0405 (''Rebhuhn Parcel'')

Beginning at a point on the South line of the Northwest quarter of Section 31, Township 24 North, Range 8 East, W.M., 1741.29 feet S88°51′11″ W of the Southeast corner of the Northwest corner of said Section 31;

Thence N3°02′25″ W 627.28 feet to the South line of a 60 foot street;

Thence S86°57′35″ W along said street 330.0 feet;

Thence S3°02′25″ E 616.36 feet to the South line of said Northwest quarter of said section 31;

Thence N88°51′11″ E along said South line of said Northwest quarter of said section 31, 330.18 feet to the point of beginning, in King County, Washington. (4.71 acres) (also known as Lot 4, Block 3, of the unrecorded Plat of Si-View Acre tracts)

Parcel No. 780290–0520 (''Meyers Parcel'')

That portion of the Northwest quarter of Section 31, Township 24 North, Range 8 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the section line between Section 31, Township 24 North, Range 8 East, W.M., in King County, Washington and Section 36, Township 24 North, Range 8 East, W.M., in King County, Washington, 628.28 feet N0°30′14″ W of the one-quarter corner between said Sections 31 and 36;

Thence N86°57′35″ E 226.80 feet;

Thence N3°02′25″ W 30.0 feet;

Thence N86°57′35″ E 630 feet to the West line of Weathervane Plats, page 29, in King County, Washington;

Thence N3°02′25″ W along said West line 660 feet;

Thence S86°57′35″ W to the section line between Sections 31 and 36;

Thence S0°30′14″ E along the section line 690.64 feet to the Point of Beginning; except that portion described as follows:

The West 256 feet in width of that portion of the Northwest quarter of Section 31, Township 24 North, Range 8 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the section line between Section 31, Township 24 North, Range 8 East, W.M., in King County, Washington and Section 36, Township 24 North, Range 8 East, W.M., in King County, Washington, 628.28 feet N0°30′14″ W of the one-quarter corner between said Sections 31 and 36;

Thence N86°57′35″ E 226.80 feet;

Thence N3°02′25″ W 30.0 feet;

Thence N86°57′35″ E 374 feet to the True Point of Beginning;

Thence N86°57′35″ E 586 feet to the west line of that certain tract of land described in deed recorded under recording number 3324383, King County Building Co., grantor, to Ernest C. Crawford and Helen G. Crawford, his wife, grantees;

Thence N3°02′25″ W, 660 feet to a point N86°57′35″ E 1098.74 feet and S3°02′25″ E; 1305.79 feet from the Northwest corner of said Section 31;

Thence S86°57′35″ W 586 feet;

Thence S0°30′14″ E 660 feet to the True Point of Beginning. (9.03 acres) (also known as Lot 5, and the West 74 feet of Lot 4, Block 4, Si-View Acre Tracts, according to the unrecorded plat thereof).

Parcel No. 362047–9001 (''Tudor Parcel 1'')

That portion of the South 265.14 feet of the North half of the Southeast quarter of the Northeast quarter of Section 36, Township 24 North, Range 7 East, W.M. in King County, Washington, lying Easterly of County Road;

Except the Northern Pacific Railway spur right-of-way. (1.53 acres)

Parcel No. 362407–9082 (''Tudor Parcel 2'')

That portion of the North half of the Southeast quarter of the Northeast quarter of Section 36, Township 24 North, Range 7 East, W.M. in King County, Washington, lying Easterly of County Road;

Except the South 265.14 feet thereof; and Except the Northern Pacific Railway Spur right-of-way. (1.36 acres)

All Situate in the County of King, State of Washington.

Containing 16.63 acres, more or less.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13082 Filed 6–17–20; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1161]

Certain Food Processing Equipment and Packaging Materials Thereof; Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order (''GEO'') prohibiting the unlicensed entry of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more certification marks of U.S. Trademark Registration No. 1,976,117; U.S. Trademark Registration No. 5,189,919; or U.S. Trademark Registration No. 5,554,628 (collectively, ''the Certification Marks''). The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. 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 on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 18, 2019, based on a complaint filed by 3–A Sanitary Standards, Inc. of McLean, Virginia (''3–A SSI''). 84 FR 28335 (June 18, 2019). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation or sale of certain food processing equipment and packaging materials thereof by reason of false advertising and unfair competition, the threat or effect of which is to destroy or substantially injure an industry in the United States. The notice of investigation named as respondents Wenzhou QiMing Stainless Co., Ltd. of Wenzhou, China (''Wenzhou QiMing''); High MPa Valve Manufacturing Co., Ltd. of Wenzhou, China (''High MPa Valve''); Wenzhou Sinco Steel Co, Ltd. of Wenzhou, China (''Wenzhou Sinco''); Wenzhou Kasin Valve Pipe Fitting Co., Ltd. of Wenzhou, China (''Wenzhou Kasin''); and Wenzhou Fuchuang Machinery (''Wenzhou Fuchuang'') (collectively, ''defaulting respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. *Id.*

On October 15, 2019, the Commission found respondents Wenzhou QiMing, High MPa Valve, Wenzhou Sinco, and Wenzhou Kasin in default. Order No. 8 (Sept. 19, 2019), *unreviewed,* Notice (Oct. 15, 2019). On December 19, 2019, the Commission found Wenzhou Fuchuang in default. Order No. 13 (Nov. 19, 2019), *unreviewed,* Notice (Dec. 18, 2019).

On November 7, 2019, 3–A SSI moved for summary determination of violation of section 337 by the defaulting respondents. On November 20, 2019, and December 3, 2019, 3–A SSI supplemented its motion and exhibits. On December 13, 2019, OUII filed a response supporting 3–A SSI's motion.

On February 18, 2020, the presiding administrative law judge issued Order No. 14, an initial determination (''ID'') granting 3–A SSI's motion for summary determination of a violation of section 337 by the defaulting respondents. No party petitioned for review of the ID.

On April 3, 2020, the Commission determined not to review the ID. 85 FR 19955–56 (Apr. 9, 2020). The

Commission's determination resulted in finding a violation of section 337 as to the defaulting respondents. The Commission also requested written submissions on remedy, the public interest, and bonding. *See id.* On April 14, 2020, 3–A SSI and OUII submitted their briefs on remedy, the public interest, and bonding. OUII further filed a response brief on April 21, 2020.

The Commission finds that the statutory requirements for relief under section 337(g)(2), 19 U.S.C. 1337(g)(2), are met. In addition, the Commission finds that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the statutory relief.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain food processing equipment and packaging materials thereof that are falsely advertised through the unlicensed use of one or more of the Certification Marks. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on June 15, 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).

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

Issued: June 15, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–13164 Filed 6–17–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on May 29, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3Pillar Global, Inc., Fairfax, VA; Aegis Power Systems, Inc., Murphy, NC; Aegon EDC Limited, Edinburgh, UNITED KINGDOM; BusCorp Inc., Calgary, CANADA; C3.ai, Inc., Redwood City, CA; CAST Navigation, LLC, Tewksbury, MA; CCTI SAS Consultoria en Technologia, Bogota, COLOMBIA; Confluent, Inc., Mountain View, CA; CRFS, Inc., Chantilly, VA; DeepIQ, LLC, Houston, TX; E&P Consulting Ltd, London, UNITED KINGDOM; Eastman Chemical Company, Kingsport, TN; ELIIS SAS, Clapiers, FRANCE; FITS Middle East FZ–LLC, Dubai, UNITED ARAB EMIRATES; Freedom Power Systems, Inc., Cedar Park, TX; Fugro (USA), Inc., Houston, TX; FutureOn AS, Oslo, NORWAY; Geosiris SAS, Fourqueux, FRANCE; HighByte Inc., Portland, ME; Juniper Capital Advisors, L.P., Houston, TX; Mellanox Federal Systems, Houston, TX; Mi4 Corporation, Houston, TX; Mosaic451, LLC, Phoenix, AZ; Motorola Solutions Inc., Schaumburg, IL; NormShield, Inc., Vienna, VA; Perspecta Labs, Inc., Red Bank, NJ; PMK Architecture Services, LLC, San Diego, CA; Repsol S.A., Spring, TX; Seequent, Christchurch, NEW ZEALAND; SMATMASS Pty Ltd, Johannesburg, SOUTH AFRICA; SparkCognition, Austin, TX; Spirit Energy Norway AS, Stavanger, NORWAY; Supermicro, San Jose, CA; Sword Venture, Staines-Upon-Thames, UNITED KINGDOM; Talus Technologies Inc., Calgary, CANADA; TDE Group, Sugar Land, TX; The Fervid Group LLC, Houston, TX; TTTech Industrial Automation AG, Vienna, AUSTRIA; Wintershall Dea GmbH, Hamburg, GERMANY; Wolf Advanced Technology, St. Petersburg, FL; and Woodward Inc., Fort Collins, CO, have been added as parties to this venture.

Also, Arizona State University, Tempe, AZ; Asia eHealth Information Network, Kowloon, People's Republic of China; CA, Inc., San Jose, CA; Carrtelcom Nigeria Company Limited, Iju-Shaga, NIGERIA; E-quality Italia S.r.l., Rome, ITALY; EACIIT LLC, Cypress, TX; Euroavionics USA LLC, Sarasota, FL; Foresight Resilience Strategies, LLC, Bethesda, MA; ING Group NV, Amsterdam, THE NETHERLANDS; Intelligent Training de Colombia, Bogota, COLOMBIA; Inter-Coastal Electronics, Inc. (ICE), Mesa, AZ; International Technology Transfer Group, Cairo, EGYPT; Kerala State IT Mission, Thiruvananthapuram, INDIA; Office of the National Coordinator for Health Information Technology, Washington, DC; OMNICOM, s.r.o., Bratislava, SLOVAKIA; Pramana, Paris, FRANCE; Pyrrhus Software, L.L.C., Phoenix, AZ; San Jose State University, San Jose, CA; Star Lab Corporation, Huntsville, AL; Tubitak Bilgem, Kocaeli, TURKEY; and Veracity Security Intelligence, Aliso Viejo, CA have withdrawn as parties to this venture.

In addition, Esterel Technologies, Inc. has changed its name to ANSYS, Inc., Canonsburg, PA; and Hitachi Vantara Corporation to Hitachi Vantara LLC, Santa Clara, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on February 14, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2020 (85 FR 11395).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–13170 Filed 6–17–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on May 19, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TM Forum, A New Jersey Non-Profit Corporation (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following entities have become members of the Forum: Optiva Inc., Mississauga, CANADA; International Free and Open Source Solutions Foundation, Pleasanton, CA; Future Internet Consulting and Development Solutions S.L., Madrid, SPAIN; Ulster University, Newtownabbey, UNITED KINGDOM; MDS Global Ltd, Warrington, UNITED KINGDOM; Eastwind, Ekaterinburg, RUSSIA; Triple-Innovations Ltd, Zagreb, CROATIA; SoftBank Corp, Minato-ku, JAPAN; Brightcomms, Miami, FL; ONIS Solutions, San Pedro Garza García, MEXICO; Nile University, Giza, EGYPT; Calicsi LTD, MUSCAT, OMAN; Tekpaths, Riyadh, SAUDI ARABIA; Sorbonne University, Paris, FRANCE; Sarathi Softech Pvt. Ltd., Pune, INDIA; TÜBITAK BILGEM Software Research Technologies Institute, Gebze, TURKEY; Scorecard Systems Inc., Stouffville, CANADA; Red Dawn Consulting, Northwood, UNITED KINGDOM; Meiji University, Tokyo, JAPAN; Vanrise Solutions, Beirut, LEBANON; OmniSci, San Francisco, CA; Consilience Technologies, Naperville, IL; Bartr Technologies Limited, Birmingham, UNITED KINGDOM; Avistas, Irving, TX; AWTG Ltd, London, UNITED KINGDOM; Creativity Software, Kingston upon Thames, UNITED KINGDOM; Compax Software Development GmbH, Vienna, AUSTRIA; SATEC GROUP, Madrid, SPAIN; Software AG (UK) Ltd, Derby, UNITED KINGDOM; Norconsult Telematics, Riyadh, SAUDI ARABIA; Symbox Ltd, Theale, UNITED KINGDOM; Telecom Egypt, Giza, EGYPT.

Also, the following members have changed their names: OSSEra, Inc. to OSSEra, Sacramento, CA; GCI to GCI Communication Corp, Anchorage, AK; Torry Harris Integrated Solutions Pvt Ltd to Torry Harris Integration Solutions, Bangalore, INDIA; Mahindra Comviva to Comviva, Haryana, INDIA.

In addition, the following parties have withdrawn as parties to this venture: BASE Company, Brussels, BELGIUM; Biplus Vietnam Software Solution JSC, Hanoi, VIETNAM; Business-intelligence of Oriental Nations Corporation Ltd., Beijing, PEOPLES' REPUBLIC OF CHINA; China Mobile Online Service Company Limited Yunnan Branch, Kunming, PEOPLES' REPUBLIC OF CHINA; Clementvale, Dublin, IRELAND; Corporate Software, Casablanca, MOROCCO; Couchbase Limited, London, UNITED KINGDOM; Emersion Software, Melbourne, AUSTRALIA; ePLDT Inc., Makati City, PHILIPPINES; gen-E, Irvine, CA; Mercato, Birmingham, UNITED KINGDOM; NetYCE, Amsterdam, NETHERLANDS; Optix Pakistan (Pvt.) Limited, Lahore, PAKISTAN; Polaris Technology, Amman, JORDAN; SAS Institute, Inc, Cary, NC; Sitronics Telecom Solutions Co. (Pvt.) Ltd, Lahore, PAKISTAN; Synchronoss Technologies, Inc., Bridgewater, NJ; Tawhiri Networks, Brewster, NY; Tel Aviv University—Urban Innovation and Sustainability Lab, Tel Aviv, ISRAEL; Telecom Personal (Paraguay), Asuncion, PARAGUAY; Telenet NV, Mechelen, BELGIUM; Tempest IT services a. s., Bratislava, SLOVAKIA; Unitel one source limited, London, UNITED KINGDOM; VenKizmet PERU SAC, Lima, PERU; Virgin Media, Hook, UNITED KINGDOM; Wavelength Communications Ltd, St Albans, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 14, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 2020 (85 FR 6575).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–13171 Filed 6–17–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 28, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Kansas in the lawsuit entitled *United States and State of Kansas, ex rel. Kansas Department of Health and Environment* v. *HollyFrontier El Dorado Refining LLC,* Civil Action No. 2:20–cv–2270. On June 10, 2020, the Department of Justice lodged a corrected proposed Consent Decree with the United States District Court for the District of Kansas in the same action to correct cross-reference errors in the appendices to the proposed Consent Decree. In the filed Complaint, the United States on behalf of the United States Environmental Protection Agency (''EPA''), and the State of Kansas, on behalf of the Kansas Department of Health and Environment (''KDHE''), allege that HollyFrontier El Dorado Refining LLC (''HollyFrontier'') has violated and, in some instances, continues to violate, the following environmental statutes, regulations, and permits applicable to the petroleum refining industry:

(a) The Clean Air Act (''CAA''), 42 U.S.C. 7401 *et seq.,* specifically Section 110 of the CAA, 42 U.S.C. 7410, and the Kansas State Implementation Plan (''SIP'') issued thereunder; Section 111 of the CAA, 42 U.S.C. 7411, and the New Source Performance Standards (''NSPS''), 40 CFR part 60; Section 112 of the CAA, 42 U.S.C. 7412, and the National Emission Standards For Hazardous Air Pollutants (''NESHAPs''), 40 CFR part 63; Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1); and Section 112(r)(7) of the CAA, 42 U.S.C. 7412(r)(7), and the Risk Management Program, 40 CFR part 68;

(b) the Kansas Air Quality Act (''KAQA''), Kan. Stat. Ann. section 65–3001 *et seq.,* and Kan. Admin. Regs. sections 28–19–302, 28–19–650, and 28–19–20; and

(c) the federally enforceable permits issued to HollyFrontier by KDHE pursuant to Title V of the CAA, 42 U.S.C. 7661–7661f; the KAQA, Kan.

Stat. Ann. section 65–3001 *et seq.;* and the regulations promulgated thereunder.

The Consent Decree requires HollyFrontier El Dorado Refining LLC to implement injunctive relief at its petroleum refinery in El Dorado, Kansas, and to pay a $4 million civil penalty for a covenant-not-to-sue for some of the claims in the filed Complaint. The injunctive relief includes, but is not limited to: (1) Installation and operation of a new flare tip; (2) installation of an additional compressor on the flare gas recovery system; and (3) internal and third-party audits. The proposed Consent Decree does not resolve the United States' claims for civil penalties for the alleged violations of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1); and Section 112(r)(7) of the CAA, 42 U.S.C. 7412(r)(7), and the Risk Management Program, 40 CFR part 68.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Kansas, ex rel. Kansas Department of Health and Environment* v. *HollyFrontier El Dorado Refining LLC,* D.J. Ref. No. 90–5–2–1–08660/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $20.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $13.00.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–13141 Filed 6–17–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–12010]

Z–RIN: 1210–ZA28

Prohibited Transactions Involving Pooled Employer Plans Under the SECURE Act and Other Multiple Employer Plans

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Request for information.

SUMMARY: The Setting Every Community Up for Retirement Enhancement Act (SECURE Act) amended the Employee Retirement Income Security Act of 1974 (ERISA) to allow for pooled employer plans (PEPs). PEPs are required to designate a pooled plan provider who is a named fiduciary of the PEP. As a fiduciary, the pooled plan provider is subject to standards and restrictions in ERISA and the Internal Revenue Code, including the prohibited transaction provisions restricting fiduciaries of plans from engaging in conflict of interest transactions. This document requests information on the possible parties, business models, and conflicts of interest that respondents anticipate will be involved in the formation and ongoing operation of PEPs. This document also requests information on similar issues involving multiple employer plans sponsored by employer groups or associations or professional employer organizations (referred to herein as "MEPs"). The Department of Labor (the Department) is considering whether to propose a class exemption on its own motion to cover prohibited transactions involving PEPs and MEPs.

DATES: Comments should be submitted to the Department on or before July 20, 2020.

ADDRESSES: You may submit written comments to the Office of Exemption Determinations by any of the following methods, identified by Z–RIN 1210–ZA28:

Federal eRulemaking Portal: http://www.regulations.gov at Docket ID number: EBSA–2020–0001. Follow the instructions for submitting comments.

Email to: e-OED@dol.gov.

See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Erin Hesse, telephone (202) 693–8546, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comment Instructions

All comments received must include the agency name and Regulation Identifier Number (Z–RIN) for this request for information. In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/agencies/ebsa,* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: All comments and hearing requests will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments and hearing requests may be posted on the internet and can be retrieved by most internet search engines.

The Department of Labor (the Department) is considering whether to propose a class exemption on its own motion to cover prohibited transactions involving PEPs and MEPs under the authority of section 408(a) of ERISA, and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

I. Background

A. Setting Every Community Up for Retirement Enhancement Act (SECURE Act)

The SECURE Act was signed into law on December 20, 2019. It amended the Employee Retirement Income Security Act of 1974 (ERISA) to allow for a type of employee benefit plan called a pooled employer plan (PEP). A PEP is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers, that is treated as a single employee pension benefit plan or single pension plan for purposes of ERISA. A PEP does not include a plan maintained by employers that have a common interest other than having adopted the plan.

A PEP must have a pooled plan provider that is designated as a named fiduciary, plan administrator, and the person responsible for specified administrative duties. Additionally, the PEP's governing documents and operation must have and be operated pursuant to certain specified terms, including terms relating to the designation of trustees and terms providing that employers, participants, and beneficiaries may not be subject to unreasonable restrictions, fees, or penalties for ceasing participation, receiving distributions, or transferring assets to another plan. Further, the PEP's governing documents must provide that each employer in the plan retains fiduciary responsibility for: (1) The selection and monitoring of the pooled plan provider and any other named fiduciaries of the plan, and (2) to the extent not otherwise delegated to another fiduciary by the pooled plan provider and subject to the provisions of ERISA section 404(c), the investment and management of the portion of the plan's assets attributable to their own employees and the employees' beneficiaries.

The SECURE Act also amended Internal Revenue Code (Code) section 413 to add a new subsection addressing qualification requirements for plans with pooled plan providers as well as plans maintained by employers with a common interest other than having adopted the plan. Under Code section 413(e), these types of plans will not be treated as failing to meet certain requirements of the Code merely because one or more employers of employees covered by the plan fail to take actions required to meet the requirements. In order for Code section 413(e)(1) to apply, the plan must require that:

(1) The assets attributable to the noncompliant employer's employees and the employees' beneficiaries will be transferred to a plan maintained only by the noncompliant employer (or its successor), to an eligible retirement plan defined in Code section 402(c)(8)(B), or to any other arrangement that the Secretary of the Treasury determines is appropriate, unless the Secretary of the Treasury determines that it is in the best interest of the employees and beneficiaries to retain the assets in the plan; and

(2) the noncompliant employer (and not the plan or any other employer in the plan) shall be liable for any liabilities with respect to a plan attributable to the noncompliant employer's employees and the employees' beneficiaries, except to the extent provided by the Secretary of the Treasury.

The SECURE Act provides that the Secretary of the Treasury shall issue such guidance as the Secretary determines appropriate to carry out the new subsection.

B. Department's MEP Final Rule and Previous Request for Information on Open MEPs

The SECURE Act amendments furthered an existing regulatory initiative of the Department to expand access to affordable, quality retirement savings options. In 2019, the Department issued a final rule (MEP Final Rule) clarifying the circumstances under which an employer group or association or a professional employer organization (PEO) may sponsor a single pension plan under ERISA for the employees of multiple employer members or clients, respectively (referred to herein as a ''MEP'').[1] The Department's initiative responded to President Trump's Executive Order 13847, ''Strengthening Retirement Security in America.''

On the same day it issued the MEP Final Rule, the Department published an additional request for information which sought comments on whether to amend the regulations to facilitate the operation of ''open MEPs''—*i.e.,* by expressly permitting financial institutions or other persons/entities to maintain a single ERISA plan on behalf of employers with no relationship other than their joint participation in the plan.[2] The request for information included a series of questions directed at the conflicts of interest that might exist for the persons/entities that would operate ''open MEPs'' and the need for additional prohibited transaction exemptions if such arrangements were permitted. While the Department received valuable input on those issues, the request did not specifically address the structure of PEPs as established by the SECURE Act or the amendment to Code section 413.

C. Prohibited Transaction Exemptions

ERISA and the Code prohibit fiduciaries with respect to plans, including PEPs and MEPs, from engaging in self-dealing transactions. Fiduciaries violate these prohibited transaction provisions if they use their authority to affect or increase their own compensation or the compensation of affiliates or related entities, or if they receive payments from third parties in connection with transactions involving a plan.[3] Further, fiduciaries to plans may not act in their individual capacity or any other capacity, in any transaction involving the plan, on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries.[4]

The Department has authority to grant administrative exemptions from the prohibited transaction provisions in ERISA and the Code.[5] Before granting an exemption, the Department must find that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of plans.

As a result of the SECURE Act amendments to ERISA and the Code, a variety of service providers may decide to become pooled plan providers. The Department is seeking information regarding the possible parties, business models, conflicts of interest, and prohibited transactions that might exist in connection with PEPs, for the purpose of assessing the need for new prohibited transaction exemptions or amendments to existing exemptions. This document also requests information on similar issues involving MEPs.

II. Request for Information

This document contains a number of questions. Respondents need not answer every question, but should identify, by number, each question addressed. Respondents also are encouraged to address any other matters they believe are germane to the general topic of the request for information.

[1] Definition of ''Employer'' Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans, 84 FR 37508 (July 31, 2019).

[2] ''Open MEPs'' and Other Issues Under Section 3(5) of the Employee Retirement Income Security Act, 84 FR 37545 (July 31, 2019).

[3] ERISA section 406(b)(1) and (3) and Code section 4975(c)(1)(E)–(F).

[4] ERISA section 406(b)(2).

[5] ERISA section 408(a) authorizes the Secretary of Labor to grant exemptions from the prohibited transaction provisions in ERISA. Code section 4975(c)(2) authorizes the Secretary of the Treasury to grant exemptions from the prohibited transaction provisions of the Code. Reorganization Plan No. 4 of 1978 (5 U.S.C. App. (2018)) generally transferred the Secretary of the Treasury's authority to grant administrative exemptions under Code section 4975 to the Secretary of Labor.

A. Pooled Plan Providers and MEP Sponsors

1. What types of entities are likely to act as pooled plan providers? For example, there are a variety of service providers to single employer plans that may have the ability and expertise to act as a pooled plan provider, such as banks, insurance companies, broker-dealers, and similar financial services firms (including pension recordkeepers and third-party administrators). Are these types of entities likely to act as a pooled plan provider? Are some of these entities more likely to take on the role of the pooled plan provider than others? Why or why not? How many entities are likely to act as pooled plan providers? Will a single entity establish multiple PEPs with different features?

2. What business models will pooled plan providers adopt in making a PEP available to employers? For example, will pooled plan providers rely on affiliates as service providers, and will they offer proprietary investment products?

3. What conflicts of interest, if any, would a pooled plan provider (along with its affiliates and related parties) likely have with respect to the PEP and its participants? Are there conflicts that some entities might have that others will not?

4. To what extent will a pooled plan provider be able to unilaterally affect its own compensation or the compensation of its affiliates or related parties through its actions establishing a PEP or acting as a fiduciary or service provider to the PEP? What categories of fees and compensation, direct or indirect, will pooled plan providers and their affiliates and related parties be likely to receive as a result of operating a PEP, including through the offering of proprietary investment products? Are there likely to be any differences in types of fees and compensation associated with operation of a PEP as compared to a single employer plan?

5. Do respondents anticipate that the Department's existing prohibited transaction exemptions will be relied on by pooled plan providers, and if so, which exemptions are most relevant? Are any amendments needed to the Department's existing exemptions to address unique issues with respect to PEPs? Do respondents believe that there is a need for additional prohibited transaction exemptions? If so, please describe the specific transactions and the prohibited transactions provisions that would be violated in connection with the transactions.

6. If additional prohibited transaction relief is necessary, should the Department consider developing distinct exemptions for different categories of pooled plan providers (*e.g.,* to specifically address the unique prohibited transactions involved for certain entities) or should the Department address pooled plan provider conflicts more generally, in a single exemption? What are advantages and disadvantages of either approach?

7. To the extent respondents do not believe additional prohibited transaction relief is necessary, why? How would the conflicts of interest be appropriately addressed to avoid prohibited transactions? Are different mitigating provisions appropriate for different entities? Why or why not?

8. Do employer groups, associations, and PEOs described in the Department's MEP Final Rule face similar prohibited transactions to those of pooled plan providers, and do they have similar need for additional prohibited transaction relief? Are there prohibited transaction issues unique to employer groups or associations, or PEOs?

B. Plan Investments

1. What plan investment options do respondents anticipate will be offered in PEPs and MEPs? Are the investment options likely to be as varied as those offered by large single employer plans? Are the options likely to be more varied than those offered by small single employer plans?

2. What role will the entities serving as pooled plan providers or MEP sponsors, or their affiliates or related entities, serve with respect to the investment options offered in PEPs and MEPs?

C. Employers in the PEP or MEP

1. How many employers are likely to join a PEP or MEP? Will joining a PEP or MEP be more appealing to employers of a particular size? Are there any estimates of the total number of employers and participants likely to be covered by newly formed PEPs and MEPs? Are there any estimates of the number of employers and participants that will migrate from a single employer plan to a newly formed PEP or MEP?

2. Will larger employers also seek to join PEPs or MEPs in order to take advantage of additional economies of scale? Will any additional prohibited transactions exist as a result of substantial size differences between employers in the PEP or MEP (*e.g.,* because a large employer has greater ability to influence decisions of a pooled plan provider or MEP sponsor as compared to a small employer)?

3. Will the existence of multiple employers in a PEP or MEP cause greater exposure to prohibited transactions in connection with investments in employer securities or employer real property? In what form will PEPs and MEPs hold employer securities or employer real property?

4. Do respondents anticipate that prohibited transactions will occur in connection with a decision to move assets from a PEP or MEP to another plan or IRA, in the case of a noncompliant employer? Do respondents anticipate that any other prohibited transactions will occur in connection with the execution of that decision?

Signed at Washington, DC, this 15th day of June, 2020.

Jeanne Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2020–13142 Filed 6–17–20; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Presence Sensing Device Initiation (PSDI) Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 20, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Regulation 29 CFR 1910.217(h) regulates the use of Presence Sensing Devices (PSDs) in mechanical power-press safety systems. A PSD (*e.g.,* a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. The PSD initiation standard contains a number of information collection requirements, including: Certifying brake monitor adjustments, alternatives to photoelectric PSDs, safety system design and installation, and worker training; annual recertification of safety systems; establishing and maintaining the original certification and validation records, as well as the most recent recertification and revalidation records; affixing labels to test rods and to certified and recertified presses; and notifying an OSHA-recognized third-party validation organization when a safety system component fails, the employer modifies the safety system, or a point-of-operation injury occurs. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 9, 2020 (85 FR 19961).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Presence Sensing Device Initiation (PSDI) Standard.

OMB Control Number: 1218–0143.

Affected Public: Private Sector—Business or other for-profit.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 1 hour.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–13173 Filed 6–17–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0048]

Standard on Powered Platforms for Building Maintenance; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend OMB approval of the information collection requirements specified in the Standard on Powered Platforms for Building Maintenance.

DATES: Comments must be submitted (postmarked, sent, or received) by August 17, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0048, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0048). All comments, including any personal information you provide, such as social security numbers and dates of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the below phone number to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (e)(9) of the Standard requires that employers develop and implement a written emergency action plan for each type of powered platform operation. The plan must explain the emergency procedures that workers are to follow if they encounter a disruption of the power supply, equipment failure, or other emergency. Prior to operating a powered platform, employers must notify workers how they can inform themselves about alarm systems and emergency escape routes, and emergency procedures that pertain to the building on which they will be working. Employers are to review with each worker those parts of the emergency action plan that the worker must know to ensure their protection during an emergency; these reviews must occur when the worker receives an initial assignment involving a powered platform operation and after the employer revises the emergency action plan.

According to paragraph (f)(5)(i)(C), employers must affix a load rating plate to a conspicuous location on each suspended unit that states the unit's weight and the rated load capacity. Paragraph (f)(5)(ii)(N) requires employers to mount each emergency electric operating device in a secured compartment and label the device with instructions for its use. After installing a suspension wire rope, paragraphs (f)(7)(vi) and (f)(7)(vii) mandate that employers attach a corrosion-resistant tag with specified information to one of the wire rope fastenings if the rope is to remain at one location. In addition, paragraph (f)(7)(viii) requires employers who resocket a wire rope to either stamp specified information on the original tag or put that information on a supplemental tag and attach it to the fastening.

Paragraphs (g)(2)(i) and (g)(2)(ii) require that building owners, at least annually, have a competent person: Inspect the supporting structures of their buildings; inspect and, if necessary, test the components of the powered platforms, including control systems; inspect/test components subject to wear (*e.g.,* wire ropes, bearings, gears, and governors); and certify these inspections and tests. Under paragraph (g)(2)(iii), building owners must maintain and, on request, disclose to OSHA a written certification record of these inspections/tests; this record must include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the building support structure and equipment inspected/tested.

Paragraph (g)(3)(i) mandates that building owners use a competent person to inspect and, if necessary, test each powered platform facility according to the manufacturer's recommendations every 30 days, or prior to use if the work cycle is less than 30 days. Under paragraph (g)(3)(ii), building owners must maintain and, on request, disclose to the agency a written certification record of these inspections/tests; this record is to include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the powered platform facility inspected/tested.

According to paragraph (g)(5)(iii), building owners must use a competent person to thoroughly inspect suspension wire ropes for a number of specified conditions once a month, or before placing the wire ropes into service if the ropes are inactive for 30 days or longer. Paragraph (g)(5)(v) requires building owners to maintain and, on request, disclose to OSHA a written certification record of these monthly inspections; this record must consist of the date of the inspection, the signature of the competent person who performed it, and the number/identifier of the wire rope inspected.

Upon completion of this training, paragraph (i)(1)(v) specifies that employers must prepare a written certification that includes the identity of the worker trained, the signature of the employer or the trainer, and the date the worker completed the training. In addition, the employer must maintain a worker's training certificate for the duration of their employment and, on request, make it available to OSHA.

Emergency action plans allow employers and workers to anticipate, and effectively respond to, emergencies that may arise during powered platform operations. Affixing load rating plates to suspended units, instructions to emergency electric operating devices, and tags to wire rope fasteners prevent workplace accidents by providing information to employers and workers regarding the conditions under which they can safely operate these system components. Requiring building owners to establish and maintain written certification of inspections and testing conducted on the supporting structures of buildings, powered platform systems, and suspension wire ropes provides employers and workers with assurance that they can operate safely from the buildings using equipment that is in safe operating condition.

The training requirements increase worker safety by allowing them to develop the skills and knowledge necessary to effectively operate, use, and inspect powered platforms, recognize and prevent safety hazards associated with platform operation, respond appropriately under emergency conditions, and maintain and use their fall protection arrest system. In addition, the paperwork requirements specified by the Standard provide the most efficient means for an OSHA compliance officer to determine whether or not employers and building owners are providing the required notification and certification.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Standard on Powered Platforms for Building Maintenance (29 CFR 1910.66). The agency is requesting an increase in the current burden hours from 130,763 hours to 130,776 hours, a difference of 13 hours. The slight adjustment increase is primarily due to the method of calculating the burden. The agency believes that using fractions instead of decimals to represent time would make it easier for the public to follow the burden calculations. The agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Standard on Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Affected Public: Business or other for-profits.

Number of Respondents: 900.

Frequency: On occasion; Initially, Monthly, Annually.

Average Time per Response: Varies from 3 minutes (3/60 hour) to generate and maintain the written training certification records to 4 hours to inspect/test both a powered platform facility and the suspension wire ropes, and to prepare the certification record.

Total Burden Hours Requested: 130,776.

Estimated Cost (*Operation and Maintenance):* $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0048). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 15, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–13176 Filed 6–17–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–056)]

National Space-Based Positioning, Navigation, and Timing Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board. Since this will be a more concise virtual meeting rather than the traditional extended face-to-face meeting, it will be formally noted as the ''24th Interim Meeting,'' in preparation for the 25th Meeting in the fall, 2020.

DATES: Wednesday, July 1, 2020, 11:00 a.m. to 3:00 p.m., Eastern Time.

ADDRESSES: Virtual meeting via dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Designated Federal Officer, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4417, fax (202) 358–4297, or *jj.miller@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be available telephonically and by WebEx only. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll-free conference call number 1–844–467–4685 or toll number 1–720–259–7012, passcode 106724, to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number is 198 621 2282, and password is GCsKMAd?334.

The agenda for the meeting includes the following topics:

- Updates on emerging U.S. Positioning, Navigation and Timing (PNT) policies
- Status of Global Positioning System (GPS) constellation services and modernization
- Examine techniques to Protect, Toughen, and Augment (PTA) access to GPS/Global Navigation Satellite Systems (GNSS) services for multiple user sectors
- Assess alternative or complimentary PNT signals sources to GPS/GNSS signals in a stressed spectrum environment
- Explore opportunities for enhancing the interoperability of GPS with other emerging international GNSS constellations
- Identify emerging trends and requirements for new PNT services in U.S. and international fora

In accordance with 41 CFR parts 101–6 and 102–3, Federal Advisory Committee Management; Final Rule, Section 102–3.150(b), this meeting is being held with less than 15 calendar days' notice to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–13174 Filed 6–17–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Evaluation of the Sustainability and Diffusion of the NSF ADVANCE Program

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection

requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: 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: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF 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.

Title of Collection: Evaluation of the Sustainability and Diffusion of the NSF ADVANCE Program.

OMB Number: 3145–NEW.

Type of Request: Establishment of a new information collection.

Proposed Project: The ADVANCE Program, launched by the National Science Foundation in 2001, supports projects to identify and address structural and policy barriers to equity for STEM faculty. The proposed evaluation examines the sustainability and diffusion of ADVANCE strategies. The evaluation focuses on ADVANCE projects that started between 2001 and 2018, as well as proposals for the ADVANCE Institutional Transformation (IT) grants that were not funded. The data collection for this request includes: Six self-completion online surveys (with questions tailored to different types of ADVANCE grants); one self-completion online survey for ADVANCE Institutional Transformation applicants; and one instrument to conduct interviews with two representatives from six ADVANCE grantees.

Respondents: Respondents are representatives from ADVANCE grantees and applicants of ADVANCE Institutional Transformation grants.

Estimated Number of Annual Respondents: 360 individuals.

Burden on the Public: 207.5 hours.

Data collection type	Number of individuals	Participation time (in minutes)	Burden (in annual hours)
Single Institution Organizational Change Ended Survey	75	45	56.25
Single Institution Organizational Change Ongoing Survey	17	30	8.5
Partnership Ended Survey	29	30	14.5
Single Institution Self-Assessment Ended Survey (version A)	17	30	8.5
Single Institution Self-Assessment Ended Survey (version B)	20	30	10
General ADVANCE Ended Survey	53	30	26.5
General ADVANCE Ongoing Survey	13	30	6.5
Single Institution Organizational Change Ended Survey and Partnership Ended Survey	2	75	2.5
General ADVANCE Ended Survey and Single Institution Self-Assessment Ended Survey (version A)	1	60	1
Single Institution Organizational Change Ended Survey and Single Institution Self-Assessment Ended Survey (version A)	1	75	1.25
Institutional Transformation Applicant Survey	120	30	60
Teleconference interviews with representatives of ADVANCE awards	12	60	12
Total	360	....	207.50

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: June 15, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–13167 Filed 6–17–20; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0144, More Information Needed for the Person Named Below, RI 38–45

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request RI 38–45, More Information Needed for the Person Named Below.

DATES: Comments are encouraged and will be accepted until July 20, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk

Officer for the Office of Personnel Management or sent via electronic mail to: *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0144) was previously published in the **Federal Register** on March 23, 2020 at 85 FR 13692, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

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.

RI 38–45 is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need the Social Security Number of the Person Named Below.

OMB Number: 3206–0144.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 3,000.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 250 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–13092 Filed 6–17–20; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–159 and CP2020–177]

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 22, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 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).:* MC2020–159 and CP2020–177; *Filing Title:* USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 15, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* June 22, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–13166 Filed 6–17–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Railroad Unemployment Insurance Act Applications; OMB 3220–0039.

Under Section 2 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 362), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage, or childbirth. Under Section 1(k) of the RUIA a statement of sickness, with respect to days of sickness of an employee, is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The Railroad Retirement Board's (RRB) authority for requesting supplemental medical information is Section 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR part 335.

The forms currently used by the RRB to obtain information needed to determine eligibility for, and the amount of, sickness benefits due a claimant follow: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3 (Manual & Internet), Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; and Form ID–11A, Requesting Reason for Late Filing of Sickness Benefit. Completion is required to obtain or retain benefits. One response is requested of each respondent. The RRB proposes no changes to Form SI–1a, Form SI–3 (Manual), SI–7, SI–8, and ID–11a; minor non-burden impacting changes to the Form SI–1b to include update to the officer title and RRB zip code in the Paperwork Reduction Act/Privacy Act Notices section; and minor non-burden impacting changes to the Form SI–3 (Internet) to include update to the officer title and RRB zip code in the Paperwork Reduction Act/Privacy Act Notices section, update the ''Estimation Completion Time'' to 5 minutes, and update zip code on page's 6 and page 7.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
SI–1a (Employee)	15,700	10	2,617
SI–1b (Doctor)	15,700	8	2,093
SI–3 (Manual)	131,600	5	10,967
SI–3 (Internet)	61,350	5	5,113
SI–7	20,830	8	2,777
SI–8	26	5	2
ID–11A	518	4	35
Total	245,724	....	23,604

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2020–13104 Filed 6–17–20; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89056; File No. SR–C2–2020–006]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Chapter 6, Section G Regarding Off-Floor Transactions and Transfers

June 12, 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 June 5, 2020, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') 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 C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to adopt Chapter 6, Section G regarding off-floor transactions and transfers. The text of

[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).

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/options/regulation/rule_filings/ctwo/*), 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

The Exchange proposes to adopt new Chapter 6, Section G regarding off-floor transactions and transfers.

Prohibition on Off-Floor Transactions

Rules 19c–1 and 19c–3 under the Securities Exchange Act of 1934 (the ''Act') describe rule provisions that each national securities change must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange's rules, stated policies, and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include these provisions. Therefore, the proposed rule change adopts these provisions in new Rule 6.60 in accordance with Rules 19c–1 and 19c–3 under the Act.[5]

Off-Floor Position Transfers

Today, C2 does not permit off-floor transfers of options positions and has no rule that specifically addresses off-floor transfers. The Exchange proposes to adopt Rule 6.61 to specify the limited circumstances under which a Trading Permit Holder (''TPH'') may effect transfers of their options positions without first exposing the order.[6] This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the Exchange. This Rule would permit transfers upon the occurrence of significant, non-recurring events. This Rule states that a TPH must be on at least one side of the transfer.

Specifically, proposed Rule 6.61(a) states:

Notwithstanding Rule 6.60, existing positions in options listed on the Exchange of a Trading Permit Holder or of a Non-Trading Permit Holder that are to be transferred on, from, or to the books of a Clearing Trading Permit Holder may be transferred off the Exchange (an ''off-floor transfer'') if the off-floor transfer involves one or more of the following events:

(1) Pursuant to Rule 8.5 or 8.14 of the Cboe Rules (incorporated into Chapter 5 of the Rules), an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;

(2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same person (as defined in Rule 1.1)),[7] provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;

(3) the consolidation of accounts where no change in ownership is involved;

(4) a merger, acquisition, consolidation, or similar non-recurring transaction for a person;

(5) the dissolution of a joint account in which the remaining Trading Permit Holder assumes the positions of the joint account;

(6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;

(7) positions transferred as part of a Trading Permit Holder's capital contribution to a new joint account, partnership, or corporation;

(8) the donation of positions to a not-for-profit corporation;

(9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or

(10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[8]

The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing TPH. The proposed rule change states that existing positions of a TPH or a non-TPH may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a TPH.[9] The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[10] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Rule 6.61(b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[11] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a TPH wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the TPH could not transfer the offsetting series, as they would net against each other and close the positions.[12]

However, netting is permitted for transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market-Maker nominees are trading for the same TPH, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at the Clearing Corporation. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be

[5] *See* CFR 240.19c–1 and 240.19c–3; *see also* Cboe Options, Inc. (''Cboe Options'') Rule 5.12(d) and (e).

[6] *See* Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR–Cboe–2019–035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers); *see also* Cboe Options Rule 6.7.

[7] The proposed rule change adds a definition of person to Rule 1.1, which definition provides that the term ''person'' means an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust, or unincorporated organization, or any governmental entity or agency or political subdivision thereof. This proposed definition codifies the Exchange's current definition of person. *See also* Cboe Options Rule 1.1 (which includes an identical definition of person).

[8] *See* proposed Rule 6.61(a); *see also* Cboe Options Rule 6.7(a).

[9] *See* proposed Rule 6.61(a)(5) and (7).

[10] *See* proposed Rule 6.61(h).

[11] For example, positions may not transfer from a customer, joint back office, or firm account to a Market-Maker account. However, positions may transfer from a Market-Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs). *See also* Cboe Options Rule 6.7(b).

[12] *See* Cboe Options Rule 6.7(b).

automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market-Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market-Maker may have a nominee with an appointment in class XYZ on Cboe Options, and have another nominee with an appointment in class XYZ on C2, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Cboe Options transactions and another for C2 transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market-Maker's universal account in this circumstance to achieve this purpose.

Proposed Rule 6.61(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing TPH, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date; [13] or (4) the then-current market price of the positions at the time the transfer is effected.[14]

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Proposed Rule 6.61(d) requires a TPH and its Clearing TPH (to the extent that the TPH is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a TPH(s).[15] The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.[16] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the TPH(s) and its Clearing TPH(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Rule 6.61. Notwithstanding submission of written notice to the Exchange, TPHs and Clearing TPHs that effect transfers that do not conform to the requirements of proposed Rule 6.61 will be subject to appropriate disciplinary action in accordance with the Rules.

Similarly, proposed Rule 6.61(e) requires each TPH and each Clearing TPH that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the TPH or Clearing TPH provide.[17]

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the TPH (with respect to the TPH's positions) or a Clearing TPH (with respect to positions carried and cleared by the Clearing TPHs). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[18]

The Exchange proposes within Rule 6.61(g) that the transfer procedure set forth in Rule 6.61 is intended to facilitate non-routine, nonrecurring movements of positions.[19] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

The Exchange proposes within Rule 6.61(h) notes that the transfer procedure set forth in Rule 6.61 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.[20]

Off-Floor RWA Transfers

The Exchange proposes to adopt Rule 6.62 to facilitate the reduction of risk-weighted assets (''RWA'') attributable to open options positions.[21] SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital

[13] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[14] *See* Cboe Options Rule 6.7(c).

[15] This notice provision applies only to transfers involving a TPH's positions and not to positions of non-TPH parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

[16] *See* Cboe Options Rule 6.7(d).

[17] *See* Cboe Options Rule 6.7(e).

[18] *See* Cboe Options Rule 6.7(f).

[19] *See* Cboe Options Rule 6.7(g).

[20] *See* Cboe Options Rule 6.7(h).

[21] *See* Cboe Options Rule 6.8; *see also* Securities Exchange Act Release No. 87107 (September 25, 2019), 84 FR 52149 (October 1, 2019) (SR–CBOE–2019–044).

Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[22] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[23]

Subject to certain exceptions, Clearing TPHs are subject to the Net Capital Rules.[24] However, a subset of Clearing TPHs are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[25] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[26] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing TPHs that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[27] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing TPHs that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market-Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. The Exchange currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a TPH or non-TPH (including an affiliate of a TPH) may be transferred on, from, or to the books of a Clearing TPH off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below);[28] and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[29]

These transfers will not result in a change in ownership, as they must occur between accounts of the same person.

''Person'' is defined in Rule 1.1 as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. In other words, RWA transfers may only occur between the same individual or legal entity. RWA transfers are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market-Maker A clears transactions on the Exchange into an account it has with Clearing TPH X, which is affiliated with a U.S-bank holding company. Market-Maker A opens a clearing account with Clearing TPH Y, which is not affiliated with a U.S.-bank holding company. Clearing TPH X has informed Market-Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market-Maker A reviews the open positions in its Clearing TPH X clearing account and determines it must reduce its open positions to satisfy Clearing TPH X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing TPH X to avoid additional position limits in September. Market-Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market-Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing TPH Y. As a result, Market-Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A TPH must give up a Clearing TPH for each transaction it effects on the Exchange, which identifies the Clearing TPH through which the transaction will clear.[30] A TPH may change the give up for a transaction within a specified

[22] 17 CFR 240.15c3–1.

[23] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.,* vertical spreads).

[24] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[25] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[26] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[27] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

[28] This transfer would establish a net reduction of RWA attributable to the transferring person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[29] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

[30] *See* Rule 6.30.

period of time.[31] Additionally, a TPH may also change the Clearing TPH[32] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[33] In the above example, if Market-Maker A had initially given up Clearing TPH Y rather than Clearing TPH X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing TPH Y pursuant to Rule 6.30 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing TPH restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different exchanges, but only if the Market-Maker nominees are trading for the same TPH, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at OCC. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market-Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market-Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market-Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing TPH X. If Market-Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market-Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market-Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market-Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing TPH Y to its account with Clearing TPH X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market-Maker A cleared the September transaction directly into its account with Clearing TPH Y or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[34] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[35]

In-Kind Exchange of Options Positions and ETF Shares and UIT Interests

The Exchange proposes to adopt Rule 6.63 regarding in-kind exchanges of options positions and exchange-traded fund (''ETF'') shares and unit investment trust (''UIT'') interests.[36] As discussed further below, the ability to effect ''in kind'' transfers is a key component of the operational structure of an ETF and a UIT. Currently, in general, ETFs and UITs can effect in-kind transfers with respect to equity securities and fixed-income securities. The in-kind process is a major benefit to ETF shareholders and UIT unit holders, in general, the means by which assets may be added to or removed from ETFs and UITs. In-kind transfers protect ETF shareholders and UIT unit holders from the undesirable tax effects of frequent ''creations and redemptions'' (described

[31] *See* Rule 6.31.

[32] The Clearing Member Trade Assignment (''CMTA'') process at OCC facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[33] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

[34] *See* proposed paragraph (a)(4).

[35] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. All RWA transfers will be subject to all applicable recordkeeping requirements applicable to TPHs and Clearing TPHs under the Act, such as Rules 17a–3 and 17a–4.

[36] *See* Cboe Options Rule 6.9; *see also* Securities Exchange Act Release Nos. 87340 (October 17, 2019) (SR–CBOE–2019–048) (Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)); and 88786 (April 30, 2020), 85 FR 26998 (May 6, 2020) (SR–CBOE–2020–042) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.9 To Permit In-Kind Transfers of Positions Off of the Exchange in Connection With Unit Investment Trusts (''UITs'')).

below) and improve the overall tax efficiency of the products. However, currently, the Rules do not provide for ETFs and UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for ETFs and UITs that hold them. As a result, the use of options by ETFs and UITs is substantially limited.

Proposed Rule 6.63 would add a circumstance under which off-Exchange transfers of options positions would be permitted to occur, in addition to the circumstances in proposed Rules 6.61 and 6.62. Specifically, under proposed Rule 6.63, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a TPH in connection with transactions (a) to purchase or redeem ''creation units'' of ETF shares between an ''authorized participant'' [37] and the issuer [38] of such ETF shares [39] or (b) to create or redeem units of a UIT between a broker-dealer and the issuer [40] of such UIT units, which transfers would occur at the price used to calculate the net asset value (''NAV'') of such ETF shares or UIT units, respectively. This proposed new exception, although limited in scope, would have a significant impact in that it would help protect ETF shareholders and UIT holders from undesirable tax consequences and facilitate tax-efficient operations. The frequency with which ETFs and authorized participants, and UITs and sponsors, would rely on the proposed exception would depend upon such factors as the number of ETFs and UITs, respectively, holding options positions traded on the Exchange, the market demand for the shares of such ETFs and units of such UITs, the redemption activity of authorized participants and sponsors, respectively, and the investment strategies employed by such ETFs and UITs.

While the Exchange recognizes that, in general, the execution of options transactions on exchanges provides certain benefits, such as price discovery and transparency, based on the circumstances under which proposed Rule 6.63 would apply, the Exchange does not believe that such benefits would be compromised. In this regard, as discussed more fully below, the Exchange notes that in conjunction with the creation and redemption process, positions would be transferred at a price(s) used to calculate the NAV of such ETF shares and UIT units. In addition, although options positions would be transferred off of the Exchange, they would not be closed or ''traded.'' Rather, they would reside in a different clearing account until closed in a trade on the Exchange or until they expire. Further, as discussed below, proposed Rule 6.63 would be clearly delineated and limited in scope, given that the proposed exception would only apply to transfers of options effected in connection with the creation and redemption process.

ETFs

As described in further detail below, while ETFs do not sell and redeem individual shares to and from investors, they do sell large blocks of their shares to, and redeem them from, authorized participants in conjunction with what is known as the ETF creation and redemption process. Under the proposed exception, ETFs that hold options listed on the Exchange would be permitted to effect creation and redemption transactions with authorized participants on an ''in-kind'' basis, which is the process that may generally be utilized by ETFs for other asset types. This ability would allow such ETFs to function as more tax-efficient investment vehicles to be benefit of investors that hold ETF shares. In addition, it may also result in transaction cost savings for the ETFs, which may be passed along to investors.

Due to their ability to effect in-kind transfers with authorized participants in conjunction with the creation and redemption process described below, ETFs have the potential to be significantly more tax-efficient than other pooled investment products, such as mutual funds.[41] ETFs issue shares that may be purchased or sold during the day in the secondary market at market-determined prices. Similar to other types of investment companies, ETFs invest their assets in accordance with their investment objectives and investment strategies, and ETF shares represent interests in an ETF's underlying assets. ETFs are, in certain respects, similar to mutual funds in that they continuously offer their shares for sale. In contrast to mutual funds, however, ETFs do not sell or redeem individual shares. Rather, through the creation and redemption process referenced above, authorized participants have contractual arrangements with an ETF and/or its service provider (*e.g.,* its distributor) purchase and redeem shares directly from that ETF in large aggregations known as ''creation units.'' In general terms, to purchase a creation unit of ETF shares from an ETF, in return for depositing a ''basket'' of securities and/or other assets identified by the ETF on a particular day, the authorized participant will receive a creation unit of ETF shares. The basket deposited by the authorized participant is generally expected to be representative of the ETF's portfolio [42] and, when combined with a cash balancing amount (*i.e.,* generally an amount of cash intended to account for any difference between the value of the basket and the NAV of a creation unit), if any, will be equal in value to the aggregate NAV of the shares of the ETF comprising the creation unit. The NAV for ETF shares is represented by the traded price for ETFs holding options positions on days of creation or redemption, and an options pricing model on days in which creations and redemptions do not occur. After purchasing a creation unit, an authorized participant may then hold individual shares of the ETF and/or sell them in the secondary market. In connection with effecting redemptions, the creation process described above is reversed. More specifically, the authorized participant will redeem a creation unit of ETF shares to the ETF in return for a basket of securities and/

[37] The Exchange is proposing that, for purposes of proposed Rule 6.63, the term ''authorized participant'' would be defined as an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.,* specified numbers of ETF shares). While an authorized participant may be a TPH and directly effect transactions in options on the Exchange, an authorized participant that is not a TPH may effect transactions in options on the Exchange through a TPH on its behalf.

[38] The Exchange proposes that, for purposes of proposed Rule 6.63, any issuer of ETF shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the ''1940 Act'').

[39] An ETF share is a share or other security traded on a national securities exchange and defined as an NMS stock, which includes interest in open-end management investment companies. *See* Rule 1.1 and Cboe Options Rule 4.3 (incorporated by reference into C2 Rules pursuant to Chapter 4).

[40] The Exchange proposes that, for purposes of proposed Rule 6.63, any issuer of UIT units would be a trust registered with the Commission as a unit investment trust under the 1940 Act.

[41] This summary of the ETF creation and redemption process is based largely on portions of the discussion set forth in Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the ''Proposed ETF Rule Release'') in which the Commission proposed a new rule under the 1940 Act that would permit ETFs registered as open-end management investment companies that satisfy certain conditions to operate without the need to obtain an exemptive order. The proposed rule was adopted on September 25, 2019. *See* Investment Company Act Release No. 33646 (September 25, 2019).

[42] Under certain circumstances, however, and subject to the provisions of its exemptive relief from various provisions of the 1940 Act obtained from the Commission, an ETF may substitute cash and/or other instruments in lieu of some or all of the ETF's portfolio holdings. For example, today, positions in options traded on the Exchange would be generally substituted with cash.

or other assets (along with any cash balancing account).

The ETF creation and redemption process, coupled with the secondary market trading of ETF shares, facilitates arbitrage opportunities that are intended to help keep the market price of ETF shares at or close to the NAV per share of the ETF. Authorized participants play an important role because of their ability, in general terms, to add ETF shares to, or remove them from, the market. In this regard, if shares of an ETF are trading at a discount (*i.e.,* below NAV per share), an authorized participant may purchase ETF shares in the secondary market, accumulate enough shares for a creation unit and then redeem them from the ETF in exchange for the ETF's more valuable redemption basket. Accordingly, the authorized participant will profit because it paid less for the ETF shares than it received for the underlying assets. The reduction in the supply of ETF shares available on the secondary market, together with the sale of the ETF's basket assets, may cause the price of ETF shares to increase, the price of the basket assets to decrease, or both, thereby causing the market price of the ETF shares and the value of the ETF's holdings to move closer together. In contrast, if the ETF shares are trading at a premium (*i.e.,* above NAV per share), the transactions are reversed (and the authorized participant would deliver the creation basket in exchange for ETF shares), resulting in an increase in the supply of ETF shares which may also help to keep the price of the shares of an ETF close to the value of its holdings.

In comparison to other pooled investment vehicles, one of the significant benefits associated with an ETF's in-kind redemption feature is tax efficiency. In this regard, by effecting redemptions on an in-kind basis (*i.e.,* delivering certain assets from the ETF's portfolio instead of cash), there is no need for the ETF to sell assets and potentially realize capital gains that would be distributed to shareholders. As indicated above, however, because the Rules currently do not allow ETFs to effect in-kind transfers of options off of the Exchange, ETFs that invest in options traded on the Exchange are generally required to substitute cash in lieu of such options when effecting redemption transactions with authorized participants. Because they must sell the options to obtain the requisite cash, such ETFs (and therefore, investors that hold shares of those ETFs) are not able to benefit from the tax efficiencies afforded by in-kind transactions.

An additional benefit associated with the in-kind feature is the potential for transaction cost savings. In this regard, by transacting on an in-kind basis, ETFs may avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets. Again, however, this benefit is not available today to ETFs with respect to their options holdings.

UITs

Although UITs operate differently than ETFs in certain respects, as described below, the anticipated potential benefits to UIT investors (*i.e.,* greater tax efficiencies and transaction cost savings) from the proposed exemption would be similar as discussed below. Specifically, under the 1940 Act,[43] a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.[44] A UIT's investment portfolio is relatively fixed, and, unlike an ETF, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including ETFs), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like ETFs, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations known as ''units.'' A broker-dealer purchases a unit of UIT shares from the UIT's trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by ''in-kind'' transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to the aggregate NAV of the shares of the UIT comprising a unit.[45] The UIT then issues units that are publicly offered and sold. Unlike ETFs, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (*i.e.,* the primary period, which may range from a single day to a few months). Similar to the process for ETFs, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of ETFs, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Proposed Rule

The Exchange believes that it is appropriate to permit off-Exchange transfers of options positions in connection with the creation and redemption process and recognizes that the prevalence and popularity of ETFs have increased greatly. Currently, ETFs serve both as popular investment vehicles and trading tools[46] and, as discussed above, the creation and redemption process, along with the arbitrage opportunities that accompany it, are key ETF features. Although ETFs and UITs operate differently in certain respects, the ability to effect in-kind transfers is also significant for UITs. As described above, UITs and ETFs are situated in substantially the same manner; the key differences being a UIT's fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implication and trading costs for remaining unit holders

[43] 15 U.S.C. 80a–4(2).

[44] The Exchange also notes that, though a majority of ETFs are structured as open-ended funds, some ETFs are structured as UITs, and currently represent a significant amount of assets within the ETF industry. These include, for example, SPDR S&P 500 ETF Trust (''SPY'') and PowerShares QQQ Trust, Series 1 (''QQQ'').

[45] The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. *See* § 270.2a–4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of § 270.2a–4(a), which provides for other events that would trigger computation of a UIT's NAV.

[46] As noted in the Proposed ETF Rule Release, during the first quarter of 2018, trading in U.S.-listed ETFs comprised approximately 18.75% of U.S. equity trading by share volume and 28.2% of U.S. equity trading by dollar volume (based on trade and quote data from the New York Stock Exchange and Trade Reporting Facility data from the Financial Industry Regulatory Authority, Inc. (FINRA)). *See* Proposed ETF Rule Release at 83 FR 37334.

would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, the Exchange believes that providing for an additional, narrow circumstance to make it possible for ETFs and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified.

The Exchange submits that its proposal is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off of the Exchange. In this regard, the proposed circumstance would be available solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of ETF shares between ETFs and authorized participants,[47] and units of UITs between UITs and sponsors. As a result of this process, such transfers would occur at the price(s) used to calculate the NAV of such ETF shares and UIT units (as discussed above), which removes the need for price discovery on an Exchange for pricing these transfers. Moreover, as described above, ETFs and authorized participants, and UITs and sponsors, are not seeking to effect the opening or closing of new options positions in connection with the creation and redemption process. Rather, the options positions would reside in a different clearing account until closed in a trade on the Exchange or until they expire.

The proposed transfers, while occurring between two different parties, will occur off the Exchange and will not be considered transactions (as is the case for current off-Exchange transfers permitted by proposed Rule 6.61(a)). While the prices of options transactions effected on the Exchange are disseminated to OPRA, back-office transfers of options positions in clearing accounts held at OCC (in accordance with OCC Rules) [48] are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions.[49] The Exchange believes that price transparency is important in the options markets. However, the Exchange expects any transfers pursuant to the proposed rule will constitute a minimal percentage of the total average daily volume of options. Today, the trading of ETFs and UITs that invest in options is substantially limited on the Exchange, primarily because the current rules do not permit ETFs or UITs to effect in-kind transfers of options off the Exchange. The Exchange continues to expect that any impact this proposal could have on price transparency in the options market is minimal because proposed Rule 6.63 is limited in scope and is intended to provide market participants with an efficient and effective means to transfer options positions under clearly delineated, specified circumstances. Additionally, as noted above, the NAV for ETF and UIT transfers will generally be based on the disseminated closing price for an options series on the day of a creation or redemption, and thus the price (although not the time or quantity of the transfer) at which these transfers will generally be effected will be publicly available.[50] Further, the Exchange generally expects creations or redemptions to include corresponding transactions by the authorized participant that will occur on an exchange and be reported to OPRA.[51] Therefore, the Exchange expects that any impact the proposed rule change could have on price transparency in the options market would be de minimis.

Other than the transfers covered by the proposed rule, transactions involving options, whether held by an ETF or an authorized participant, or a UIT or a sponsor would be fully subject to all applicable trading Rules.[52] Accordingly, the Exchange does not believe that the proposed new exception would compromise price discovery or transparency.

Further, the Exchange believes that providing an additional exception to make it possible for ETFs and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified because, while the proposed exception would be limited in scope, the benefits that may flow to ETFs that hold options and their investors may be significant. Specifically, the Exchange expects such ETFs and UITs and their investors would benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other ETFs and UITs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction.

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.[53] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [54] 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) [55] 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 proposed Rule 6.60 is consistent with the Act, because it adopts provisions in the Rules specifically required by Rules

[47] *See supra* note 37. The term ''authorized participant'' is specific and narrowly defined. As noted in the Proposed ETF Rule Release, the requirement that only authorized participants of an ETF may purchase creation units from (or sell creation units to) an ETF ''is designed to preserve an orderly creation unit issuance and redemption process between ETFs and authorized participants.'' Furthermore, an ''orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism.'' *See* Proposed ETF Rule Release at 83 FR 37348.

[48] OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers. All transfers pursuant to proposed Rule 6.63 would be required to comply with OCC rules

[49] For example, any transfers that would be effected pursuant to proposed Rule 6.61(a) are not disseminated to OPRA.

[50] If there is no disseminated closing price, the ETF or UIT would price according to a pricing model or procedure as described in the fund's prospectus.

[51] The Exchange notes that for in-kind creations, an authorized participant will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA. For in-kind redemptions, the Exchange generally expects that an authorized participant will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position would likely be acquired in an on-exchange transaction that would be reported to OPRA. Such transactions are generally identical to the way that creations and redemptions work for equities and fixed income transactions—while the transfer between the authorized participant and the fund is not necessarily reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

[52] As indicated above, the operation of the arbitrage mechanism accompanying the creation and redemption process generally contemplates ongoing interactions between authorized participants and the market in transactions involving both ETF shares and the assets comprising an ETF's creation/redemption basket.

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(5).

[55] *Id.*

19c–1 and 19c–3 under the Act. The Exchange's rules, stated policies, and procedures currently comply with these provisions of the Rules under the Act, and the proposed rule will change will add transparency to the Rules, which will benefit investors.

The Exchange believes proposed Rule 6.61 regarding off-floor position transfers is consistent with the Section 6(b)(5) [56] requirements that the rules of an exchange be 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) [57] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Rule 6.61 in very limited circumstances is reasonable to allow a TPH to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a TPH that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a TPH that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a TPH may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed Rule 6.61(f) that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

[56] *Id.*

[57] *Id.*

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will enable the Exchange to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a–3 and 17a–4 under the Act.

Similar to Cboe Options Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Proposed Rule 6.61(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Rule 6.61(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Rule 6.61(f) which are intended to protect investors and the general public. While Cboe Options grants an exemption to the President (or senior-level designee),[58] the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

The Exchange believes proposed Rule 6.62 regarding RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to

[58] *See* Cboe Options Rule 6.7(f).

netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

Proposed Rule 6.62 does not unfairly discriminate against market participants, as all TPHs and non-TPHs with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing TPHs.

The Exchange believes proposed Rule 6.63 to permit off-Exchange transfers in connection with the in-kind ETF and UIT creation and redemption process will promote just and equitable principles of trade and help remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit ETFs and UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for ETFs and UITs that invest in equities and fixed-income securities. This process represents a significant feature of the ETF and UIT structure generally, with advantages that distinguish ETFs and UITs from other types of pooled investment vehicles. In light of the associated tax efficiencies and potential transaction cost savings, the Exchange believes the ability to utilize an in-kind process would make such ETFs and UITs more attractive to both current and prospective investors and enable them to compete more effectively with other ETFs and UITs that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. In addition, the Exchange believes that because it would permit ETFs and UITs that invest in options traded on the Exchange to benefit from tax efficiencies and potential transaction cost savings afforded by the in-kind creation and redemption process, which benefits the Exchange expects would generally be passed along to investors that hold ETF shares and UIT units, the proposed rule change would protect investors and the public interest.

Moreover, the Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off the Exchange. Other than the transfers covered by the proposed exception, transactions involving options, whether held by an ETF or an authorized participant, or a UIT or a sponsor, would be fully subject to the applicable trading Rules. Additionally, the transfers covered by the proposed exception would occur at a price(s) used to calculate the NAV of the applicable ETF shares or UIT units, which removes the need for price discovery on the Exchange. Accordingly, the Exchange does not believe that the proposed rule change would compromise price discovery or transparency.

When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'' [59] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[60] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition among exchanges. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the lifeblood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public.

Currently, the Exchange Rules do not allow ETFs or UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for ETFs and UITs that hold them. As a result, the use of options by ETFs and UITs is substantially limited. While the proposed exception would be limited in scope, the Exchange believes the benefits that may flow to ETFs and UITs that hold options and their investors may be significant. Specifically, the Exchange expects that such ETFs and UITs and their investors could benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other ETFs and UITs, and other investment vehicles, that, due to their particular portfolio

[59] *See* H.R. Rep. 94–229, at 92 (1975) (Conf. Rep.).

[60] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

holdings, may effect in-kind creations and redemptions without restriction. This may lead to further development of ETFs and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

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 be a competitive trading tool.

The Exchange does not believe the proposed rule change regarding off-floor position transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the transfer procedure may be utilized by any TPH and the rule will apply uniformly to all TPHs. Use of the transfer procedure is voluntary, and all TPHs may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a TPH that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will enable the Exchange to be aware of transfers and monitor and review the transfers for compliance with the proposed rule.

Adopting an exemption, similar to Cboe Options Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to proposed Rule 6.60 prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change regarding off-floor position transfers will impose an undue burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Rule 6.61(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Rule 6.61(g) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Options Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

The Exchange does not believe the proposed rule change regarding off-floor RWA Transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, as use of the proposed process is voluntary. All TPHs and non-TPHs with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

The Exchange does not believe the proposed rule change regarding off-floor in-kind transfers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed exception would be voluntary. As an alternative to the normal auction process, proposed Rule 6.63 would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for ETFs and UITs under specified circumstances. The proposed exception would enable all ETFs and UITs that hold options to enjoy the benefits of in-kind creations and redemptions already available to other ETFs and UITs (and to pass these benefits along to investors). The proposed rule change would apply in the same manner to all authorized participants and sponsor broker-dealers that choose to use the proposed process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, it is intended to provide an additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Further, the Exchange believes the proposed rule change will eliminate a significant competitive disadvantage for ETFs and UITs that invest in options. Furthermore, as indicated above, in light of the significant benefits provided (*e.g.,* tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of ETFs and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that the proposed rule change is based on Cboe Rule 6.9. As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for ETFs that hold options to utilize the in-kind transfers proposed herein.

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)(iii) of the Act[61] and subparagraph (f)(6) of Rule 19b–4 thereunder.[62]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[63] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[64] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the requested waiver will provide for fair competition among options exchanges, given that the proposed rules are ''substantively the same'' as those of at least one other national securities exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not present any unique or novel regulatory issues and is substantively identical to the rules of Cboe. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[65]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2020–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2020–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–C2–2020–006 and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13116 Filed 6–17–20; 8:45 am]

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[61] 15 U.S.C. 78s(b)(3)(A)(iii).

[62] 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.

[63] 17 CFR 240.19b–4(f)(6).

[64] 17 CFR 240.19b–4(f)(6)(iii).

[65] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[66] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89064; File No. SR–CboeEDGX–2020–025]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

June 12, 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 June 2, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule applicable to Members and non-Members[3] of the Exchange pursuant to EDGX Rules 15.1(a) and (c). 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/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' See Exchange Rule 1.5(n).

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

The Exchange proposes to amend its fee schedule in connection with its Add Volume Tiers.[4]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[5] no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0017 per share for orders that add liquidity and assesses a fee of $0.0027 per share for orders that remove liquidity, and for securities below $1.00, the Exchange provides a standard rebate of $0.00003 per share for orders that add liquidity and assesses a standard fee of 30% of dollar value per share for orders that remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. Pursuant to footnote 1 of the Fees Schedule, the Exchange currently offers Add Volume Tiers (tiers 1 through 4, plus five various additional tiers) that provide Members an opportunity to receive an enhanced rebate from the standard fee assessment for liquidity adding orders that yield fee codes ''B'',[6] ''V'',[7] ''Y'',[8] ''3'',[9] and ''4''.[10] The Add Volume Tiers currently offer nine different tiers that vary in levels of criteria difficulty and incentive opportunities in which Members may qualify for enhanced rebates for such orders. For example, Tier 4 currently provides an enhanced rebate of $0.0029 for qualifying, liquidity adding orders (*i.e.* yielding fee codes B, V, Y, 3, or 4) for Members who have an ADV[11] of greater than or equal to 0.70% of the TCV.[12]

Moreover, the Exchange notes that the competition for Retail Order flow is particularly intense, especially as it relates to exchange versus off-exchange venues, as prominent retail brokerages tend to route a majority of their limit orders to off-exchange venues.[13] This competition is particularly acute for non-marketable Retail Orders, *i.e.,* Retail Orders that provide liquidity, and even more fiercely for non-marketable Retail Orders that provide displayed liquidity on an exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. Pursuant to footnote 3 of the Fees Schedule, the Exchange currently offers Retail Volume Tiers which provide Members an opportunity to receive an enhanced rebate from the standard fee assessment for Retail Orders[14] that add liquidity (*i.e.,* yielding fee code ''ZA''[15]). Currently, the Retail Volume Tiers offer two levels of criteria difficulty and incentive opportunities in which Members may qualify for enhanced rebates for Retail Orders.

The tier structures described above are designed to encourage Members to increase their order flow (adding and removing or Retail) in order to receive an enhanced rebate on their liquidity adding orders, and the Exchange now proposes to amend Add Volume Tier 4, as well as add an additional Add Volume Tier (Growth Tier 3) in footnote 1 and an additional Retail Volume Tier (Retail Volume Tier 3) in footnote 3 of the Fees Schedule.

First, the proposed rule change amends Add Volume Tier 4 (as

[4] The Exchange initially filed the proposed fee changes on June 1, 2020 (SR–CboeEDGX–2020–024). On June 2, 2020, the Exchange withdrew that filing and submitted this filing.

[5] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (May 27, 2020), available at *https://markets.cboe.com/us/equities/market_statistics/.*

[6] Appended to orders that add liquidity to EDGX (Tape B) and offered a rebate of $0.0017 per share.

[7] Appended to orders that add liquidity to EDGX (Tape A) and offered a rebate of $0.0017 per share.

[8] Appended to orders that add liquidity to EDGX (Tape C) and offered a rebate of $0.0017 per share.

[9] Appended to orders that add liquidity to EDGX pre and post market (Tape A or C) and offered a rebate of $0.0017 per share.

[10] Appended to orders that add liquidity to EDGX pre and post market (Tape B) and offered a rebate of $0.0017 per share.

[11] ''ADV'' means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[12] ''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.

[13] *See* Securities Exchange Release No. 86375 (July 15, 2019), 84 FR 34960 (SR–CboeEDGX–2019–045).

[14] *See* EDGX Rule 11.21(a)(1). A ''Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See EDGX Rule 11.21(a)(2). Retail Orders are submitted by a ''Retail Member Organization'' or ''RMO'', which is a member (or a division thereof) that has been approved by the Exchange to submit such orders.

[15] Appended to Retail Orders that add liquidity to EDGX and offered a rebate of $0.0032 per share.

described in the example above) so that a Member may receive the current enhanced rebate of $0.0029 for qualifying, liquidity adding orders if that Member has an ADV that is greater than or equal to 0.65% of the TCV. The proposed criteria change is designed to incentivize Members to continue to submit order flow to the Exchange in order to receive an enhanced rebate on their liquidity adding orders, by making Tier 4 criteria easier to achieve. Instead of meeting a 0.70% ADV threshold of the TCV, the proposed change eases the threshold five basis points to 0.65% of the TCV. As a result of the proposed ease in criteria, Members will be further incentivized to submit order flow to receive the enhanced rebate provided under Tier 4 for their qualifying orders. The Exchange notes that Tier 4, as amended, will continue to be available to all Members and is competitively achievable for all Members that submit an overall ADV as the requisite threshold of TCV (both adding and removing order flow), in that, all firms that submit the requisite order flow will continue to be able to compete to meet the tier.

Second, the Exchange proposes to add Growth Tier 3 to the Add Volume Tiers and Retail Volume Tier 3 to the Retail Volume Tiers. Pursuant to both additional proposed tiers, Members will be able to receive an enhanced rebate if they have a Retail Step-Up Add (*i.e.,* yielding fee code ZA [16]) TCV [17] from May 2020 that is greater or equal to 0.10%. A Member that meets such criteria will receive an enhanced rebate of $0.0027 on qualifying orders (B, V, Y, 3, and 4) pursuant to proposed Growth Tier 3 and/or an enhanced rebate of $0.0037 on qualifying orders (ZA) pursuant to proposed Retail Volume Tier 3. The proposed criteria under the additional tiers is designed to encourage growth in retail order flow (*i.e.,* Members must increase their relative liquidity each month over a predetermined baseline (in this case the month being May 2020)). The Exchange notes that the proposed tier is available to all Retail Member Organizations (''RMOs'') and is competitively achievable for all RMOs that submit liquidity adding retail order flow, in that, all firms that submit the requisite liquidity adding retail order flow could compete to meet the tier.

The Exchange believes the proposed opportunity to receive an enhanced rebate on qualifying orders for (1) liquidity adding and removing orders and (2) Retail Orders incentivizes an increase in overall order flow to the Book. It provides liquidity adding Members on the Exchange a further incentive to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange a further incentive to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, this benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [20] 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tiers are reasonable because they either amend an existing opportunity to make it easier to reach or provide an additional opportunity for Members to receive an enhanced rebate on qualifying orders by means of liquidity adding orders and removing or Retail Orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[21] including the Exchange,[22] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[23]

The Exchange believes the proposed modification to ease the criteria under Add Volume Tier 4, by decreasing the threshold of ADV to TCV is a reasonable means to further incentivize Members to increase their total order flow to the Exchange by encouraging those

[16] Appended to Retail Orders that add liquidity to EDGX and offered a rebate of $0.0032 per share.

[17] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. ''ADAV'' means ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f.(b)(5).

[21] *See e.g.,* Nasdaq PSX Price List, Rebate to Add Displayed Liquidity (Per Share Executed), which provides rebates to members for adding displayed liquidity over certain thresholds of TCV ranging between $0.0020 and $0.0026; Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers, which provides similar incentives for liquidity adding orders and offers rebates ranging between $0.0018 and $0.0032; Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, which offer rebates of $0.00325 and $0.0033 for Add Displayed Designated Retail Liquidity.

[22] *See generally,* Cboe EDGX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tiers, which provides incentives for ADV/ADAV order flow as a percentage of TCV and for criteria based on certain other threshold components (*i.e.* Step-Up Add TCV, average OCV, and AIM and Customer orders); and Footnote 3, Retail Volume Tiers, which provides incentives for Retail Step-Up Add TCV and Retail Order ADV as a percentage of TCV.

[23] *See supra* note 20.

Members who could not previously achieve Tier 4 to strive, instead, for the proposed lower ADV percentage of the TCV to receive the same rebate. Likewise, the Exchange believes that the proposed criteria for the new Growth Tier 3 and Retail Volume Tier 3 is a reasonable means to encourage Members to grow their overall liquidity adding Retail Orders as it provides an additional opportunity for Members to receive an enhanced rebate on various qualifying orders (B,V,Y, 3, and 4 under Growth Tier 3 and ZA under Retail Volume Tier 3) based on increases in their add retail volume by a modest amount since May 2020. Moreover, the Exchange believes the proposed tiers are reasonable because they are designed to encourage overall order flow, that is, both adding and removing orders as a result of proposed Add Volume Tier 4 and Retail Orders as a result of proposed Growth Tier 3 and Retail Volume Tier 3. Indeed, the Exchange notes that greater add volume order flow provides for deeper, more liquid markets and execution opportunities, and greater remove volume order flow increases transactions on the Exchange, which incentivizes liquidity providers to submit additional liquidity and execution opportunities, thus, providing an overall increase in price discovery and transparency on the Exchange. Also, an increase in Retail Order flow, which generally are submitted in smaller sizes, tends to attract Market-Makers, as smaller size orders are easier to hedge. Increased Market-Maker activity facilitates tighter spreads, signaling additional corresponding increase in order flow from other market participants, which contributes towards a robust, well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Further, the Exchange believes that the proposed rule changes are reasonable as they do not represent a significant departure from the current criteria or enhanced rebates currently offered in the Fees Schedule. The proposed criteria under Add Volume Tier 4 remains in line with the incremental increases in ADV as a percentage of TCV from Tier 1 through Tier 3 (where Tier 1 provides for 20%, Tier 2 for 30%, and Tier 3 for 40%). Also, the proposed criteria in Growth Tier 3 poses an incremental increase in difficulty from Growth Tier 2 (which may be met if a Member adds an ADV greater than or equal to 0.20% of the TCV, and has a Step-Up Add TCV from March 2019 of greater than or equal to 0.10%) as the sum of Retail Orders as a Step-Up component present a more narrow, thus more difficult, type of order flow that must meet threshold in total. As such, the Exchange believes the enhanced rebate of $0.0027 offered under proposed Growth Tier 3, over the $0.0026 enhanced rebate offered under Growth Tier 2, is a reasonable increase. Likewise the proposed criteria under Retail Tier 3 is of comparable difficulty to the criteria under Retail Tier 2 (which may be met if a Member adds a Retail Order ADV greater than or equal to 0.50% of the TCV) therefore it is reasonable to offer the same enhanced rebate of $0.0037 across the two tiers.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for Add Volume Tier 4, as amended, and all RMOs will be eligible for Growth Tier 3 and Retail Volume Tier 3. The proposed tiers are designed as an incentive to any and all Members or RMOs, as applicable, interested in meeting the tier criteria to submit additional adding and removing, or Retail, order flow to the Exchange. Each will have the opportunity to submit the requisite order flow and will receive the applicable enhanced rebate if the tier criteria is met. The Exchange additionally notes that while the proposed Growth and Retail Volume tiers are applicable only to RMOs, the Exchange does not believe this application is discriminatory as the Exchange offers similar rebates to non-RMO order flow.[24]

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that at least two Members will be able to compete for and reach each of the proposed tiers. The Exchange anticipates that multiple Member types will compete to reach the proposed tiers, broker-dealers and liquidity providers, each providing distinct types of order flow to the Exchange to the benefit of all market participants. The Exchange also notes that the proposed tiers will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria for a proposed tier, the Member will merely not receive the corresponding enhanced rebate. Furthermore, the proposed fees would uniformly apply to all Members that meet the required criteria per each respective tier (Add Volume Tier 4, Growth Tier 3, and/or Retail Volume Tier 3).

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [25]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members or RMOs, as applicable, equally in that all Members or RMOs, as applicable, are eligible for the proposed tiers, have a reasonable opportunity to meet the tiers' criteria and will all receive the proposed rebates if such criteria is met. As indicated above, the Exchange does not believe that offering RMOs, specifically, opportunities to meet certain tier criteria for enhanced rebates imposes a burden on intramarket competition as the Exchange offers many similar rebate opportunities for non-RMOs.[26] Overall, the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified tier

[24] Such as the nine other Add Volume Tiers and the Tape B Volume Tier which provide opportunities to all Members to submit the requisite order flow to receive an enhanced rebate.

[25] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[26] *See supra* note 23.

criteria would incentivize market participants to direct liquidity removing order flow to the Exchange and, as a result, increase execution opportunities, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[27] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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.'' [28] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[29] 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 [30] and paragraph (f) of Rule 19b–4 [31] 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–CboeEDGX–2020–025 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–CboeEDGX–2020–025. 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–CboeEDGX–2020–025, and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13124 Filed 6–17–20; 8:45 am]

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[27] *See supra* note 4.

[28] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[29] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89060; File No. SR–ICEEU–2020–005]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Clearing Rules

June 12, 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 June 2, 2020, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe is proposing to make certain changes to its Clearing Rules (the ''Rules'') [3] to address the receipt of proceeds from default insurance.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe proposes amendments to Parts 9 and 11 of the Rules relating to default insurance that is intended to cover losses resulting from a Clearing Member default. Among other changes, the proposed amendments address the potential receipt of proceeds from default insurance. Although ICE Clear Europe is not, and would not be, required to obtain or maintain default insurance, the proceeds of any such insurance would, under the Rules as proposed to be revised, be applied as part of the resources available to ICE Clear Europe in the event of a Clearing Member default. Such default insurance would provide additional default resources to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources from non-defaulting Clearing Members. This would provide a potential extra layer of protection for the non-defaulting Clearing Members' guaranty fund contributions and assessments. ICE Clear Europe is also proposing certain additional conforming amendments to the Rules. The proposed revisions are described in detail below.

ICE Clear Europe proposes to amend the default waterfalls in Rules 908(b) (for F&O-only Clearing Members or Sponsored Principals), (c) (for CDS-only Clearing Members or Sponsored Principals), (d) (for FX-only Clearing Members or Sponsored Principals) and (g) (for Clearing Members or Sponsored Principals in multiple membership categories) such that default insurance proceeds would be placed third in the waterfall of assets used to meet the obligations and liabilities of a Defaulter and any shortfall, loss or liability to the Clearing House upon an Event of Default. (In the case of a defaulter with multiple membership categories, the proceeds of default insurance would be applied to each Default Amount on a pro rata basis, as provided in Rule 908(g)(iii) as proposed to be revised.) Default insurance proceeds would thus be applied following the Clearing House initial contribution and before the Clearing Member guaranty fund contributions and assessment contributions. Conforming amendments would be made to the Rule 101 definitions of ''Clearing House CDS GF Contribution'', ''Clearing House F&O GF Contribution'' and ''Clearing House FX GF Contribution'' as well as to Rule 909(a), reflecting the placement of default insurance proceeds in the applicable waterfalls under Rule 908.

Rule 1103(e) (which states certain limitations with respect to the benefits of default insurance) would be amended to provide that the Clearing House is not obliged to obtain or maintain any default insurance policy or make or receive the proceeds under any claim prior to processing to the next levels of assets in the applicable waterfall in Rule 908, and subject to the payment order specified in Rule 1102(k). The amendments would further reflect that there could be a delay in receiving insurance proceeds such that other assets applicable under Rule 908 may be called prior to insurance proceeds being received and proceeds of any claim may need to be applied to meet losses across more than one Event of Default if there are multiple defaulters. The amendments would further set out the order in which proceeds of default insurance claims would be paid out if there are multiple defaulters within a certain period, such that insurance proceeds would not be applied to a default in respect of which there were no further losses after applying default resources up to and including the Clearing House contribution, and would be applied to remaining losses based on which default occurred first in time, and to losses from defaults occurring simultaneously (including defaults occurring on the same day) on a pro rata basis.

Rule 1102(k) (which addresses allocation of amounts recovered from a Defaulter) would be amended to address application of recoveries to pay amounts owed to default insurers in respect of default insurance, as well as reimbursements to Clearing Members and the Clearing House in respect of their contributions that have been used, in the reverse order in which assets were applied under Rule 908 (*i.e.,* to non-defaulting Clearing Members in respect of their Guaranty Fund Contributions that had been applied, then to the default insurance provider in respect of amounts owed to it, and then to the Clearing House in respect of its default contribution). Rule 1102(k) would also be revised to clarify that application of such amounts would be subject to (i) retaining or repaying amounts applied by the Clearing House (which would no longer include claims under insurance policies) or other third parties applied to meet shortfalls; (ii) if applicable, reimbursing payments to Persons that made Assessment Contributions in the reverse order specified in Rule 908; and (iii) if applicable, meeting certain repayment obligations under Rules 909(j), 914(j) or 916(n).

Rule 909(j) (which addresses reimbursement of Assessment Contributions) would also be amended to reflect the application of default insurance. The amendments would expand the existing provision to provide that if, after any Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects on the defaulted obligation, loss or shortfall in whole or in part from an insurer, the Clearing House would refund the collected

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

amount, less expenses, to non-defaulting Clearing Members in respect of their paid Assessment Contributions. The amendment would also add a drafting clarification that such reimbursements are subject to the Clearing House retaining or repaying amounts applied to meet any shortfall and certain repayment obligations, if applicable, under Rules 914(j) (addressing payment of recoveries to persons that were subject to reduced gains distributions under Rule 914) and 916(n) (addressing payments of recoveries to persons that received reduced amounts in the case of product termination under Rule 916), which is consistent with the existing language of Rule 914(j) and 916(n).

The term ''Available Non-Defaulter Resources'' in Rule 913 would be amended to include claims under default insurance policies available to be applied pursuant to Rule 908, provided that they were received in cleared funds at the time the Clearing House performs a calculation of Available Non-Defaulter Resources.

Rule 914(j) (which addresses application of recoveries in the context of reduced gains distribution) would be extended such that it would also apply where the Clearing House receives insurance proceeds. Existing Rule 914(j) provides that if the Clearing House receives an amount that would, had it been paid on time, have increased the Clearing House's available resources on a day on which a Margin Account Adjustment was made in connection with Reduced Gains Distributions, the Clearing House would distribute the amounts received first to non-defaulting Contributors who were liable to pay an adjustment on a pro rata basis and second in accordance with Rule 1102(k) (as described above). The amendment would include default insurance proceeds in the type of received amounts subject to the rule.

Similarly, Rule 916(n) (which addresses application of recoveries in the context of product termination) would be amended such that it also applies to insurance proceeds. Existing Rule 916 in general permits the Clearing House to terminate the open contracts in a relevant contract category (*e.g.,* F&O or CDS) under specified circumstances, including in certain cases following an Under-priced Auction or where the Clearing House determines there are not sufficient Clearing Members to support continued clearing of the relevant contract category. In the case of such a termination of a contract category, under existing Rule 916(n), where ICE Clear Europe receives an amount that would, had it been paid on time, have increased the amount owed to (or decreased the amount owed by) Clearing Members or Sponsored Principals upon termination of a contract category, ICE Clear Europe would distribute the amount received first to non-defaulting Clearing Members or Sponsored Principals who received less in respect of product termination than they were otherwise owed, then in accordance with Rule 914(j) (as discussed above), and then in accordance with Rule 1102(k) (as discussed above). The amendment would include default insurance proceeds in the type of received amounts subject to distribution under Rule 916(n).

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[5] In particular, Section 17A(b)(3)(F) of the Act requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest.[6] The proposed changes amend the default waterfalls in Rule 908 to apply the proceeds of default insurance, if any, as an additional default resource after the application of ICE Clear Europe's own initial contributions and prior to the application of guaranty fund contributions or assessment contributions of non-defaulting Clearing Members. Placing the proceeds from any default insurance that ICE Clear Europe may receive before the guaranty fund resources of non-defaulting Clearing Members in the default waterfall is generally favorable to non-defaulting Clearing Members and enhances ICE Clear Europe's procedures that are designed to protect and ensure the safety of Clearing Member funds and assets. Although ICE Clear Europe is not relying on the additional default resources from default insurance to meet regulatory minimum financial requirements, in ICE Clear Europe's view, the proposed changes to the Rules nonetheless enhance ICE Clear Europe's ability to manage the risk of defaults by providing resources to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources from non-defaulting Clearing Members, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible within the meaning of Section 17A(b)(3)(F) of the Act.[7]

The amendments will also satisfy relevant requirements of Rule 17Ad–22,[8] as set forth in the following discussion.

Rule 17Ad–22(e)(4) [9] requires ICE Clear Europe to maintain financial resources at a minimum sufficient to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions. ICE Clear Europe is not relying on default insurance to meet its regulatory financial resource requirements, including for purposes of Rule 17Ad–22(e)(4), and is not reducing the amount of its other relevant financial resources. ICE Clear Europe believes that the proposed revisions will nonetheless enhance its default waterfall and default management procedures. As described above, the proposed amendments contemplate the possibility of ICE Clear Europe receiving proceeds from default insurance, which would provide additional default resources to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources from non-defaulting Clearing Members. Conforming changes proposed to Rule 1103(e) would permit the use of Guaranty Fund Contributions to occur prior to receipt of any default insurance proceeds and the application of default insurance proceeds to meet losses across multiple Events of Default. As such, default insurance would, in ICE Clear Europe's view, represents a tool that strengthens ICE Clear Europe's ability to manage its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(b)(3).[10]

Rule 17Ad–22(e)(13) [11] requires ICE Clear Europe to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22.

[9] 17 CFR 240.17Ad–22(e)(r).

[10] 17 CFR 240.17Ad–22(e)(4).

[11] 17 CFR 240.17Ad–22(e)(13).

action to contain losses and liquidity demands and continue to meet its obligations in the case of participant default. The proposed changes to the Rules integrate default insurance into the default waterfall, providing additional potential default resources to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources from non-defaulting Clearing Members. Amended Rule 1103(e) provides that ICE Clear Europe may use the contributions of non-defaulting Clearing Members to the guaranty fund prior to the receipt of proceeds owed under the default insurance provided that those Clearing Members are reimbursed from the insurance proceeds when received. Given that there may be delays in making and processing an insurance claim, this provision ensures that the existence and use of default insurance does not interfere with ICE Clear Europe's default management and allows ICE Clear Europe to continue its default management process without having to wait for the payment of insurance proceeds. The proposed amendments thus ensure that ICE Clear Europe can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad–22(e)(13).[12]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments will apply consistently across all Clearing Members or across all Clearing Members in a particular product category, their customers and other market participants. Furthermore, as the amendments would place the application of proceeds from default insurance above Clearing Member guaranty fund contributions and contemplates certain repayments to Clearing Members upon collection from default insurers, the amendments are generally consistent with the interests of Clearing Members. As a result, ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe has conducted a public consultation the proposed amendments[13] and received one written response. The commenter inquired into whether the total default insurance coverage covers both F&O and CDS clearing together and, if both, how the insurance policy will be applied if the defaulting clearing member was active in both clearing segments. ICE Clear Europe noted that these points were addressed in the consultation Circular, which states that the coverage includes both F&O and CDS Contract Categories, and proposed Rule 908(g)(iii), which states that proceeds of any insurance policy claim shall be applied to each segment on a basis pro rata to the shortfall, loss or liability of each Default Amount (as defined in Rule 908(g)) less Clearing House Contributions applied to such amount. No changes were made as a result of the comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be 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–ICEEU–2020–005 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–ICEEU–2020–005. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2020–005 and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13120 Filed 6–17–20; 8:45 am]

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[12] 17 CFR 240.17Ad–22(e)(13).

[13] ICE Clear Europe Circular C20/037 (March 24, 2020), available at *https://www.theice.com/publicdocs/clear_europe/circulars/C20037.pdf* (the "Circular").

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89062; File No. SR–CBOE–2020–050]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rules 5.37 and 5.73

June 12, 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 June 3, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rules 5.37 and 5.73. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.37. Automated Improvement Mechanism (''AIM'' or ''AIM Auction'')

A Trading Permit Holder (the ''Initiating TPH'') may electronically submit for execution an order it represents as agent (''Agency Order'') against principal interest or a solicited order(s) [(except for an order for the account of any Market-Maker with an appointment in the applicable class on the Exchange)] (an ''Initiating Order'') provided it submits the Agency Order for electronic execution into an AIM Auction pursuant to this Rule. For purposes of this Rule, the term ''NBBO'' means the national best bid or national best offer at the particular point in time applicable to the reference, and the term ''Initial NBBO'' means the national best bid or national best offer at the time an Auction is initiated. Bulk messages are not eligible for AIM.

* * * * *

(c) AIM Auction Process. Upon receipt of an Agency Order that meets the conditions in paragraphs (a) and (b), the AIM Auction process commences.

(1)–(4) No change.

(5) AIM Auction Responses. [All Users] *Any User other than the Initiating TPH (the System rejects a response with the same EFID as the Initiating Order)* may submit responses to an AIM Auction that are properly marked specifying price, size, side of the market, and the Auction ID for the AIM Auction to which the User is submitting the response. An AIM response may only participate in the AIM Auction with the Auction ID specified in the response.

* * * * *

Rule 5.73. FLEX Automated Improvement Mechanism (''FLEX AIM'' or ''FLEX AIM Auction'')

A FLEX Trader (the ''Initiating FLEX Trader'') may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (''Agency Order'') against principal interest or a solicited order(s) [(except, if the Agency Order is a simple order, for an order for the account of any FLEX Market-Maker with an appointment in the applicable FLEX Option class on the Exchange)] (an ''Initiating Order'') provided it submits the Agency Order for electronic execution into a FLEX AIM Auction pursuant to this Rule.

* * * * *

(c) FLEX AIM Auction Process. Upon receipt of an Agency Order that meets the conditions in paragraphs (a) and (b), the FLEX AIM Auction process commences.

(1)–(4) No change.

(5) FLEX AIM Responses. Any FLEX Trader *other than the Initiating FLEX Trader (the System rejects a response with the same EFID as the Initiating Order)* may submit responses to a FLEX AIM Auction that are properly marked specifying price, size, side, and the Auction ID for the FLEX AIM Auction to which the FLEX Trader is submitting the response. A FLEX AIM response may only participate in the FLEX AIM Auction with the Auction ID specified in the response.

* * * * *

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

The Exchange proposes to permit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited for the Initiating Order[3] submitted for execution against an Agency Order in a proprietary index option class into a simple AIM Auction pursuant to Rule 5.37 or a simple FLEX AIM Auction pursuant to Rule 5.73. Currently, the introductory paragraphs of Rules 5.37 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited to execute against the Agency Order in a simple AIM or FLEX AIM Auction, respectively.[4] This provision was initially included in Rules regarding these auctions because the Exchange initially only permitted appointed Market-Makers (and TPHs representing customers at the top of the Book) to submit responses to AIM and FLEX Auctions. However, the Exchange now permits any user to submit responses to simple AIM and FLEX AIM Auctions.[5] Therefore, while market participants other than appointed Market-Makers may contribute liquidity to these crossing auctions as either contra orders or responses, appointed Market-Makers, who are the primary source of liquidity on the Exchange in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''Initiating Order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Trading Permit Holder (the ''Initiating TPH'' or ''Initiating FLEX Trader,'' as applicable) represents as agent (the ''Agency Order'').

[4] The proposed rule change amends the introductory paragraph of Rule 5.73 to add an end quotation market to the defined term ''Initiating FLEX Trader'' in the parenthetical, which was inadvertently omitted.

[5] *See* Securities Exchange Act Release No. 87072 (September 24, 2019), 84 FR 51673 (September 30, 2019) (SR–CBOE–2019–045).

their appointed classes, are limited in the manner in which they may provide liquidity to these auctions. Given that contra orders that comprise Initiating Orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of appointed Market-Makers to participate in simple AIM and FLEX AIM Auctions may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses. The Exchange believes providing appointed Market-Makers with an additional way to participate in electronic auctions will expand available liquidity for these auctions, which may increase execution and price improvement opportunities for customers' orders.

No similar restriction applies to crossing transactions in open outcry trading.[6] Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit appointed Market-Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class (as noted above). Therefore, the Exchange believes the proposed rule change will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes at all times.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and began operating in an all-electronic configuration.[7] As a result, the Exchange adopted a temporary rule change to permit Market-Makers to be solicited for electronic crossing transactions in its exclusively listed index options when the Exchange's trading floor was inoperable. The Exchange believed this would help ensure the same sources of liquidity for customer orders that executed in open outcry would be available for those orders in an electronic-only environment.[8] The Exchange believed not permitting Market-Makers to participate as contras could have created a risk that brokers may have difficulty finding sufficient liquidity to fill their customer orders that may currently be traded against orders from solicited Market-Makers appointed in the applicable class. For example, when the Exchange operates in its normal hybrid manner (with electronic and open outcry trading), if a customer order is not fully executable against electronic bids and offers, a floor broker can attempt to execute the order, or remainder thereof, on the trading floor, where the liquidity to trade with this remainder is generally provided by Market-Makers in the open outcry trading crowd. Additionally, brokers may solicit liquidity from upstairs Market-Maker firms.

The Exchange believes appointed Market-Makers should have the ability to provide liquidity to these electronic auctions, including when the Exchange is operating in its normal hybrid trading environment. Market-Makers are subject to quoting obligations and must expend resources to comply with these obligations to provide liquidity to the lit market. Given these additional costs and obligations, the Exchange does not believe these Market-Makers should have fewer execution opportunities with respect to volume submitted for execution through AIM auctions and not for electronic execution against interest in the book. The Exchange believes there is no reason to restrict Market-Makers' ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading. By permitting brokers to solicit primary liquidity providers in a class for electronic auctions, regardless of whether the trading floor is operational, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility, which may create additional execution and price improvement opportunities for customers at all times.

Appointed Market-Makers frequently serve as contra parties to crossing transactions on the trading floor. For example, during the last week of February 2020 (when the trading floor was open), over 70% of open outcry trades (consisting of over 30% of volume) across all classes executed on the trading floor consisted of a crossing transaction that included an order of a Market-Maker one side of the transaction. This demonstrates the importance of the liquidity appointed Market-Makers to the market with respect to crossing transactions, which they are currently unable to do with respect to electronic crossing transactions.

The Exchange notes solicited orders submitted as the Initiating Order for AIM Auctions are almost always comprised of orders for the accounts of away market-makers. For example, in April of 2020, approximately 99.6% of the orders submitted into all AIM Auctions had Initiating Orders comprised of orders for accounts of away market-makers, making up approximately 86.2% of the volume executed through AIM auctions. The Exchange understands these away market-makers often serve as both appointed Market-Makers on the Exchange and market-makers on other options exchanges, and thus have accounts for both purposes. These firms, as a result, can use their accounts for their away market-maker activities for being solicited with respect to AIM Auctions. Therefore, the Exchange believes the current restriction has a negative impact on the ability of firms that serve as Market-Makers on the Exchange but not other options exchanges, as well as Market-Makers for single or exclusively listed classes, to participate in AIM Auctions. During April 2020, when Initiating Orders could be comprised of orders for accounts of appointed Market-Makers pursuant to a temporary rule, while approximately 81.5% of the orders in exclusively listed index options submitted into all AIM Auctions had Initiating Orders comprised of orders for accounts of away market-makers, these orders represented only approximately 12.2% of the volume executed through AIM Auctions. The majority of the volume was represented by orders for accounts of appointed Market-Makers. This demonstrates the difficulty brokers have to find sufficient interest to fill customer orders in these classes when appointed Market-Makers may not be solicited. The Exchange believes there is no reason to not permit Initiating Orders to be comprised of orders for the accounts of appointed Market-Makers in all classes at all times. The Exchange believes the proposed rule change will provide all firms that act as Market-Makers on the Exchange in all classes with consistent access to AIM Auctions, which may further increase liquidity in these auctions and price improvement opportunities for customers.

The proposed rule change also amends Rules 5.37(c)(5) and 5.73(c)(5) to codify that any User or FLEX Trader, respectively, other than the Initiating TPH or FLEX Trader, respectively, may submit responses to AIM and FLEX AIM Auctions. As set forth in Rules 5.37(e) and 5.73(e), the Initiating Order may receive an entitlement of 40% or 50% of the Agency Order. The Exchange believes it is appropriate to not permit the Initiating TPH or Initiating FLEX Trader, as applicable, to also submit

[6] *See* Rules 5.86 and 5.87.

[7] The Exchange continues to operate in an all-electronic environment, but currently plans to reopen its trading floor on June 8, 2020.

[8] *See* Rule 5.24(e)(1)(A); *see also* Securities Exchange Act Release No. 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR–CBOE–2020–047).

responses in order to try to trade against a larger percentage of the Agency Order. This is consistent with allocation rules, pursuant to which the Initiating Order may only receive more than 40% or 50%, as applicable, of the Agency Order if there are remaining contracts after all other interest has executed.

The Rule change also notes that the System will reject a response with the same EFID [9] as the Initiating Order. The Exchange notes that orders for the same User may have different EFIDs. However, the rule prohibits all responses from the same User, even with different EFIDs. The System is currently only able to reject responses with the same EFID as the Initiating Order, which is why that is specified in the proposed rule. If the same User submits a response to an auction in which that same User had an order comprising the Initiating Order (even with a different EFID), the Exchange may take regulatory action against that User for a violation of the proposed rule. The Exchange currently applies this restriction to simple AIM and FLEX AIM Auctions, but it was inadvertently omitted from the Rules, so the proposed rule change adds transparency to the Rules. This restriction is also currently in the Rules related to AIM for complex orders, so the proposed rule change adds consistency to the rules of Exchange auctions.[10]

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.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] 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) [13] 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 the proposed rule change will benefit investors. The proposed rule change will provide the primary liquidity providers on the Exchange with an additional way to participate in electronic auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for electronic auctions, regardless of whether the trading floor is operational, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these auctions, which may create additional execution and price improvement opportunities for customers at all times, which ultimately benefits investors.

The Exchange also believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes. Currently, appointed Market-Makers may be solicited with respect to crossing transactions on the trading floor but may not be solicited with respect to electronic crossing transactions. The Exchange believes there is no reason to restrict Market-Makers ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading. The Exchange notes the electronic crossing price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.[14]

Finally, the Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will be permit orders for accounts of appointed Market-Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than appointed Market-Makers may be solicited as the contra and submit responses in AIM Auctions, while appointed Market-Makers are restricted to only submitting responses. Given the additional costs and obligations associated with being an appointed Market-Maker, the Exchange does not believe these Market-Makers should have fewer execution opportunities with respect to volume submitted for execution through AIM auctions and not for electronic execution against interest in the book. This is particularly true for Market-Makers that do not serve in a market-making capacity on other exchanges or that serve as a Market-Maker in a singly or exclusively listed class. While it is possible for an order to be solicited for the account of an away market-maker in a singly or exclusively listed class, it is less common given the order must be for market-making purposes with respect to that class. The Exchange believes the proposed rule change will provide all Market-Makers on the Exchange with the same ability to participate in AIM in all classes at all times. This may further increase execution and price improvement opportunities for customers, particularly those that submit orders in singly or exclusively listed classes where the ability for away market-makers to provide liquidity is limited.

The Exchange believes the proposed rule change to codify that any User or FLEX Trader, respectively, other than the Initiating TPH or FLEX Trader, respectively, may submit responses to AIM and FLEX AIM Auctions will promote just and equitable principles of trade so that market participants may not trade against a larger percentage of the Agency Order than permitted by the rules. The proposed rule change is consistent with allocation rules. The proposed rule change is consistent with current functionality and the rules related to AIM for complex orders, and therefore adds consistency and transparency to the Rules, which ultimately benefits investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it provides the same execution opportunities in AIM Auctions to appointed Market-Makers that are

[9] *See* Rule 1.1, which defines EFID as an Executing Firm ID.

[10] *See* Rule 5.38(c)(5).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] *See* NYSE Arca, Inc. (''Arca'') Rule 971.1NY.

currently available to all other market participants. Additionally, the proposed rule change it will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates to orders submitted into an auction mechanism on the Exchange. Additionally, the Exchange notes that the rules of at least one other options exchange permits orders for the accounts of appointed market-makers to be solicited as contra orders for that exchange's electronic crossing price improvement auction.[15] The Exchange believes the proposed rule change may improve price competition within AIM Auctions, because the primary liquidity providers will be able to increase participation in AIM Auctions.

The Exchange believes the proposed rule change to codify that any User or FLEX Trader, respectively, other than the Initiating TPH or FLEX Trader, respectively, may submit responses to AIM and FLEX AIM Auctions will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it codifies current system functionality. Additionally, it applies to all market participants that submit orders into AIM Auctions. The Exchange believes the proposed rule change will not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it relates solely to which market participants may submit responses into Exchange auction. The proposed rule change is consistent with current allocation rules and the rules related to AIM for complex orders, and therefore adds consistency and transparency to the Rules, which ultimately benefits investors.

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.

[15] *See* Arca Rule 971.1NY.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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–2020–050 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–2020–050. 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–2020–050, and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13122 Filed 6–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89057; File No. SR–NYSEArca–2019–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the AdvisorShares Pure U.S. Cannabis ETF Under NYSE Arca Rule 8.600–E

June 12, 2020.

On December 13, 2019, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the AdvisorShares Pure U.S. Cannabis ETF under NYSE Arca Rule 8.600–E (Managed Fund Shares). The proposed rule change was published for comment in the **Federal Register** on December 26, 2019.[3] On January 28, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On March 13, 2020, the Commission

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87791 (December 18, 2019), 84 FR 71057.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 88066, 85 FR 6009 (February 3, 2020).

instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 26, 2019. June 23, 2020 is 180 days from that date, and August 22, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates August 22, 2020 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2019–77).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13117 Filed 6–17–20; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 88378, 85 FR 15834 (March 19, 2020).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89059; File No. SR–NYSE–2020–50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Temporarily the Auction Collars for Exchange-Facilitated Core Open Auctions Under Rule 7.35C

June 12, 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 June 11, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 add Commentary .04 to Rule 7.35C to provide that, for a temporary period that begins June 15, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to Designated Market Makers (''DMMs'') or after the Exchange closes on June 30, 2020, the Auction Collar for the Core Open Auction will be a price that is the greater of $1.00 or 10% away from the Auction Reference Price for the Core Open Auction. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .04 to Rule 7.35C to provide that, for a temporary period that begins June 15, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Auction Collar for the Core Open Auction will be a price that is the greater of $1.00 or 10% away from the Auction Reference Price for the Core Open Auction.

Background

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[4] On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.31(c) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers.[5]

Because the Trading Floor facilities are now temporarily closed to DMMs, DMMs are not on the Trading Floor and therefore cannot manually facilitate most types of Auctions.[6] While the Trading Floor is temporarily closed, DMMs electronically participate in continuous trading and facilitate Auctions. As provided for under Rule 7.35C, any Auctions that cannot be facilitated electronically by the DMM will be facilitated by the Exchange.

Rule 7.35C sets forth the procedures for Exchange-facilitated Auctions.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange's rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.* Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

[5] *See* Securities Exchange Act Release No. 88933 (May 22, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

[6] During this temporary closure of the Trading Floor, a DMM may manually facilitate either on the Trading Floor or remotely an IPO Auction, a Core Open Auction for a post-IPO public offering, or a Trading Halt Auction following a regulatory halt. *See* Commentaries .02, .03, .04, and .05 to Rule 7.35A.

Currently, the Exchange will facilitate an Auction only if a DMM cannot facilitate an Auction for one or more securities. The Exchange determines an Auction Price based on the Indicative Match Price for a security, which is bound by Auction Collars.[7] Currently, the Auction Collars for the Core Open Auction are at a price that is the greater of $0.15 or 10% away from the Auction Reference Price.[8]

During the period while the Trading Floor has been temporarily closed, the Exchange has facilitated 2.35% of the Core Open Auctions, with DMMs electronically facilitating the balance of more than 97% of Core Open Auctions. Approximately 30% of the Exchange-facilitated Core Open Auctions have had an Indicative Match Price that was subject to an Auction Collar, and approximately 50% of these collared Exchange-facilitated Core Open Auctions were in securities trading at prices under $10.00. If Auction Collars had not been applied to these securities priced under $10.00, they would have opened at a price between $0.15 and $1.00 away from the Auction Reference Price.

Proposed Rule Change

The Exchange proposes to add Commentary .04 to Rule 7.35C to provide that, for a temporary period that begins June 15, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Auction Collar for the Core Open Auction will be a price that is the greater of $1.00 or 10% away from the Auction Reference Price for the Core Open Auction.

The Exchange believes that this proposed rule change would reduce the number of Exchange-facilitated Core Open Auctions subject to Auction Collars during the temporary Trading Floor closure, and therefore would reduce the potential number of securities that would open at a price that may not represent the current value of the security due to unfilled marketable auction interest, while still preserving investor protections by preventing significantly dislocated openings.

The Exchange proposes to keep the 10% price parameter, but increase the size of the static price change from $0.15 to $1.00. This proposed rule change would therefore modify the price parameters for determining Auction Collars only for securities priced under $10.00.[9] As noted above, approximately 50% of the Exchange-facilitated Core Open Auctions that have been subject to Auction Collars have been in securities priced under $10.00. Therefore, the Exchange believes that this proposed wider Auction Collar would significantly reduce the number of securities subject to a collared Exchange-facilitated Core Open Auction. More specifically, with this proposed rule change, securities with an Auction Reference Price under $10.00 would be more likely to open at a price that is consistent with the buy and sell interest in the security at the opening.

There are technology changes associated with this proposed rule change that the Exchange anticipates will be implemented on June 11, 2020.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

To reduce the spread of COVID–19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. On May 14, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. However, the Trading Floor has not yet been reopened in full to DMMs.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the number of securities that would be subject to a collared Exchange-facilitated Core Open Auction. As noted above, the Exchange has facilitated only 2.35% of the Core Open Auctions during the temporary Trading Floor closure, and only 30% of those Exchange-facilitated Auctions have been subject to an Auction Collar. The proposed rule change would change how the Auction Collars are determined for securities with an Auction Reference Price under $10.00. Because approximately 50% of the collared Exchange-facilitated Auctions to date were priced under $10.00, the Exchange believes that this proposed rule change would reduce the number of Exchange-facilitated Core Open Auctions subject to Auction Collars, and therefore would reduce the potential number of securities that would open at a price that may not represent the current value of the security due to unfilled marketable auction interest, while still preserving investor protections by preventing significantly dislocated openings. This proposed rule change would therefore promote the fair and orderly operation of Exchange-facilitated Auctions by allowing such securities to open at a price that is consistent with the buy and sell interest in the security, even if such price is more than $0.15 away from the Auction Reference Price, which would also allow more buy and sell interest to participate in such Auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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 designed to address any competitive issues but rather is designed to provide for wider Auction Collars for Exchange-facilitated Core Open Auctions in securities priced under $10.00 during a temporary period when the Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID–19.

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[7] *See* Rule 7.35C(b)(2).

[8] *See* Rule 7.35C(b)(3)(A)(i). Rule 7.35C(b)(1) provides that the Auction Reference Price for a Core Open Auction is the same as the Imbalance Reference Price determined under Rule 7.35A(e)(3). Pursuant to Rule 7.35A(e)(3), the Imbalance Reference Price for a Core Open Auction is the Consolidated Last Sale Price, unless a pre-opening indication has been published. Pursuant to Rule 7.35(a)(11)(A), the term ''Consolidated Last Sale Price'' means the most recent consolidated last-sale eligible trade in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

[9] For example, currently, a security with an Auction Reference Price of $9.00 would have Auction Collars of $0.90, and a security with an Auction Reference Price of $2.00 would have Auction Collars of $0.20. With this proposed change, both securities would have an Auction Collar of $1.00.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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 [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change would provide for wider Auction Collars for Exchange-facilitated Core Open Auctions in securities priced under $10.00 during a temporary period, when the Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID–19. The Exchange has represented that approximately 50% of the collared Exchange-facilitated Auctions are in securities priced under $10.00. The Exchange believes that the proposed rule change would promote fair and orderly Core Open Auctions by allowing more buy and sell interest to participate at prices consistent with such buy and sell interest. The Exchange has also represented that it will be able to implement these changes on June 15, 2020. The Commission notes that the proposed wider collars would only apply to Exchange-facilitated Core Open Auctions.[18] Furthermore, the proposed rule change would modify the price parameters for determining Auction Collars only for securities priced under $10.00. The Commission also notes that the proposal is a temporary measure designed to respond to current, unprecedented market conditions, and would end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–50 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–2020–50. 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–2020–50, and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13119 Filed 6–17–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] As the Exchange notes above, during the period while the Trading Floor has been temporarily closed, it has facilitated 2.35% of the Core Open Auctions, with DMMs electronically facilitating the balance of more than 97% of Core Open Auctions.

[19] 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).

[20] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89061; File No. SR–NYSEArca–2020–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule Regarding Pricing Incentives for Certain Posted Volume

June 12, 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 June 10, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding pricing incentives for certain posted volume. The Exchange proposes to implement the fee change effective June 10, 2020.[4] 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 purpose of this filing is to amend the Fee Schedule to introduce a new incentive program to provide an additional method for OTP Holders and OTP Firms (collectively, ''OTP Holders'') executing in their capacity as Market Makers or Lead Market Makers (''LMMs'') to qualify for enhanced posting credits for certain Penny Pilot issues.

Specifically, the Exchange proposes to adopt an additional $0.03 per contract credit for OTP Holders executing in their capacity as Market Makers and LMMs (collectively, ''Market Makers'' unless otherwise specified herein) that qualify for certain of the Market Maker Penny Pilot and SPY Posting Credit Tiers. To qualify for the credit, the proposed change would include a ''cross-asset pricing'' component to incentivize Market Makers and their affiliates to execute a certain amount of volume on both the Exchange's equities and options platform.

The Exchange proposes to implement the fee changes on June 10, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [5]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[6] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[7] Similarly, the equities markets also face stark competition, which is relevant because the Exchange may offer ''cross-asset pricing,'' which is designed to incent participants to execute a certain amount of volume on both the Exchange's equities and options platform. As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [8] Indeed, equity trading is currently dispersed across 13 exchanges,[9] 31 alternative trading systems,[10] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[11] Therefore, currently no single exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 10%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products. To respond to this competitive marketplace, the Exchange has established incentives—or posting credit tiers—designed to encourage Market Makers to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. The Exchange incentives also include ''cross-asset pricing,'' which allows Market Makers to aggregate their options and equity volume with affiliated or appointed Order Flow Providers (''OFPs'') (collectively referred to as

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on June 1, 2020 (SR–NYSEArca–2020–53) and withdrew such filing on June 10, 2020.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[6] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[7] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[8] *See* Securities Exchange Act Release No. 84875 (December 19, 2018), 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule).

[9] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, *available here http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[10] *See* FINRA ATS Transparency Data, *available here: https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[11] *See* Cboe Global Markets U.S. Equities Market Volume Summary, *available here: http://markets.cboe.com/us/equities/market_share/.*

affiliates herein), making the NYSE Arca a more attractive trading venue.[12]

The Exchange proposes to adopt an additional incentive program that encourages executions of Market Maker posted volume as well as trading on NYSE Arca Equities.

Proposed Rule Change

Pursuant to the Market Maker Penny Pilot and SPY Posting Credit Tiers (the ''MM Penny Credit Tiers''), Market Maker orders and quotes that post liquidity and are executed on the Exchange earn a base credit of $0.28 per contract, and may be eligible for increased credits based on the participant's activity. Currently, in addition to the base, there are three MM Penny Credit Tiers, with increasing minimum volume thresholds (as well as increasing credits) associated with each tier: The Select Tier, the Super Tier and the Super Tier II.

The Exchange proposes to adopt a new incentive program that would provide OTP Holders acting as Market Makers that achieve Super Tier or Super Tier II of the MM Penny Credit Tiers (each an ''eligible'' Market Maker or LMM) [13] an additional $0.03 per contract credit on certain electronic executions of Market Maker posted interest in Penny Pilot issues.

Specifically, eligible Market Makers and LMMs may earn the additional $0.03 credit if the Market Makers or LMMs execute at least 0.18% of TCADV from Market Maker posted interest in all issues, plus Equity Trading Permit Holder and Market Maker posted volume in Tape B Securities (''Tape B Adding ADV'') that is equal to at least 1.50% of US Tape B consolidated average daily volume (''CADV'') executed on NYSE Arca Equity Market for the billing month.[14] However, for eligible LMMs, this additional ($0.03) credit is not available to executions of issues in their LMM appointment as the Exchange already provides an additional credit to LMMs on such posted interest.[15] The Exchange notes that there is no limitation on the availability of this credit to eligible Market Makers (that are not acting as LMMs) and the additional ($0.03) credit will be applied to eligible executions regardless of whether an option issue executed is part of a Market Maker's appointment. As is the case with current posting credit tiers, Market Makers may aggregate their volume with affiliated OFPs to achieve the proposed additional credit.[16]

The Exchange believes the proposed additional incentive is reasonable because Market Makers (and their affiliates) can bring a variety of order flow to the Exchange, which may result in an increase in volume and liquidity on both its options and equities platforms. The Exchange's fees are constrained by intermarket competition, as Market Makers (and their affiliates) may direct their order flow to any of the 16 options exchanges, including those with similar posting incentives. The proposed cross-asset pricing is designed to encourage Market Makers to (continue to) conduct trading in both options and equities on the Exchange. The Exchange notes that all market participants stand to benefit from increased transaction volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange believes the proposed incentive should incent Market Makers to increase trading on the equities market, as well as the options market. Furthermore, the Exchange believes that incenting additional liquidity by Market Makers in all issues and by LMMs, in issues outside of their LMM appointment, benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. To the extent that Market Maker activity that adds liquidity is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange cannot predict with certainty whether any Market Maker would benefit from this proposed credit. At present, whether or when a Market Maker qualifies for the MM Penny Credit Tiers in a given month is dependent on market activity and a Market Maker's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of Market Makers that may qualify for the proposed incentive; however, the Exchange believes that Market Makers would be encouraged to try to achieve the newly adopted credit.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [19]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed

[12] *See* Fee Schedule, Endnote 15 (providing that an ''Appointed MM'' is an NYSE Arca Market Maker designated as such by an Order Flow Provider (''OFP'') (as defined in NYSE Arca Rule 6.1A–O(a)(21)) and ''Appointed OFP'' is an OFP been designated as such by an NYSE Arca Market Maker).

[13] Super Tier and Super Tier II each have alternative minimum volume thresholds. While Super Tier requires certain levels of options volume only, two of the three alternative qualification bases to achieve Super Tier II include cross-asset pricing. *See* Fee Schedule, Market Maker Penny Pilot and SPY Posting Credit Tiers.

[14] *See* proposed Fee Schedule, Market Maker Penny Pilot and SPY Posting Credit Tiers (with asterisks denoting requirements for eligible Market Makers to receive the additional ($0.03) credit). The Exchange notes that the cross-asset (equity) component is identical to one of the alternative bases to achieve Super Tier II, but the options requirement to achieve the proposed credit is higher.

[15] *See id. See* also Fee Schedule, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT (regarding additional $0.04 credit on posted interest in Penny Pilot issues in an LMM's appointment).

[16] *See id. See also* proposed Fee Schedule, Endnotes 8 (providing that the proposed incentives will include the activity of affiliates) and 15 (defining affiliates referenced in Endnote 8).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

equity and ETF options trades.[20] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[21] In addition, by including the cross-asset pricing in the proposed incentive, it is important to note that the equities market is likewise subject to stark competition. As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [22] Indeed, equity trading is currently dispersed across 13 exchanges, 32 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume). Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 10%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The proposed change is designed to incent Market Makers (and their affiliates) to transact more options and equities volume on the Exchange, which may result in an increase of volume and liquidity on both its options and equites platforms, which would benefit all market participants by providing more trading opportunities and tighter spreads, and may lead to a corresponding increase in order flow from other market participants. The Exchange believes it is reasonable to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[23]

Furthermore, the Exchange believes that incenting additional liquidity by Market Makers in all issues and by LMMs, in issues outside of their LMM appointment, benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. To the extent that Market Maker activity in Penny Pilot issues that adds liquidity is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants in those issues and thus would promote just and equitable principles of trade, 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.

To the extent that the proposed change attracts more posted interest in Penny Pilot issues and cross asset activity, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Exchange cannot predict with certainty whether any Market Maker would benefit from of this proposed credit. At present, whether or when a Market Maker qualifies for the MM Penny Credit Tiers in a given month is dependent on market activity and a Market Maker's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of Market Makers that may qualify for the proposed incentive; however, the Exchange believes that Market Makers would be encouraged to try to achieve the newly adopted credit.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and Market Makers (and their affiliates) can opt to avail themselves of the incentives or not.

The Exchange believes it is an equitable allocation of credits to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[24]

To the extent that the proposed change continues to attract more participation in the MM Penny Posting Tiers, the increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to introduce the various Tiers because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The Exchange believes it is not unfairly discriminatory to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[25]

The proposal is based on the amount and type of business transacted on the Exchange and Market Makers are not obligated to try to achieve the qualifications for any of the MM Penny Credit Tiers, nor are they obligated to try to achieve the proposed additional credit. The Exchange also believes the proposed incentive is not unfairly discriminatory to non-Market Markers (*i.e.,* Customers, Professionals Customers, Firms and Broker-Dealers) because such market participants are

[20] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[21] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[22] *See supra* note 8.

[23] *See supra* note 15.

[24] *See id.*

[25] *See id.*

not subject to the obligations that apply to Market Makers. The Exchange believes the proposed incentive is reasonable, equitable and not unfairly discriminatory because encouraging Market Makers to direct more volume to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

To the extent that the proposed change attracts more Market Maker posted interest and cross asset activity, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [26]

Intramarket Competition. The proposed change is designed to attract additional order flow in Penny Pilot issues to the Exchange by offering competitive rates based on increased volumes on the Exchange's options and equities platforms, which would enhance the quality of quoting and may increase the volumes of contracts trade on the Exchange. Furthermore, the Exchange believes that incenting additional liquidity by Market Makers in all issues and by LMMs, in issues outside of their Market Making appointment, benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. The Exchange believes it does not pose an undue burden on competition to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[27] To the extent that the proposed change attracts more posted interest in Penny Pilot issues and cross-asset activity, this increased order flow would continue to make the Exchange a more competitive venue for order execution and all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The proposed change would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. The Exchange also believes the proposed incentive is not unfairly discriminatory to non-Market Markers (*i.e.,* Customers, Professionals Customers, Firms and Broker-Dealers) because such market participants are not subject to the obligations that apply to Market Makers.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[28] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[29]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage Market Makers (and their affiliates) to direct trading interest (particularly Market Maker posted interest and cross asset activity) to the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar incentive for posting liquidity, by encouraging additional orders to be sent to the Exchange for execution. The proposal to is designed to continue to encourage Market Makers (and affiliates) to commit to directing their order flow, including equity market order flow, to the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [30] of the Act and subparagraph (f)(2) of Rule 19b–4 [31] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[26] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

[27] *See* supra note 15.

[28] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[29] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(2).

under Section 19(b)(2)(B) [32] 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–2020–55 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–2020–55. 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–2020–55 and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

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[32] 15 U.S.C. 78s(b)(2)(B).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89058; File No. SR–CBOE–2020–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Automated Price Improvement Auction Rules in Connection With Agency Order Size Requirements

June 12, 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 June 11, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its automated price improvement auction rules in connection with Agency Order size requirements. 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

The Exchange proposes to amend Rule 5.37(a)(3) and Rule 5.38(a)(8) to allow the Exchange to determine maximum size requirements for Agency Orders in SPX submitted though the Automated Price Improvement Mechanism (''AIM'' or ''AIM Auction'') and the Complex Automated Price Improvement Mechanism (''C–AIM'' or ''C–AIM Auction'').

Currently, Rules 5.37(a)(3) and 5.38(a)(3), which govern the size requirements for AIM and C–AIM Agency and Initiating Orders, provide that there is no minimum size for orders submitted into AIM and C–AIM Auctions, respectively, and that the Initiating Order must be for the same size as the Agency Order. As such, an Agency Order of any size [3] may currently be submitted in an AIM or C–AIM Auction.

The Exchange now proposes to amend Rule 5.37(a)(3) to provide that the Exchange may determine a maximum size requirement for Agency Orders in SPX, and by amending Rule 5.38(a)(3) to provide that the Exchange may determine a maximum size requirement for the smallest leg of an Agency Order in SPX.[4] The Exchange believes that the proposed flexibility to allow the Exchange to determine to limit the size of SPX Agency Orders submitted in an AIM or C–AIM Auction will allow the Exchange to appropriately address the specific trading characteristics, market model, and investor basis of SPX. The Exchange notes that the maximum size requirement for Agency Orders in SPX would apply to all Agency Orders in the entire SPX class (including SPX Weeklys (''SPXW'')).

In particular, SPX has a different and more complicated market model,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change indicates the maximum size may be up to 100 contracts.

[4] Application of the maximum size to the smallest leg of complex orders is consistent with the application of a size requirement for the Exchange's Complex Solicitation Auction Mechanism, which is a similar price improvement auction mechanism on the Exchange. *See* Rule 5.40(a)(3).

involves taking on greater risk, has a significantly higher notional value (*e.g.,* they are ten times the notional size of SPY options), tends to trade in much larger size, and tends to execute increasingly more complex strategies (*e.g.,* SPX Combo orders) than in other options classes. The Exchange understands these factors may limit retail customer participation in SPX to simpler strategies and smaller-sized orders. These factors also have contributed to the Exchange's historical determination to not activate AIM in SPX when the floor is open so to encourage liquidity on the trading floor to accommodate these large and complex trades. Therefore, the Exchange believes the application of an Agency Order size ceiling may provide more price improvement opportunities in SPX geared towards retail customers. The Exchange believes this may incentivize increased retail customer auction participation in SPX and provide retail customers with execution and price improvement opportunities in SPX while incentivizing continued liquidity on the trading floor for larger and more complex orders.

The Exchange has observed that increased smaller size order flow tends to attract Market-Maker responses, as such orders are generally easier to hedge than larger orders, which may encourage Market-Makers to compete to provide price improvement in an electronic competitive auction process. This, in turn, may contribute to a deeper, more liquid auction process with additional price improvement opportunities for market participants, and particularly retail customers. The Exchange notes, too, that the Exchange's trading floor may be better suited for crosses in SPX with more complex orders, complicated strategies and larger size. Such orders are more generally executed on the trading floor, where Trading Permit Holders (''TPHs'') may negotiate and fine-tune the terms of a trade. In addition to this, the trading crowd in open outcry may provide markets that are more tailored to the complexity and size of orders typically submitted in SPX. Greater execution and price improvement opportunities for SPX orders may result from the markets given by the trading crowd that better define the nuanced complexity and size of such orders than if the same orders were submitted via AIM or C–AIM—which, instead, may provide greater price improvement opportunities for simpler and smaller orders. Permitting the Exchange to determine a maximum size for SPX orders submitted to AIM and C–AIM will enable the Exchange to activate AIM and C–AIM in SPX to provide additional price improvement opportunities for smaller orders and maintain liquidity on the trading floor for larger complex orders, thus creating a liquid hybrid environment for orders in this class.

In a sample of SPX orders submitted into simple AIM during a week of trading in April 2020,[5] the Exchange observed that orders containing quantities from one to ten contracts submitted through AIM received an average price improvement of approximately $0.34 over their limit prices, orders containing quantities from 11 to 50 contracts received an average price improvement of approximately $0.22, and orders for 51 to 100 contracts received an average price improvement of $0.08; whereas, orders containing quantities of between 100 and 250 contracts received an average of $0.08 and orders containing quantities of between 251 and 500 received an average of $0.15. That is approximately 325% larger average price improvement that orders for one to ten contracts received than orders for 100 to 250 contracts and approximately 127% larger average price improvement than orders for 251 to 500 contracts. The Exchange also observed this trend generally in the sample of SPX orders submitted to C–AIM, as well, where greater price improvement generally occurred for smaller sized orders as compared to larger sized orders. For C–AIM, the Exchange observed that orders for one to ten contracts received an average price improvement of $0.14, for 11 to 50 contracts received an average of $1.69, and for 51 to 100 contracts received an average of $2.36; whereas orders for 100 to 250 contracts received an average price improvement of $1.15 and orders for 251 to 500 contracts received an average of $0.24. As this data demonstrates, price improvement on smaller orders in SPX, a class which generally exhibits more complicated trading characteristics and complex market factors, is generally more beneficial than price improvement on larger orders submitted through AIM and C–AIM.[6] As a result, if the Exchange is able to implement a maximum size requirement for SPX as proposed, it may determine to activate AIM when the trading floor is open. The Exchange believes this could incentive the submission of smaller size SPX orders to the Exchange. As a result, the Exchange believes the proposed rule change will provide retail customers with additional price improvement opportunities for retail customers overall when the trading floor is open while preserving liquidity available in the market, particularly on the trading floor, for larger and more complicated orders.

Finally, pursuant to current Rule 5.37.02 and Rule 5.38.02, it is deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 8.1 to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in the AIM and C–AIM Rules, respectively. In light of the proposed rule change, the Exchange also proposes to amend Rules 5.37.02 and 5.38.02 to make it clear that Initiating TPHs also may not break up an Agency Order into separate orders for the purpose of circumventing a maximum quantity requirement as determined by the Exchange pursuant to subparagraph(s) (a)(3). The Exchange notes that its surveillance program will monitor for such violations in the same manner in which it currently monitors for allocation-related break up violations.

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.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] 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.

[5] The sample was taken for average price improvement over the limit price of Agency Orders submitted into AIM and C–AIM from April 6 through April 9.

[6] The proposed rule change to designate a maximum ''maximum size'' of 100 is based on this data, which demonstrates that orders with size up to 100 contracts generally receive the most beneficial price improvement (and are generally considered to be ''retail'' sized orders).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] 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 the proposed rule change to allow the Exchange to determine a maximum size for AIM and C–AIM Agency Orders in SPX will provide the Exchange with the flexibility to activate AIM and C–AIM Auctions for SPX in a manner the Exchange believes will appropriately address the different trading characteristics, market model, investor basis and conditions presented in SPX as compared to different option classes. The Exchange has considered these factors in its determination to not activate AIM and C–AIM in SPX when operating in a normal hybrid trading environment. With the proposed rule change, the Exchange would consider activating AIM and C–AIM in SPX when the trading floor is open to provide additional execution and price improvement opportunities to retail customers. The Exchange believes this may encourage an increase smaller-sized SPX orders and meaningful and competitive responses to the auctions, as applicable, which ultimately benefits investors and retail customers in particular.

The Exchange acknowledges that price improvement auctions have provided the market with benefits, such as providing an efficient manner of access to liquidity for customers. However, the options industry overall has observed that quoted liquidity on the book has decreased, quotes have widened, and options market makers have reduced their participation in the market, which has impacted market quality.[10] Thus, the Exchange believes that the flexibility to impose a maximum order size for these auctions would permit the Exchange to provide retail customers in SPX with access to these auctions while continuing to create incentives for SPX Market-Makers to continue to provide liquidity in the in the trading crowd for larger and more complex orders. As such, the Exchange believes the proposed rule change may encourage a general increase in retail order flow and execution opportunities in AIM and C–AIM Auctions in SPX, thus enhancing the quality of the auctions, while maintaining market quality and liquidity for larger and more complicated orders, which removes impediments to and perfects the mechanism of a free and open market and a national market system, and benefits the entire market and all investors.

In addition to this, the Exchange does not believe that the proposed rule change would significantly impact TPHs that submit larger and more complicated orders in SPX because the trading floor is generally better suited and more appropriate for such orders, where TPHs tend to execute much larger and more complex orders given the flexibility to negotiate and fine-tune the terms of an order.[11] As discussed above, the Exchange believes not permitting these larger orders to execute in AIM and C–AIM auctions will create incentives for Market-Makers to continue to provide on the trading floor to execute against those orders. Additionally, given that the Exchange does not generally activate AIM and C–AIM in SPX, the proposed rule change will have no impact on larger orders, which TPHs are unable to submit into AIM and C–AIM Auctions when the trading floor is open. In addition, the Exchange believes that the proposed rule change to amend Rules 5.37.02 and 5.38.02 would protect investors by prohibiting TPHs to break up Agency Orders to circumvent maximum size requirements.

The Exchange does not believe that the purpose of the proposed rule change to accommodate retail customers is new or unique, as the Exchange and other options exchanges currently have rules, such as certain reduced fees and market structure benefits, in place that provide preferential treatment to or are geared toward benefitting retail customers particularly. Moreover, the Exchange believes that the proposed rule change is consistent with longstanding precedent, thus indicating that it is consistent with the Act, to provide reasonable incentives to retail investors that rely on the public markets for their investment needs. Indeed, the Commission has long stressed the need to ensure that the markets are structured in a way that meets the needs of ordinary investors.[12] The Exchange believes that the proposed rule change would assist the Exchange in achieving the Commission's stated goal of improving the retail investor experience in the public markets while protecting overall market quality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to all Agency Orders in SPX where the Exchange imposes a maximum size submitted into the AIM and C–AIM auctions by all market participants. The Exchange believes having the ability to designate a maximum size for SPX orders only is appropriate given the trading characteristics, market model, investor base, and large notional value of SPX options compared to other options. The Exchange believes all market participants in SPX may benefit from any additional liquidity and price improvement in the AIM and C–AIM Auctions that may result from the proposed rule change. Moreover, the Exchange believes that determination of a maximum quantity in SPX would not significantly affect TPHs that submit larger and more complicated orders as open outcry auctions are generally better suited to facilitating liquidity for larger order size and/or more complex order strategies. The Exchange notes it generally does not activate AIM and C–AIM in SPX options, so the proposed rule change would have no impact on larger-sized SPX orders that currently are not permitted to be submitted into AIM and C–AIM auctions when the Exchange is operating in a normal hybrid trading environment. The Exchange believes not permitting larger orders into these auctions will encourage Market-Makers to continue to provide liquidity in the trading crowd while providing retail customers with price improvement opportunities, which may increase competition for these orders. As stated above, the Exchange believes the proposed rule change is consistent with the Commission's goal and industry practice to provide reasonable incentives to retail investors that rely on

[9] *Id.*

[10] *See* Letter to Brett Redfearn, Director, Division of Trading & Markets, from Cboe Global Markets, Inc. the Listed Options Trading Committee of the Securities Industry and Financial Markets Association (''SIFMA''), and the Listed Options Committee of the Security Traders Association (''STA''), dated June 4, 2018, available at *http://cdn.batstrading.com/resources/comment_letters/Cboe-Joint-Letter-with-SIFMA-and-The-STA-on-Options-Market-Structure.pdf.*

[11] This is demonstrated by the significant decrease in complex order execution while the Exchange has operated in an all-electronic environment.

[12] *See e.g.* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf,* wherein the Commission's strategic plan for fiscal years 2018–2022 touts ''focus on the long-term interests of our Main Street investors'' as the Commission's number one strategic goal.

the public markets for their investment needs. The Exchange also notes the proposed rule change has no impact on the allocation or priority of orders and responses at the conclusion of AIM and C–AIM auctions. Additionally, any Agency Order for less than 50 contracts must continue to have an auction price that improves the then-current NBBO.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to an Exchange-specific auction mechanism in a class of options only listed for trading on the Exchange. The Exchange also notes that other options exchanges offer similar price improvement auctions [13] that are available to market participants, and other options exchanges may, in their discretion, adopt similar flexibility in connection with their auctions.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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.

[13] *See e.g.,* BOX Options' Price Improvement Period (''PIP'') available at *https://boxoptions.com/about/price-improvement;* and Complex Order Price Improvement Period (''COPIP'') available at *https://boxoptions.com/about/complex-order-description/; and* MIAX Options' Price Improvement Mechanism (''PRIME'') and Complex Price Improvement Mechanism (''cPRIME'') available at *https://www.miaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAX_PRIME_07212017.pdf.*

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–2020–051 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–2020–051. 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–2020–051, and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13118 Filed 6–17–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 89066/June 12, 2020; File No. 4–757]

Securities Exchange Act of 1934; Order Denying Stay; In the Matter of Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data

On June 1, 2020, Nasdaq Stock Market LLC, Nasdaq BX, Inc., and Nasdaq PHLX LLC filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit seeking review of the Commission's Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System (''NMS'') Plan Regarding Consolidated Equity Market Data (the ''Governance Order''), which was approved by the Commission on May 6, 2020 and later published in the **Federal Register**. *See* 85 FR 28702 (May 13, 2020). On June 3, 2020, petitioners filed with the Commission a motion to stay the effect of the Governance Order pending final resolution of their petition for review.

Pursuant to Section 25(c)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') and Section 705 of the Administrative Procedure Act, the Commission has discretion to stay its order directing the self-regulatory organizations (''SROs'') to jointly develop, and file with the Commission by August 11, 2020, a single New Consolidated Data Plan that replaces the three current Equity Data Plans if it finds that ''justice so requires.'' 15 U.S.C. 78y(c)(2); 5 U.S.C. 705. The Commission has determined, however, that petitioners have not met their burden to demonstrate that the extraordinary remedy of a stay of the Commission's Governance Order is warranted. Petitioners have not established sufficient irreparable harm, petitioners' legal challenges to the Order lack merit, and the public interest would be served by the SROs complying with the requirements of the Order.

1. The Commission finds that petitioners' stay request overstates the harm that will result from their compliance with the Governance Order. Petitioners assert that, in the absence of a stay, they ''will incur immediate and significant upfront costs in drafting the New Consolidated Data Plan, seeking Commission approval of the plan, and, if approved, implementing the plan.'' Stay Mot. 16. But the Governance Order does not establish a New Consolidated Data Plan. It requires the SROs to file a

proposed plan with the Commission. Pursuant to Regulation NMS Rule 608, the New Consolidated Data Plan submitted in response to the Governance Order ''will itself be published for public comment prior to any Commission decision to disapprove or to approve the plan with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.'' 85 FR at 28705; *see* 17 CFR 242.608. Through that process, interested parties will still be able to comment on the proposed plan, and the Commission will review the plan and may make changes or add conditions before issuing a subsequent order approving or disapproving a new plan. Petitioners thus err by claiming that they will incur significant upfront costs in implementing a plan if the Governance Order is not stayed.

Similarly, petitioners wrongly assert that there would be any actions taken pursuant to a New Consolidated Data Plan that would have to be unwound in the absence of a stay. Stay Mot. 16–17. As the Governance Order makes clear, the current Equity Data Plans will remain in place until a New Consolidated Data Plan has been approved by the Commission and implemented. *See* 17 CFR 242.608(b)(1); 85 FR at 28705, 28728. The proposed plan, moreover, must include provisions for the orderly transition of functions and responsibilities from the three existing Equity Data Plans. *Id.* at 28729. And any approval order will be subject to judicial review at that time.

Petitioners also overstate the harm from compliance with the Governance Order itself, including drafting the New Consolidated Data Plan and seeking Commission approval. For example, the SROs will be able to use their extensive expertise and experience in NMS plan operation to efficiently formulate the specific terms and provisions of the proposed New Consolidated Data Plan. 85 FR at 28711. The Commission anticipates that proposal costs will be further reduced because most of the detailed provisions relating to the operation of the existing Equity Data Plans could be imported into the New Consolidated Data Plan without substantial effort or great cost. *Id.* And to the extent governance provisions in the New Consolidated Data Plan would differ from those in the existing Equity Data Plans, the Governance Order prescribes the content of these provisions, further reducing the costs of preparing the new plan. *Id.* at 28729. We therefore do not believe that any harm resulting from compliance with the Governance Order warrants a stay.

2. Petitioners have not shown a likelihood of success on the merits. Exchange Act Section 11A permits the Commission ''to authorize or require'' SROs ''to act jointly'' with respect to ''matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system.'' 15 U.S.C. 78k–1(a)(3)(B). Rule 608 likewise provides that ''[a]ny two or more self-regulatory organizations, acting jointly, may file a national market system plan'' and that ''[s]elf-regulatory organizations are authorized to act jointly in'' ''[p]lanning, developing, and operating any national market subsystem or facility contemplated by a national market system plan,'' ''[p]reparing and filing a national market system plan,'' and ''[i]mplementing or administering an effective national market system plan.'' 17 CFR 242.608(a). In petitioners' view, the statutory and regulatory references to ''acting jointly'' mean that SROs—and only SROs—may have voting power on an NMS operating committee.

The Commission has already considered and rejected that argument. In the Governance Order, the Commission determined that granting non-SROs voting power is consistent with Section 11A and Rule 608(a). Despite petitioners' challenge, nothing in the text of either Section 11A or Rule 608(a) demonstrates that ''acting jointly'' means ''acting jointly *and exclusively*.'' Rather, paragraph (2) of Section 11A(a) contains a broad grant of authority to the Commission, directing it ''to use its authority'' under the Exchange Act ''to facilitate the establishment of a national market system for securities'' in accordance with certain broad congressional findings and objectives. 15 U.S.C. 78k–1(a)(2). Paragraph (3) then references the Commission's ability to authorize or require SROs to act jointly, and nothing in the text or structure of paragraph (3) undermines the Commission's grant of authority in paragraph (2) or compels the conclusion that joint SRO action must mean exclusive SRO action. The Commission's grant of authority to SROs in Rule 608(a)(3) likewise authorizes SROs to act jointly but, in doing so, does not by implication limit the Commission's authority to set forth a governance structure that includes non-SROs with some measure of voting power on an NMS plan operating committee. Rather, as the Governance Order notes, both Section 11A and Rule 608 are silent as to the participation of non-SROs in the operation of the plan. 85 FR at 28715. The Governance Order's allocation of voting power to non-SROs is thus consistent with Section 11A and Rule 608(a).

The Governance Order does not discount the important role SROs play in plan governance. But it balances that role against the need for, among other things, more viewpoints on plan operating committees. The Commission has determined that ''the distribution of voting power'' described in the Governance Order ''appropriately strikes th[e] balance'' between broader representation and the SROs' statutory and regulatory responsibilities, ''by providing for meaningful input from a broad range of stakeholders while also ensuring that the SROs retain sufficient voting power to act jointly on behalf of the plan pursuant to their regulatory responsibilities.'' 85 FR at 28722.

Petitioners' other challenges presented in their stay motion were already rejected in the Governance Order.

3. The Governance Order serves a strong public interest. The governance model for the Equity Data Plans was established in 1970s. Since then, critical developments in the equities markets—including the heightening of an inherent conflict of interest between the for-profit and regulatory roles of the exchanges and the concentration of voting power in the Equity Data Plans among a few large exchange groups—have demonstrated the need for an updated governance model. The public interest will be served by the enhanced decisionmaking and innovation in the provision of equity market data that will result from the governance changes outlined in the Governance Order. And the governance of the consolidated data feeds can be improved by consolidating the three existing, separate Equity Data Plans into a single New Consolidated Data Plan that will reduce existing redundancies, inefficiencies, and inconsistencies between and among the Equity Data Plans. *See* 85 FR at 28711; Proposed Order, 85 FR 2164, 2166–74 (Jan. 14, 2020). Moreover, as the Order explains, ''[a]ddressing the issues with the current governance structure of the Equity Data Plans discussed in this Order is a key step in responding to broader concerns about the consolidated data feeds.'' 85 FR at 28702 & n.11. Any further delay in taking this first step toward establishing a new governance structure will impede the achievement of these benefits.

Accordingly, it is *ordered*, pursuant to Section 25(c)(2) of the Exchange Act and Section 705 of the Administrative Procedure Act that petitioners' motions for a stay be denied.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–13127 Filed 6–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89063; File No. SR–CBOE–2020–052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating To Amend Rules 5.37, 5.38 and Rule 5.73

June 12, 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 June 3, 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 Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rules 5.37, 5.38 and Rule 5.73. 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

The Exchange proposes to amend Rule 5.38 and Rule 5.73 regarding the minimum increment for Complex Automated Improvement Mechanism (''C–AIM'') and FLEX AIM Auction responses, respectively, in connection with SPX Combo Orders, as well as Rule 5.37, Rule 5.38, and Rule 5.73 in connection with dissemination of the stop price in auction notification messages for auctions in SPX.

By way of background, the Exchange recently activated the Automated Improvement Mechanism (''AIM'') and C–AIM Auctions in S&P 500 Index (''SPX'') options.[3] When submitting an Agency Order into a C–AIM Auction, the Initiating Member must also submit a contra-side second order for the same size as the Agency Order. This second order guarantees that the Agency Order will receive an execution (*i.e.,* it acts as a stop). Upon commencement of a C–AIM Auction, market participants submit responses to trade against the Agency Order. At the end of an auction, depending on the contra-side interest available, the contra order may be allocated a certain percentage of the Agency Order.[4]

When the Exchange is operating in its normal trading environment, the Exchange has not activated C–AIM (or AIM) in SPX,[5] thus all non-FLEX crossing transactions in SPX were previously only able to occur on the trading floor. Therefore, Trading Permit Holders may cross orders only in open outcry on the trading floor. Pursuant to Rule 5.87(f), a floor broker holding an order for the eligible order size is entitled to cross a certain percentage[6] of the order with facilitated (and solicited orders, if designated by the Exchange for a class) after satisfying public customer orders[7] if the order trades at or between the best bid or offer given by the crowd in response to the floor broker's initial request for a market. Specifically, a floor broker representing an order of the eligible order size or greater that he wishes to cross (and the percentage of which he is entitled to cross) must request bids and offers for such option series and make all persons in the trading crowd, including the PAR Official, aware of his request. In this way, the crossing mechanism on the trading floor allows for the trading crowd to control the price of a crossing order and indicates to responding TPHs and the crossing floor broker a reasonable range at which the market is willing to buy (sell) at that point in time. This provision is subject to the crossing rules in Rule 5.86 (subject to certain exceptions), which require disclosure of all terms and conditions to the crowd (including the price) prior to executing a cross.[8]

Moreover, orders in SPX generally take on greater risk than in other option classes. SPX options tend to have a higher notional value than options in other classes (*e.g.,* they are ten times the notional size of SPY options), trade much larger size than in other options classes (indeed, even smaller sized orders in SPX would be considered fairly large size in other classes), and effect increasingly more complex strategies than executed in other classes (*e.g.,* SPX Combo orders) or executed electronically (*e.g.,* in open outcry complex orders trade with larger ratios that may be negotiated by the trading crowd). Given these factors, SPX Market-Makers on the floor generally have more confidence in the pricing of their responses as the crosses start with a request for market and the trading crowd then provides a ''ballpark'' of the prices at which they are willing to trade and a Market-Maker may thus more confidently base response on the market of other members of the trading crowd.

Pursuant to Rules 5.4(b) and 5.33(f)(1)(A), the minimum increment for bids and offers on complex orders in options on SPX[9] is $0.05 or greater, or in any increment determined by the Exchange. When seeking to cross SPX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes FLEX AIM in SPX had been activated prior to March 16, 2020.

[4] *See generally* Rule 5.38(e). The Exchange notes, too, that the same process applies to the FLEX AIM Auction pursuant to the FLEX Rules. *See generally* Rule 5.73(e).

[5] The Exchange had activated C–AIM and AIM in SPX for the first time as a result of the March 16, 2020 trading floor suspension to help prevent the spread of COVID–19 and operated in an all-electronic configuration beginning March 16, 2020. Currently, the trading floor is scheduled to reopen June 15, 2020. The Exchange intends to activate AIM and C–AIM in SPX as electronic crossing mechanisms available for Users while the trading floor is open, subject to approval of this proposed rule change and separate proposed rule changes regarding AIM and C–AIM.

[6] Currently, the Exchange has set the percentage as 40% (the same crossing entitlement percentage as on AIM, C–AIM, and FLEX AIM). *See* CBOE Regulatory Circular RG16–179, Participation Entitlement Applicable to Crossing Orders in Open Outcry (November 18, 2016) available at *https://www.cboe.com/publish/RegCir/RG16-179.pdf.*

[7] Similarly, the AIM and C–AIM percentage applies after public customer orders are satisfied. *See* Rules 5.37(e) and 5.38(e).

[8] *See* Rule 5.87, Interpretation and Policy .05.

[9] Except for box/roll spreads.

complex orders on the trading floor, a floor broker generally identifies the legs of the complex order and their relative sizes to each other with a net package price. The Exchange understands the trading crowd then generally provides a market based on the strategy's theoretical value in an increment of $0.05 rather than the value of the net package (which equals the strategy times the ratio), which is particularly true when the complex order represented is a delta neutral order that includes a combo. The Exchange has observed that SPX Combos comprise a significant portion of crosses in SPX.[10] For example, assume a floor broker represents a $4.00 option tied to a combo, with a ratio of 8-to-1 combo (*i.e.* 12.5 delta), and further assume the combo portion is priced as a package at even,[11] which strategy has a theoretical value of $4.00, which is applied to each of the 8 options in the order. Members of the trading crowd then generally respond with markets based on a $0.05 increment above or below the theoretical value of $4.00 rather than the net package price of $32.00 (8 × $4.00). If the execution price occurred at $4.50, the net cash price would be $36.00, providing for $4.00 price improvement (*i.e.,* $0.50 × 8 options) over the theoretical value of the strategy. However, if this order is submitted via C–AIM, responses are generally based on a $0.05 increment above or below $32.00. If the execution price was $32.50, the price improvement above the theoretical price for the strategy would be approximately $0.06 ($0.50/8).

Since the Exchange activated C–AIM for SPX options, a significant amount of SPX volume has executed through C–AIM. As noted above, the Exchange has also observed that a majority of the complex strategies submitted for execution in SPX options are ''delta neutral,'' often hedged with a ''combo'' of other SPX options, as is the case with complex orders crossed on the trading floor. An SPX Combo Order is a complex order that includes one or more SPX legs, hedged by an SPX combo, or synthetic future, defined by the delta. Specifically, an ''SPX combination'' is a purchase (sale) of an SPX call and a sale (purchase) of an SPX put with the same expiration date and strike price, and ''delta'' is the positive (negative) number of SPX combinations that must be sold (bought) to establish a market neutral hedge with one or more SPX option series.[12]

Currently, Rule 5.38(c)(5)(A) and Rule 5.38(a)(4) provide that the minimum price increment for C–AIM responses and Agency and Initiating Orders, respectively, must be in an increment the Exchange determines on a class basis—which, as described above, is $0.05 in SPX options.[13] The Exchange notes that the corresponding FLEX AIM Rules 5.73(c)(5)(A) and 5.73(a)(4) provide the same for FLEX AIM Auctions. However, unlike on the trading floor, market participant responses using this increment have generally improved the net package price (based on then-current leg markets) by the minimum increment of $0.05. While members of the trading crowd on the trading floor are permitted to improve the net package price (based on then-current leg markets) by the minimum increment of $0.05 under the Rules, that is not the common practice, as noted above. The Exchange believes this is because the parties to an electronic complex order trade may compete only with respect to the net price and are not able to negotiate the leg prices.

For example, consider an SPX complex strategy to buy 8 of the June 2600/2550 SPX put spreads tied to one June 2660 Combo, using a delta of 5. Consider that the desired starting price of the put spread is $15.50 by 8 with the combo trading at even (*i.e.,* zero). If the strategy was executed on the trading floor, the broker would first ask for a market for the June 2600/2550 put spread tied to the 2660 combo, and the trading crowd might, for example, price the 2600 leg at 16–17, the 2550 leg at 1–3, and the combo at 20–22 and 20–22 (or, even). Based off the market provided, an in-crowd Market-Maker could then respond to the package at 13–16, which equates to buying the 2660 leg at 16 and selling the 2550 leg at 3 and then selling the 2600 leg at 17 and buying the 2550 leg at a dollar. The trading crowd's responses would not include the combo, instead, the combo at even is ''tied up'' to, or in addition to, the package price. The broker would then be able to indicate their size and direction for the put spread (*i.e.,* their contra) based off the market given by the trading crowd; in this example, that they would pay 15.50 for 8. Open outcry auction responses would then be priced in $0.05 increments below $15.50, per spread. However, the same strategy submitted into a C–AIM Auction must currently be entered as one package, inclusive of the combo, for a net price of $124.00 ($15.50 × 8). In this example, the broker would submit the Agency Order and contra-side order(s) simultaneously to commence the Auction. C–AIM Auction responses would then join the $124.00 package price or occur in $0.05 below the $124.00 package price, thus price improved by $123.95, an improvement of only a quarter penny per spread (*i.e.,* $0.05/8).

In addition to this, current Rules 5.37(c)(2), 5.38(c)(2), and 5.73(c)(2) provide that the System initiates the AIM, C–AIM, and FLEX AIM Auction processes, respectively, by sending an auction notification message detailing the side, size, Auction ID, options series (additionally, in the case of C–AIM Auctions, complex strategy, and in the case of FLEX AIM Auctions, length of the auction period and complex strategy, as applicable) of the Agency Order to all Users that elect to receive AIM, C–AIM, or FLEX AIM Auction notification messages. AIM, C–AIM, and FLEX AIM Auction notification messages are not included in the disseminated BBO (in connection with AIM Auctions) or OPRA. As such, the stop price of an Agency Order is not currently included in auction notification messages. The Exchange believes that lack of an indication of where an auction is set to begin, like the ballpark figure provided by the trading crowd when crossing on the trading floor, may cause apprehension in pricing competitive responses during the electronic auctions in SPX, which may reduce liquidity and price improvement during such auctions.

The Exchange is considering activating AIM and C–AIM in SPX when it reopens the trading floor. To better align the C–AIM process for SPX complex strategies with the open outcry crossing process for those strategies, the Exchange proposes to amend Rule 5.38(c)(5)(A) to provide that the minimum price increment for a C–AIM response in which the Agency Order complex strategy is comprised of an SPX Combo Order (as defined in Rule 1.1) will be the ratio of the non-combo portion of the strategy to the number of combos, multiplied by the minimum price increment the Exchange determines for options on SPX Agency Orders pursuant to Rule 5.38(a)(4). Also, to better align the AIM and C–AIM pricing process generally for responses with the open outcry process, the Exchange proposes to amend Rules 5.37(c)(2) and 5.38(c)(2) to provide that the Exchange may also determine to

[10] In April 2020, SPX Combos comprised 60.5% of crossed volume executed in SPX via AIM while the trading floor was inoperable.

[11] The Exchange also notes that it intends to implement Index Combo Orders when it reopens its trading floor. *See* Rule 5.33(b).

[12] *See* Rule 5.6(b).

[13] The System rejects a C–AIM response or Agency or Initiating Order that is not in the applicable minimum increment.

include the stope price in AIM and C–AIM Auction notification messages, respectively, in SPX. Like all other information disseminated in an AIM and C–AIM Auction notification message, the stop price will be available to all Users that elect to receive auction notification messages. The Exchange notes that the FLEX AIM Rules in connection with the auction process for FLEX complex orders are substantially similar to the AIM and C–AIM Rules. Therefore, to maintain consistency within the Rules between the FLEX and non-FLEX auctions, the Exchange also proposes to amend the FLEX AIM process for SPX complex strategies (*i.e.,* for FLEX C–AIM) and for FLEX AIM Auction notification messages in the same manner.[14]

The Exchange believes that the proposed rule changes will create similar price competition for these orders in electronic and open outcry trading. Particularly, the Exchange believes that the current manner in which de minimis price improvement may occur via C–AIM, as well as FLEX C–AIM, Auctions in connection with SPX Combo Orders (*i.e.,* potentially only improved in sub-penny increments) may discourage market participants from providing contra-side interest at the best prices and liquidity providers from joining or improving at meaningful increments. As such, the proposed rule change is intended to provide for substantially the same price improvement opportunities at meaningful increments on SPX complex strategies submitted to C–AIM and FLEX C–AIM that occur for the same strategies on the trading floor. To illustrate by using the same complex strategy example above, if a User buys 8 of the June 2600/2550 SPX Put spreads tied to one June 2660 Combo, using a delta of 5, pursuant to the proposed rules, the System would calculate the minimum increment by the ratio of the non-combo leg (8) to the number of combos (1) by the minimum increment of $0.05. Therefore, $(8/1) \times 0.05 = \$0.40$ as the starting point for price improvement during the C–AIM or FLEX C–AIM Auction. In this way, by tying the minimum increment to the legs of the order, as opposed to the package price inclusive of the combos, the Exchange believes the proposed rule would require market participants to respond to the C–AIM or FLEX C–AIM Auctions for SPX complex strategies at prices more aligned with the prices at which responses generally occur in open outcry, *i.e.,* prices in response to a broker's corresponding bids (offers) based off of the market per leg at which the trading crowd indicates it is willing to buy (sell). If market participants may participate in C–AIM or FLEX C–AIM executions in connection with SPX complex strategies by providing de minimis price improvement compared to price improvement that may occur on the floor, the Exchange believes there may be less interest by market participants to take on the risk of participating as a contra and may negatively impact liquidity available on the trading floor. As a result, the Exchange believes this potentially reduces price improvement opportunities for customers. Particularly, if the Exchange determines to activate C–AIM in SPX when the trading floor re-opens, the Exchange believes the proposed rule change may provide customers with additional opportunities for more meaningful price improvement and may encourage market participants to provide more liquidity for C–AIM transactions in SPX while also mitigating any potential disincentive to provide liquidity on the trading floor in SPX by better aligning electronic and open outcry crossing of SPX complex orders that include a combo.

The Exchange notes that the proposed rule change does not alter the minimum increment as determined by the Exchange for SPX complex strategies and is consistent with the ability of the Exchange to determine the minimum increment for SPX (the proposed minimum increment will be in multiples of $0.05) but instead provides that price improvement opportunities for such orders submitted into C–AIM, as well FLEX AIM, occur at the same meaningful increments that market participants reasonably would expect to occur on such orders pursuant to the current Rules and practice on the trading floor. The Exchange believes this may encourage a potential increase in participation in the C–AIM and FLEX AIM Auctions in SPX without a corresponding negative impact on participation or liquidity in open outcry auctions once the trading floor reopens.

In the same way, the Exchange believes that the proposed rule change to allow the System to disseminate the initial price of an SPX AIM and C–AIM Auction, as well as FLEX AIM Auction, would more generally align the trading of SPX options submitted for execution into the electronic auctions with those crossed on the trading floor. The Exchange believes that the proposed rule change would allow the Exchange to address any uncertainties market participants may have when pricing SPX responses, given the more complicated market models, greater risk, higher notional value, larger sizes, and increasingly more complex strategies in SPX, by including the Agency Order stop price in the auction notification messages. This, in turn, may facilitate market participants' confidence in pricing meaningful, competitive responses during electronic auctions in SPX in a manner substantially similar to which the trading crowd's market allows for market participants to more confidently price their responses accordingly. As a result, this proposed rule change is intended to incentivize continued, competitive responses to SPX electronic auctions in substantially the same manner in which responses may be priced on the trading floor, thus, providing for potentially improved liquidity and price improvement opportunities for orders being executed through those auctions. The Exchange also notes that its affiliated options exchange, Cboe EDGX Exchange, Inc. (''EDGX Options'') corresponding rules[15] governing the AIM and C–AIM auction notification messages on EDGX Options provide that its system initiates the AIM or C–AIM auction processes by sending an auction notification message detailing the price, along with the same fields currently detailed pursuant to Cboe Options Rules 5.37(c)(2) and 5.38(c)(2) as well as 5.73(c)(2). Also, pursuant to Exchange Rule 5.33(d)(1), C2 Rule 6.13(d)(1), and EDGX Options Rule 21.20(d)(1), the Exchange and its affiliated options exchanges may currently determine to include in similar notification messages the limit price of an order that initiates a Complex Order Auction (''COA''), much like that of the stop price of an AIM, C–AIM, or FLEX AIM Agency order that initiates these auctions. The Exchange further notes that similar electronic auctions on other options exchanges disseminate the price in their initial auction messages.[16]

The Exchange believes that providing similar response and execution opportunities across these trading facilities will serve to maintain meaningful levels of liquidity, price competition, and price improvement opportunities in SPX during both electronic and open outcry auctions

[14] *See* proposed Rules 5.73(c)(2) and 5.73(c)(5)(A).

[15] *See* EDGX Options Rules 21.19(c)(2) and 21.22(c)(2).

[16] *See* MIAX Options Rule 5.18(d)(2), which governs the commencement of a Complex Auction on MIAX Options, and Rules 515A(a)(2)(i)(B) and 515A.12, which govern the request for response message disseminated during MIAX Options' electronic crossing auctions, PRIME and complex PRIME; substantially similar to AIM and C–AIM; *see also* NYSE American Options Rule 903G(a)(2), which governs the information required in FLEX Request for quotes.

upon the reopening of the trading floor if the Exchange determines to activate AIM and C–AIM for SPX at that time. As a result, the proposed rule change is designed to ensure that C–AIM for complex SPX strategies remains a viable additional means of execution for SPX complex orders, and that market participants maintain the same confidence in pricing their responses to AIM and C–AIM Auctions in SPX as they have during open outcry auctions, and thus, will continue to provide more execution and price improvement opportunities for customers. Likewise, the proposed rule change would align the FLEX AIM and C–AIM Auction process with the non-FLEX AIM and C–AIM Auction process, potentially providing the similar opportunities for execution and price improvement in connection with the same complex strategies and similar meaningfully price responses submitted into FLEX AIM and providing investors with continued consistency in the Exchange's auction rules, thus, mitigating any confusion for those participating in both non-FLEX and FLEX SPX trading.

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.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] 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)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change, overall, will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by further aligning the AIM, C–AIM and FLEX AIM Auction processes with the open outcry crossing process. The Exchange believes the proposed rule change will permit market participants that respond to C–AIM and FLEX AIM Auctions for orders tied to SPX Combos in a similar manner as members of a trading crowd respond to request for markets for those orders. Additionally, for those that respond to AIM, C–AIM, and FLEX AIM auctions generally in SPX, the Exchange believes the proposed rule change will facilitate more confidence of market participants in pricing responses during auctions in a manner similar to pricing process that takes place on the trading floor.

In particular, the Exchange believes the proposed rule change regarding minimum increments for responses to SPX Combo Orders will remove impediments to and perfect the mechanism of a free and open market and national market system and will protect investors by encouraging market participants to continue to provide liquidity by acting as contra in C–AIM Auctions for SPX orders, as well as possibly providing more price improvement opportunities and more meaningful price improvement if the Exchange determines to activate C–AIM in SPX when the trading floor is reopened. The Exchange believes that providing similar execution opportunities for SPX complex strategies between C–AIM and open outcry will help to maintain meaningful levels of liquidity and price improvement opportunities in SPX across both facilities. Thus, the proposed rule change seeks to have C–AIM for complex SPX strategies be an additional means of execution for SPX complex orders, together with executions opportunities via open outcry, in turn, providing additional execution and price improvement opportunities overall for customers without a potential negative impact on liquidity on the trading floor. The proposed rule change does not alter the minimum increment as determined by the Exchange for SPX complex strategies but rather increases the overall minimum increment for responses (in other words, executions will continue to trade in an increment of $0.05 per leg and per order), which will still be in a multiple of $0.05. The Exchange believes this may result in responses to customer orders submitted for execution in C–AIM and FLEX AIM at prices market participants reasonably would expect to receive for such orders on the trading floor.

Additionally, the Exchange believes that proposal to permit the Exchange to include the auction price in the auction notification message, which, unlike open outcry, will be a net package price rather than a per strategy price, may pose potential risk of market participants submitting responses by de minimis amounts ($0.05 above or below the auction price), which as described above, may discourage market participants from taking on the risk to participate as contras, which could reduce liquidity available in the electronic and open outcry SPX market. The Exchange is concerned that potential interruptions to the provision of liquidity in SPX and general participation in the complex electronic auctions in SPX, as well as on the trading floor, could result from the de minimis price increases market participants may provide in responses to electronic auctions due to the disparity between pricing in electronic auctions and pricing in open outcry trading. As a result, the Exchange believes the proposed rule change may encourage continued submission of SPX complex strategies to the electronic auctions by modifying C–AIM and FLEX AIM Auctions for SPX to more closely replicate the open outcry crossing auction process for SPX (which constitutes the majority of SPX trading when the Exchange trading floor is available and C–AIM is not activated). The Exchange believes the proposed rule change would generally enhance price improvement and execution opportunities in SPX C–AIM Auctions, as well as FLEX AIM, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, overall, benefitting the entire market and all investors.

Similarly, the Exchange believes that the proposed change to allow the System to disseminate the price of an Agency Order in SPX options submitted to AIM and C–AIM auctions will further enable all market participants to respond to the auctions with competitive prices thereby removing impediments to and perfecting the mechanism of a free and open market and national market system. As described above, participants in SPX are accustomed to receiving an approximate starting price range during open outcry auctions, which provides them with confidence in pricing their responses; this confidence is particularly important for orders in SPX, which, as noted above, generally take on greater risk and effect increasingly more complex strategies than in other option classes.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

Thus, the proposed rule change is intended to better align the dissemination of auction prices in SPX with the manner in which the trading floor may give a ''ball park'' price in response to a request for a market on the trading floor, thereby providing participants with the same level of confidence in pricing their responses when responding to both the electronic and open outcry auctions, and thus encouraging market participants to continue to submit responses and participate in the electronic auctions when the trading floor is again operable. This proposed change, too, may increase price improvement and execution opportunities in SPX during the AIM and C–AIM, as well as the FLEX AIM, Auctions, thereby also facilitating the provision of an additional viable avenue(s) of execution for SPX orders if AIM and C–AIM remain activated in SPX once the trading floor reopens. In addition to this, the proposed rule change is not new or unique, as the Exchange may already determine to include the price for notification messages in connection with the commencement of its COA pursuant to Rule 5.33(d)(1), the rules of EDGX Options currently provide that the price of an Agency Order in its AIM and C–AIM auctions be disseminated via its auction notification messages,[20] and other options exchange rules also permit for dissemination of the price of an electronic auction-commencing order in auction messages.[21] The Exchange notes that each of the aforementioned rules has previously been filed with the Commission.

The Exchange believes that, together, both proposed changes would provide benefits to investors participating in SPX. As discussed above, the Exchange believes providing market participants with the auction price for SPX AIM Auctions may increase participation in the AIM Auctions, and thus increase execution and price improvement opportunities for customer orders submitted into those auctions. The Exchange believes this will benefit all market participants that trade in the SPX market. In connection with this change, the Exchange believes the proposed change to impose a larger minimum increment for responses is necessary and appropriate offsets the potential risk that the display of the auction price may lead to further de minimis price improvement for those orders.

Moreover, the Exchange believes the proposed rule changes will likewise extend these additional execution and price improvement opportunities to such orders submitted into FLEX AIM while also maintaining consistent auction rules in connection with SPX auction notification messages and SPX complex strategies in both non-FLEX and FLEX. As a result, the Exchange believes this will benefit investors by mitigating any potential confusion regarding the manner of SPX auction message dissemination or SPX execution for complex strategies in SPX into either auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change in connection with minimum increments for SPX complex strategies will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will apply to all C–AIM and FLEX AIM executions in connection with SPX Combo Orders for all market participants. The Exchange believes it is reasonable to limit the proposed rule change to SPX Combo Orders as the majority of index strategies are structured as SPX combos. The Exchange also does not believe that the proposed rule change in connection with the dissemination of price in the SPX auction notification messages will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will apply to all Agency Orders submitted into the AIM, C–AIM, and FLEX AIM Auctions, as the Exchange determines, by all market participants. Additionally, the dissemination of the price via the auction notification message, when applicable, will continue to be made available to all market participants that elect to receive auction notification messages, as it currently is today. The Exchange further notes that, as compared to other options classes, SPX exhibits generally more complex trading characteristics and market models, different investor basis, and a significant portion of larger orders and more complex strategies that typically occur on the trading floor, and thus, it is reasonable to limit the proposed rule change to SPX as it is designed to facilitate confidence when pricing responses in light of these factors.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to an Exchange-specific auction mechanism in a class of options only listed for trading on the Exchange. Other exchanges with similar price improvement auctions may amend their rules to propose different minimum increments for auction responses as they deem appropriate. The Exchange notes the proposed rule change has no impact on the allocation or priority of orders and responses at the conclusion of the C–AIM and FLEX AIM Auctions. Also, as noted above, pursuant to rules previously filed with the Commission, the Exchange and its affiliated options exchanges may currently determine to include price in its similar notification messages disseminated in connection with the COA, EDGX Options currently disseminates the price of agency orders in its auction notification messages for AIM and C–AIM auctions,[22] and the rules of other options exchanges governing substantially similar electronic auctions disseminate the initiating prices for such auctions.[23]

The Exchange believes the proposed rule change may promote competition on the Exchange, as it will more closely align the electronic crossing process with the open outcry crossing process, and thus provide similar execution and price improvement opportunities to customers whether their orders are submitted for electronic or open outcry execution. In particular, the Exchange may activate AIM and C–AIM for SPX when the trading floor is reopened, and the proposed rule change would enable it to do so in a manner the Exchange believes will encourage liquidity in both electronic and open outcry trading, and, as a result, will provide an additional viable avenue of execution for SPX orders, and thus more execution and price improvement opportunities overall in SPX for customers.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period

[20] *See supra* note 15.

[21] *See supra* note 16.

[22] *See supra* note 15.

[23] *See supra* note 16.

up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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–2020–052 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–2020–052. 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–2020–052 and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13123 Filed 6–17–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89055; File No. SR–FINRA–2020–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Effective Date of the Temporary Amendments Set Forth in SR–FINRA–2020–015

June 12, 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 June 10, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 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

FINRA is proposing to extend the effective date of the temporary amendments set forth in SR–FINRA–2020–015 [3] from June 15, 2020 to July 31, 2020. In response to the impacts on FINRA's operations caused by the outbreak of the coronavirus disease (COVID–19), FINRA's May 8 Filing temporarily modified some timing, method of service and other procedural requirements in FINRA rules through June 15, 2020.[4]

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 8, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness to temporarily amend some timing, method of service and other procedural requirements in FINRA rules during the period in which FINRA's operations are impacted by the outbreak of COVID–19. Those temporary amendments set forth in FINRA's May 8 Filing are in effect through June 15, 2020.[5] The Commission published its notice of filing and immediate effectiveness for the May 8 Filing on May 20, 2020.[6]

FINRA proposed the temporary amendments set forth in its May 8 Filing to address the substantial impacts of the COVID–19 outbreak on FINRA's operations. Among other things, the need for FINRA staff, with limited exceptions, to work remotely and restrict in-person activities—consistent with the recommendations of public health officials—makes it challenging to meet certain procedural requirements and perform certain functions required under FINRA rules. The proposed rule change addressed these concerns by easing logistical and other issues and providing FINRA with needed flexibility for its operations during the COVID–19 outbreak.

The COVID–19 conditions necessitating the temporary amendments in FINRA's May 8 Filing

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[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (Notice of Filing and Immediate Effectiveness) (SR–FINRA–2020–015) (filed with the Commission on May 8, 2020 for immediate effectiveness) (the ''May 8 Filing'').

[4] *See id.*

[5] As noted in FINRA's May 8 Filing, the temporarily amended FINRA rules will revert back to their original state at the conclusion of the temporary relief period, now July 31, 2020, and any extension thereof.

[6] *See supra* note 3.

persist and FINRA continues to face the same logistical and other challenges. For this reason and the reasons stated in the May 8 Filing, FINRA now proposes to extend the effective date of the temporary rule amendments in its May 8 Filing through July 31, 2020.[7] The extension of these temporary amendments will continue to help minimize the impact of the COVID–19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its staff.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act,[9] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change to extend the effective date of the temporary amendments to FINRA rules set forth in the May 8 Filing to July 31, 2020, will continue to provide FINRA, and in some cases another party to a proceeding, temporary modifications to its procedural requirements in order to allow FINRA to maintain fair processes and protect investors while operating in a remote work environment and with corresponding restrictions on its activities. It is in the public interest, and consistent with the Act's purpose, for FINRA to operate pursuant to this temporary relief. The temporary amendments allow FINRA to specify filing and service methods, extend certain time periods, and modify the format of oral argument for FINRA disciplinary and eligibility proceedings and other review processes in order to cope with the current pandemic conditions. In addition, as set forth in the May 8 Filing, extending this temporary relief will further support FINRA's disciplinary and eligibility proceedings and other review processes that serve a critical role in providing investor protection and maintaining fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change, which extends the effectiveness of the temporary rule amendments in its May 8 Filing to July 31, 2020, would prevent unnecessary impediments to FINRA's operations and FINRA's investor protection goals that would otherwise result if the amendments in its May 8 Filing expire on June 15, 2020. FINRA does not believe that the proposed rule change will have any material negative effect on members and will not impose any new costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with its May 8 Filing, FINRA has also asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. As in its May 8 Filing, FINRA has reiterated that the requested relief in this proposed rule change will help minimize the impact of the COVID–19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.[12] We also note that this proposal, like FINRA's May 8 Filing, provides only temporary relief from, as FINRA states, the timing, method of service and other procedural requirements, described more fully in FINRA's May 8 Filing, during the period in which FINRA's operations are impacted by COVID–19. As proposed, these changes would be in place through July 31, 2020.[13] FINRA also noted in both proposed rule change filings that the amended rules will revert back to their original, pre-May 8 Filing state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[14] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

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

[7] FINRA is monitoring the impact of COVID–19 on its operations. If the temporary relief from the rule requirements identified in FINRA's May 8 Filing is necessary beyond July 31, 2020, FINRA will submit a separate rule filing to extend the effectiveness of the temporary relief under those rules.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[12] *See* May 8 Filing, 85 FR at 31833.

[13] As noted above, *see supra* note 5, FINRA states that if it requires temporary relief from the rule requirements identified in this proposal beyond July 31, 2020, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[14] *See* May 8 Filing, 85 FR at 31833.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2020–017. 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–017 and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13113 Filed 6–17–20; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36409]

Jon Delli Priscoli and First Colony Development and Rail Holdings Co.—Acquisition of Control Exemption—Massachusetts Coastal Railroad LLC

Jon Delli Priscoli (Delli Priscoli) and First Colony Development and Rail Holdings Co. (Holdings) (collectively, the parties) have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of Massachusetts Coastal Railroad LLC (Mass Coastal), a Class III rail carrier operating in Massachusetts.

The verified notice states that Delli Priscoli owns all of the outstanding stock of Grafton and Upton Railroad Co. (G&U), a Class III rail carrier, and all of the outstanding stock of Holdings, a newly formed noncarrier holding company. Mass Coastal is a wholly owned subsidiary of San Luis & Rio Grande Railroad, Inc. (SLRG), which is a the debtor in a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Colorado (the Bankruptcy Court).[1] The Bankruptcy Court and William A. Brandt, as Chapter 11 trustee for the bankruptcy estate of SLRG (the Trustee), have established procedures for bidding on SLRG's LLC membership interests in Mass Coastal, and Holdings states that it intends to submit a bid.[2] According to the verified notice, if Holdings submits the winning bid and the sale is approved by the Bankruptcy Court, Holdings would be entitled to acquire all of the outstanding membership interests of Mass Coastal. The parties state that, upon acquisition of Mass Coastal, Delli Priscoli, through Holdings, would control Mass Coastal indirectly and G&U directly.

The verified notice states that the schedule for the proposed acquisition contemplates consummating the transaction shortly after the anticipated approval of the sale by the Bankruptcy Court on a schedule that would not allow sufficient time for the parties to file a verified notice after the winning bid is selected. Notwithstanding that the Board's exemption authority is permissive, under the circumstances, the Board will not establish the effective date of this exemption at this time, but rather will require Holdings to inform the Board as to the result of the bidding process, at which point an effective date can be established if Holdings is the successful bidder.

The parties represent that: (1) The rail lines to be owned or operated by G&U and Mass Coastal do not connect with each other or any railroads in their respective corporate families; (2) the proposed transaction is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroads in their respective corporate families; and (3) the proposed transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The parties state that the purpose of the proposed transaction is to afford Mass Coastal improved access to financial resources and opportunities to achieve operating efficiencies as a result of common control with another rail carrier.

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. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

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 25, 2020.

All pleadings, referring to Docket No. FD 36409, 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

[16] 17 CFR 200.30–3(a)(12).

[1] *See In re San Luis & Rio Grande R.R.,* Case No. 19–18905–TBM (Bankr. D. Colo.).

[2] The Board's exemption authority is permissive only; it does not require the authorized transaction to be consummated. *See Oakland Glob. Rail Enter.—Pet. For Declaratory Order,* FD 36168 et al., slip op. at 6 n.8 (STB served June 20, 2019) (explaining that Board authority is permissive and an entity must still obtain the requisite property rights). Thus, this exemption does not foreclose any other entity from seeking to acquire Mass Coastal (subject to any Board authority that may be needed), and it does not assume or affect the outcome of the bidding process.

must be served on the parties' representative, James E. Howard, 57 Via Buena Vista, Monterey, CA 93940.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 15, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020–13172 Filed 6–17–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Solicitation of Nominations for Appointment to the Drone Advisory Committee

AGENCY: Federal Aviation Administration, U.S. Department of Transportation.

ACTION: Solicitation of Nominations for Appointment to the Drone Advisory Committee (DAC).

SUMMARY: The FAA is issuing this notice to solicit nominations for membership on the Drone Advisory Committee (DAC).

DATES: Nominations must be received no later than 6:00 a.m. Eastern Time on August 18, 2020. Nominations received after the above due date may be retained for evaluation for future DAC vacancies after all other nominations received by the due date have been evaluated and considered.

ADDRESSES: Nominations can be submitted electronically (by email) to Khurram Abbas in the FAA's UAS Integration Office, at *khurram.abbas@faa.gov.* The subject line should state ''2020 DAC Nomination.'' The body of the email must contain content or attachments that address all requirements as specified in the below ''Materials to Submit'' section. Incomplete/partial submittals as well as those that exceed the specified document length may not be considered for evaluation. An email confirmation from the FAA will be sent upon receipt of all complete nominations that meet the criteria in the ''Materials to Submit'' section. Anyone wishing to submit an application by paper may do so by contacting Khurram Abbas at *khurram.abbas@faa.gov* or 202–267–8345. The FAA will notify those appointed by the Secretary to serve on the DAC in writing.

FOR FURTHER INFORMATION CONTACT: Contact Khurram Abbas at *khurram.abbas@faa.gov* or 202–267–8345. Additional information on the DAC, including the current roster, charter, and previous meeting minutes can be found at: *https://www.faa.gov/uas/programs_partnerships/drone_advisory_committee/.*

SUPPLEMENTARY INFORMATION:

Background

The DAC is an advisory committee established under DOT's authority, in accordance with the provisions of the Federal Advisory Committee Act (FACA) as amended, Public Law 92–463, 5 U.S.C. App. 2. The objective of the DAC is to provide independent advice and recommendations to the FAA and in response to specific taskings received directly from the FAA. The advice and recommendations work toward improving the efficiency and safety of integrating Unmanned Aircraft Systems (UAS) into the National Airspace System (NAS). In response to FAA requests, the DAC may provide the FAA with information that may be used for tactical and strategic planning purposes.

This notice seeks to fill current and future vacancies on the DAC and does not affect the status of current DAC members' terms.

Description of Duties

The DAC acts solely in an advisory capacity and does not exercise program management responsibilities. Decisions directly affecting implementation of transportation policy will remain with the FAA Administrator and the Secretary of Transportation. The DAC duties include:

a. Undertaking tasks only assigned by the FAA.

b. Deliberating on and approving recommendations for assigned tasks in meetings that are open to the public.

c. Responding to ad hoc informational requests from the FAA and/or providing input to the FAA on the overall DAC structure (including structure of the subcommittees and or task groups).

Membership: The FAA will submit recommendations for membership to the Secretary of Transportation, who will appoint members to the DAC. The membership must be fairly balanced in terms of points of view represented and the functions performed. The stakeholder groups represented on the DAC include the following:

a. Airports and Airport Communities
b. Labor (controllers, pilots)
c. Local Government
d. Navigation, Communication, Surveillance, and Air Traffic Management Capability Providers
e. Research, Development, and Academia
f. Traditional Manned Aviation Operators
g. UAS Hardware Component Manufacturers
h. UAS Manufacturers
i. UAS Operators
j. UAS Software Application Manufacturers
k. Other

All DAC members serve at the pleasure of the Secretary of Transportation. The DAC will have no more than 35 members. Other membership criteria include:

a. An appointment of up to two years.

b. Service without charge and without government compensation. Representation of a particular interest of employment, education, experience, or affiliation with a specific aviation related organization.

c. Ability to attend all DAC meetings (estimated three meetings per year).

Qualifications: Candidates must be in good public standing and currently serve as a member of their organization's core senior leadership team with the ability to make UAS-related decisions. In rare circumstances, membership will be granted to uniquely qualified individuals who do not meet this latter requirement. Members appointed solely for their individual expertise serve as Special Government Employees.

Materials to Submit: Candidates are required to submit, in full, the following materials to be considered for DAC membership. Failure to submit the required information may disqualify a candidate from the review process.

a. A short biography of the nominee, including professional and academic credentials.

b. A résumé or curriculum vitae, which must include relevant job experience, qualifications, as well as contact information (email, telephone, and mailing address).

c. A one-page statement describing how the candidate will benefit the DAC, considering current membership and the candidate's unique perspective that will advance the conversation. This statement must also identify a primary and secondary interest to which the candidate's expertise best aligns. Finally, candidates should state their previous experience on Federal Advisory Committees and/or Aviation Rulemaking Committees (if any), their level of knowledge in their above stakeholder groups, and the size of their constituency they represent or are able to reach.

Up to three letters of recommendation may be submitted, but are not required. Each letter may be no longer than one page. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation. Evaluations will be based on the materials submitted.

Erik W. Amend,

Manager, Executive Office, AUS–10, UAS Integration Office, Federal Aviation Administration.

[FR Doc. 2020–13133 Filed 6–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0180]

Hours of Service of Drivers: Application for Exemption From the 14-Hour Rule During Independence Day Celebrations for Illumination Fireworks Partners, LP, and ACE Pyro, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant Illumination Fireworks Partners, LP, and ACE Pyro, LLC (Applicants), an exemption from the requirements that drivers of commercial motor vehicles (CMVs) must not drive following the 14th hour after coming on duty. The exemption will apply solely to the drivers of 60 CMVs employed by the applicants in conjunction with staging fireworks shows in celebration of Independence Day during the period of June 28–July 8, for the next five years (2020–2024) inclusive. During this period, the CMV drivers employed by the applicants would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and will continue to be subject to the 11-hour driving-time limit, and the 60 and 70-hour on-duty limits. FMCSA has determined that the terms and conditions of the exemption will likely achieve a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective June 18, 2020 and expires June 18, 2025.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the U.S. Department of Transportation 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. The on-line Federal Docket Management System (FDMS) is available 24 hours a day, 365 days a year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver, and Vehicle Safety Standards; telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* insert the docket number, ''FMCSA–2019–0180 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 Management Facility 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) including the reason for the grant or denial; the specific person or class of persons receiving the exemption, if granted; and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to five years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Hours of Service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Illumination Fireworks Partners, LP (USDOT 3247742), and ACE Pyro, LLC (USDOT 1352892) (Applicants), are fireworks display companies that employ CMV drivers who hold Commercial Driver's Licenses (CDLs) with hazardous materials endorsements. The drivers transport Division 1.3G and 1.4G fireworks and setup materials for fireworks shows at Independence Day celebrations. The applicants seek an exemption from the 14-hour rule in 49 CFR 395.3(a)(2) to permit their drivers to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. The applicants state that the basis for the request is the existing FMCSA exemption granted to Illumination Fireworks, LLC, and ACE Pyro, LLC, under Docket No. FMCSA–2014–0111. They are seeking the HOS exemption because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the existing regulation means that most shows would require two drivers, significantly increasing the cost of a fireworks display.

The applicants assert that without this exemption safety would decline, as fireworks drivers would be unable to return to their home base following each show, should they have fireworks remaining after a display. Drivers would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, the applicants refer to the short distances involved in driving from the distribution point to the site of a fireworks display, no more than 150 miles. Drivers drive to the site of the display in the early morning during light traffic. In addition, drivers have several hours off duty in the late afternoon and early evening on the day of the event. Lastly, the applicants state that they have not been involved in any reportable accidents while operating under terms and conditions of the same exemption granted to the previous owner of the companies.

V. Public Comments

On October 23, 2019, FMCSA published notice of this application and asked for public comment (84 FR 56887). The Agency did not receive any comments.

VI. FMCSA Decision

FMCSA has determined that granting an exemption to Illumination Fireworks Partners, LP, and ACE Pyro, LLC, will likely achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would achieve. FMCSA ensured that these motor carriers possess active USDOT registrations, have minimum required levels of insurance, and were not subject to any ''imminent hazard'' or other Out-of-Service (OOS) orders. The Agency conducted a comprehensive review of the motor carriers' safety performance, which included a review of the Motor Carrier Management Information System safety records, and inspection and accident reports submitted to FMCSA by state agencies.

The applicants have ''satisfactory'' safety ratings and valid Hazardous Materials Safety Permits.

VII. Terms and Conditions of the Exemption

Period of the Exemption

The exemption from 49 CFR 395.3(a)(2) is effective from June 28 through July 8, at 11:59 p.m. local time, each year from 2020 through 2024 for the drivers employed by the applicants in this notice.

Terms and Conditions of the Exemption

Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is limited to drivers employed by the applicants. The conditions of this exemption are as follows:

- Drivers must not drive more than 11 hours in the 14-hour period after coming on duty; and
- Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period.

The carrier and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no state shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

The applicants must notify FMCSA within five business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under this exemption. The notification must be emailed to *MCPSD@DOT.GOV* and include the following information:

a. Name of the Exemption: ''Illumination Fireworks Partners or Ace Pyro'';

b. Date of the accident;

c. City or town and state in which the accident occurred, or which is closest to the scene of the accident;

d. Driver's name and driver's license state, number, and class;

e. Co-driver's name and driver's license state, number, and class;

f. Vehicle company number and power unit license plate state and number;

g. Number of individuals suffering physical injury;

h. Number of fatalities;

i. The police-reported cause of the accident;

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to *MCPSD@DOT.GOV* as soon as available.

Termination

The FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revoking the exemption. The FMCSA will revoke the exemption immediately for failure to comply with its terms and conditions.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–13160 Filed 6–17–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On May 20, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. ALI NOORINAJAD, Mohammad, Iran; POB Kabudar Ahang, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 4032108617 (Iran)

(individual) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13553 of September 28, 2010, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions'' (E.O. 13553), 3 CFR, 2011 Comp., p. 253, for having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interest in property are blocked pursuant to E.O. 13553.

2. ASHRAQ, Hamidraza, Iran; POB Abadan, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 11817387375 (Iran); alt. National ID No. 1817387375 (Iran) (individual) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interest in property are blocked pursuant to E.O. 13553.

3. SHAHVARPOUR NAJAFABADI, Hassan (a.k.a. SHAHVARPOUR, Hassan), Iran; POB Safi Abad, Dezful, Khuzestan, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 2001624001 (Iran) (individual) [IRGC] [IFSR] [IRAN–HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interest in property are blocked pursuant to E.O. 13553.

4. RAHMANI FAZLI, Abdolreza (a.k.a. RAHMANI FAZLI, Abd al-Reza; a.k.a. RAHMANI FAZLI, Abdol-Reza; a.k.a. RAHMANI–FAZLI, Abdolreza), Iran; DOB 23 Dec 1959; POB Shirvan, Iran; alt. POB North Khorasan, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN] [IRAN–HR].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13553 for being an official of the Government of Iran or a person acting on behalf of the Government of Iran (including members of paramilitary organizations) who is responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Iran or Iranian citizens or residents, of the family members of the foregoing, on or after June 12, 2009, regardless of whether such abuses occurred in Iran.

5. DARVISH, Habil, Iran; DOB 1952; alt. DOB 1953; POB Para Qeshlaq, Parsabad-Moghan, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN COOPERATIVE FOUNDATION).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN COOPERATIVE FOUNDATION, a person whose property and interest in property are blocked pursuant to E.O. 13553.

6. FATHI ZADEH, Mohsen, Iran; POB Azna, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 4839651760 (Iran) (individual) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interest in property are blocked pursuant to E.O. 13553.

7. MAHMOODZADEH, Yahya, Iran; POB Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 0046206310 (Iran) (individual) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interest in property are blocked pursuant to E.O. 13553.

8. ASHTARI FARD, Hossein (a.k.a. AHSTARI, Hossein), Iran; DOB 1962; alt. DOB 1963; POB Isfahan, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interest in property are blocked pursuant to E.O. 13553.

9. SOLEIMANI, Ayoub, Iran; POB Kamaraj, Fars Province, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 5479886967 (Iran) (individual) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interest in property are blocked pursuant to E.O. 13553.

Entity

1. LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN COOPERATIVE FOUNDATION (a.k.a. BONYAD TA'AVON OF NAJA; a.k.a. NIROOYE ENTEZAMI JOMHORI ESLAMI BONYAD TA'AVON; a.k.a. ''LAW ENFORCEMENT FORCES COOPERATIVE FOUNDATION''; a.k.a. ''POLICE COOPERATIVE FOUNDATION''), Hekmat Complex, At the Beginning of Marzdaran Boulevard, Sheikh Fazlollah Nuri Highway, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 10100477865 (Iran); Registration ID 12322 (Iran) [IRAN–HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for being owned or controlled by, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interest in property are blocked pursuant to E.O. 13553.

Dated: June 15, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–13163 Filed 6–17–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions Imposed on Persons Identified by the Secretary of State Pursuant to the Countering America's Adversaries Through Sanctions Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's action to impose sanctions on persons identified by the Secretary of State pursuant to the Countering America's Adversaries Through Sanctions Act. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

Background: Section 106(a) of the Countering America's Adversaries Through Sanctions Act (CAATSA) requires the Secretary of State to submit to the appropriate congressional committees, no later than 90 days after August 2, 2017, the date of enactment of CAATSA, and annually thereafter, a list of each person the Secretary determines, based on credible evidence, on or after August 2, 2017: (1) Is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in Iran who seek (A) to expose illegal activity carried out by officials of the Government of Iran; or (B) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections; or (2) acts as an agent of or on behalf of a foreign person in a matter relating to an activity described in paragraph (1) above. Section 106(b) of CAATSA authorizes the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to authority delegated by the President, to block all transactions in all property and interests in property of a person on the list required by section 106(a) of CAATSA in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

The Secretary of State has identified the following persons in a list submitted to the appropriate congressional committees pursuant to section 106(a) of CAATSA. Accordingly, on May 20, 2020, the Director of OFAC, acting pursuant to delegated authority, has taken the actions described below to impose the sanctions set forth in Section 106(b)(1) of CAATSA with respect to the persons listed below.

Entities

1. GREAT TEHRAN PENITENTIARY (a.k.a. FASHAFOUYEH PRISON; a.k.a. FASHAFOYE PRISON), Tehran Province, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [CAATSA—IRAN].

2. QARCHAK PRISON (a.k.a. GHARCHAK PRISON; a.k.a. QARCHAK WOMEN'S PRISON; a.k.a. SHAHR–E REY PRISON; a.k.a. ''WOMEN'S KAHRIZAK''), Varamin Highway, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [CAATSA—IRAN].

The Director of OFAC has blocked all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, and which may not be transferred, paid, exported, withdrawn, or otherwise dealt in, of Great Tehran Penitentiary and Qarchak Prison. These persons have been added to OFAC's List of Specially Designated Nationals and Blocked Persons and include the identifying tag ''CAATSA—IRAN.''

Dated: June 15, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–13162 Filed 6–17–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of Open Meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its sixteenth meeting on Thursday, July 16, 2020, via webcast, beginning at 10:00 a.m. Eastern Time. The meeting will be open to the public and advance registration is required.

DATES: The meeting will be held on Thursday, July 16, 2020, beginning at 10:00 a.m. Eastern Time.

ADDRESSES: The meeting will be held via webcast using Zoom. Participants are required to process the meeting registration ahead of time. See below for details:

Register in advance for the meeting using the Zoom attendee registration link: *https://ofr-treasury.zoomgov.com/meeting/register/vJItcOurrTkqGaGlqKDqxd2Dj2sSekA4ySo* After registering, you will receive a confirmation email with a unique link to join the meeting.

REASONABLE ACCOMMODATION: If you require a reasonable accommodation or sign language interpreter, please contact *ReasonableAccommodationRequests@treasury.gov.* Please submit requests at least five days in advance of the event.

FOR FURTHER INFORMATION CONTACT: Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 927–8032 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- Electronic Statements. Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- Paper Statements. Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Melissa Avstreih, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The OFR will post statements on the Committee's website, *https://www.financialresearch.gov/frac/,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the sixteenth meeting of the Financial Research Advisory Committee. Topics to be discussed among all members include passive investing, and hedge fund trades and U.S. Treasury market illiquidity. For more information on the OFR and the Committee, please visit the OFR website at *http://www.financialresearch.gov.*

Dated: June 15, 2020.

Melissa K. Avstreih,

Senior Industry Liaison.

[FR Doc. 2020–13156 Filed 6–17–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERAN AFFAIRS

[OMB Control No. 2900–0011]

Agency Information Collection Activity: Application for Reinstatement—Insurance Lapsed More Than 6 Months and Application for Reinstatement—Non-Medical Comparative Health Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 17, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0011'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0011'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Reinstatement—Insurance Lapsed More Than 6 Months (29–352). Application for Reinstatement—Non Medical Comparative Health Statement (29–353).

OMB Control Number: 2900–0011.

Type of Review: Reinstatement of a currently approved collection.

Abstract: These forms are used by veterans who are requesting a reinstatement of their lapsed life insurance policies.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 22.5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–13091 Filed 6–17–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Bureau of Consumer Financial Protection

12 CFR Part 1026
Facilitating the LIBOR Transition (Regulation Z); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0014]

RIN 3170–AB01

Facilitating the LIBOR Transition (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation Z, which implements the Truth in Lending Act (TILA), generally to address the sunset of LIBOR, which is expected to be discontinued after 2021. Some creditors currently use LIBOR as an index for calculating rates for open-end and closed-end products. The Bureau is proposing changes to open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards. The Bureau also is proposing to permit creditors for home equity lines of credit (HELOCs) and card issuers for credit card accounts to transition existing accounts that use a LIBOR index to a replacement index on or after March 15, 2021, if certain conditions are met. The proposal also addresses change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to accounts transitioning away from using a LIBOR index. Lastly, the Bureau is proposing to address how the rate reevaluation provisions applicable to credit card accounts apply to the transition from using a LIBOR index to a replacement index.

DATES: Comments must be received on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0014 or RIN 3170–AB01, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-LIBOR-NPRM@cfpb.gov.* Include Docket No. CFPB–2020–0014 or RIN 3170–AB01 in the subject line of the message.
- *Hand Delivery/Mail/Courier:* Comment Intake—LIBOR, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Angela Fox, Counsel, or Krista Ayoub, Kristen Phinnessee, or Amanda Quester, 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 Proposed Rule

The Bureau is proposing several amendments to Regulation Z, which implements TILA, for both open-end and closed-end credit to address the sunset of LIBOR.[1] At this time, LIBOR is expected to be discontinued after 2021. These proposed changes are discussed in more detail below. As discussed in part VI, the Bureau generally is proposing that the final rule would take effect on March 15, 2021, except for the updated change-in-term disclosure requirements for HELOCs and credit card accounts that would apply as of October 1, 2021. The Bureau also is issuing additional written guidance related to the LIBOR transition on its website as discussed in part II.C. The Bureau solicits comment on the changes proposed in this document and whether there are any additional regulatory changes or guidance that would be helpful as creditors and card issuers transition away from using LIBOR indices.

A. Open-End Credit

The Bureau is proposing several amendments to the open-end credit provisions in Regulation Z to address the sunset of LIBOR. First, the Bureau is proposing a detailed roadmap for HELOC creditors and card issuers to choose a compliant replacement index for the LIBOR index.[2] Regulation Z already permits HELOC creditors and card issuers to change an index and margin they use to set the annual percentage rate (APR) on a variable-rate account under certain conditions, when the original index ''becomes unavailable'' or ''is no longer available.'' The Bureau has preliminarily determined, however, that consumers, HELOC creditors, and card issuers would benefit substantially if HELOC creditors and card issuers could transition away from a LIBOR index before LIBOR becomes unavailable. The Bureau is therefore proposing new provisions that detail specifically how HELOC creditors and card issuers may replace a LIBOR index with a replacement index for accounts on or after March 15, 2021. These proposed new provisions are in proposed § 1026.40(f)(3)(ii)(B) for HELOCs and in proposed § 1026.55(b)(7)(ii) for credit card accounts.

Under the proposal, HELOC creditors and card issuers must ensure that the APR calculated using the replacement index is substantially similar to the rate calculated using the LIBOR index, based on the values of these indices on December 31, 2020. The proposal also imposes other requirements on a replacement index. Under the proposal,

[1] When amending commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of regulatory text and commentary included in this document show the language of those sections if the Bureau adopts its changes as proposed. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is proposing to make to the regulatory text and commentary of Regulation Z. This redline can be found on the Bureau's website, at *https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/amendments-facilitate-libor-transition-regulation-z/.* If any conflicts exist between the redline and the text of Regulation Z, its commentary, or this proposed rule, the documents published in the **Federal Register** are the controlling documents.

[2] Reverse mortgages structured as open-end credit are HELOCs subject to the provisions in §§ 1026.40 and 1026.9(c)(1).

HELOC creditors and card issuers may select a replacement index that is newly established and has no history, or an index that is not newly established and has a history. HELOC creditors and card issuers may replace a LIBOR index with an index that has a history only if the index has historical fluctuations substantially similar to those of the LIBOR index. The Bureau is proposing to determine that the prime rate published in the Wall Street Journal (Prime) has historical fluctuations substantially similar to those of certain U.S. Dollar (USD) LIBOR indices. The Bureau also is proposing to determine that certain spread-adjusted [3] indices based on the Secured Overnight Financing Rate (SOFR) recommended by the Alternative Reference Rates Committee (ARRC) have historical fluctuations that are substantially similar to those of certain USD LIBOR indices.

Second, the Bureau is proposing to make clarifying changes to the existing provisions on the replacement of an index when the index becomes unavailable. These proposed changes are in proposed § 1026.40(f)(3)(ii)(A) for HELOCs and in proposed § 1026.55(b)(7)(i) for credit card accounts.

Third, the Bureau is proposing to revise change-in-terms notice requirements for HELOCs and credit card accounts to ensure that consumers know how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced. The proposal would ensure that the change-in-terms notices for these accounts will disclose the index that is replacing the LIBOR index and any adjusted margin that will be used to calculate a consumer's rate, regardless of whether the margin is being reduced or increased. These proposed changes, if adopted, would become effective October 1, 2021. The proposed changes are in § 1026.9(c)(1)(ii) for HELOCs and in § 1026.9(c)(2)(v)(A) for credit card accounts.

Fourth, the Bureau is proposing to add an exception from the rate reevaluation provisions applicable to credit card accounts. Currently, when a card issuer increases a rate on a credit card account, the card issuer generally must complete an analysis reevaluating the rate increase every six months until the rate is reduced to a certain degree. To facilitate compliance, the proposal would add an exception from these requirements for increases that occur as a result of replacing a LIBOR index using the specific proposed provisions described above for transitioning from a LIBOR index or as a result of the LIBOR index becoming unavailable. This proposed exception is in proposed § 1026.59(h)(3). This proposed exception would not apply to rate increases that are already subject to the rate reevaluation requirements prior to the transition from the LIBOR index. The proposal also would address cases where the card issuer was already required to perform a rate reevaluation review prior to transitioning away from LIBOR and LIBOR was used as the benchmark for comparison for purposes of determining whether the card issuer can terminate the six-month reviews. To facilitate compliance, these proposed changes would address how a card issuer can terminate the obligation to review where the rate applicable immediately prior to the increase was a variable rate calculated using a LIBOR index. These proposed changes are set forth in proposed § 1026.59(f)(3).

Fifth, in relation to the open-end credit provisions, the Bureau is proposing several technical edits to comments 9(c)(2)(iv)–2 and 59(d)–2 to replace LIBOR references with references to a SOFR index.

B. Closed-End Credit

The Bureau is proposing amendments to the closed-end credit provisions in Regulation Z to address the sunset of LIBOR. First, the Bureau is proposing to identify specific indices as an example of a ''comparable index'' for purposes of the closed-end refinancing provisions. Currently, under Regulation Z, if the creditor changes the index of a variable-rate closed-end loan to an index that is not a ''comparable index,'' the index change may constitute a refinancing for purposes of Regulation Z, triggering certain requirements. The Bureau is proposing to add an illustrative example to identify the SOFR-based spread-adjusted replacement indices recommended by the ARRC as an example of a ''comparable index'' for the LIBOR indices that they are intended to replace. These proposed changes are in comment 20(a)(3)–ii.

Second, in relation to the closed-end credit provisions, the Bureau is proposing technical edits to § 1026.36(a)(4)(iii)(C) and (a)(5)(iii)(B), comment 37(j)(1)–1, and sample forms H–4(D)(2) and H–4(D)(4) in appendix H. These proposed technical edits would replace LIBOR references with references to a SOFR index and make related changes and corrections.

II. Background

A. LIBOR

Introduced in the 1980s, LIBOR (originally an acronym for London Interbank Offered Rate) was intended to measure the average rate at which a bank could obtain unsecured funding in the London interbank market for a given period, in a given currency. LIBOR is calculated based on submissions from a panel of contributing banks and published every London business day for five currencies (USD, British pound sterling (GBP), euro (EUR), Swiss franc (CHF), and Japanese yen (JPY)) and for seven tenors [4] for each currency (overnight, 1-week, 1-month, 2-month, 3-month, 6-month, and 1-year), resulting in 35 individual rates (collectively, LIBOR). As of March 2020, the panel for USD LIBOR is comprised of sixteen banks, and each bank contributes data for all seven tenors.[5] In 2017, the chief executive of the U.K. Financial Conduct Authority (FCA), which regulates LIBOR, announced that it did not intend to persuade or compel banks to submit information for LIBOR past the end of 2021 and that the panel banks had agreed to voluntarily sustain LIBOR until then in order to provide sufficient time for the market to transition from using LIBOR indices to alternative indices.[6] However, the Intercontinental Exchange (ICE) Benchmark Administration, which administers LIBOR, announced a goal to continue publishing certain LIBOR tenors past 2021 though it declined to guarantee their continued availability.[7] The FCA has indicated that it would conduct ''representativeness tests'' if LIBOR continues to be published for some time after 2021 based on submissions from a smaller number of panel banks (and thus a smaller number of transactions), raising the possibility that LIBOR could

[3] The spread between two indices is the difference between the levels of those indices, which may vary from day to day. For example, if today index X is 5% and index Y is 4%, then the X–Y spread today is one percentage point (or, equivalently, 100 basis points). A spread adjustment is a term that is added to one index to make it more similar to another index. For example, if the X–Y spread is typically around 100 basis points, then one reasonable spread adjustment may be to add 100 basis points to Y every day. Then the spread-adjusted value of Y will typically be much closer to the value of X than Y is, although there may still be differences between X and the spread-adjusted Y from day to day.

[4] The tenor refers to the length of time remaining until a loan matures.

[5] *ICE LIBOR,* (last visited Mar. 26, 2020), *https://www.theice.com/iba/libor.*

[6] Andrew Bailey, *The Future of LIBOR,* U.K. FCA, (July 27, 2017), *https://www.fca.org.uk/news/speeches/the-future-of-libor; FCA Statement on LIBOR Panels,* U.K. FCA, (Nov. 24, 2017), *https://www.fca.org.uk/news/statements/fca-statement-libor-panels.*

[7] Intercontinental Exch. Benchmark Admin., *ICE Benchmark Administration Survey on the Use of LIBOR, https://www.theice.com/iba/ice-benchmark-administration-survey-on-the-use-of-libor* (last visited May 18, 2020).

be declared to be unrepresentative by its regulator.[8] As a result, industry faces uncertainty about the publication and representativeness of LIBOR, which is neither guaranteed to continue nor guaranteed to cease.

B. Consumer Products Using LIBOR

In the United States, financial institutions have used LIBOR as a common benchmark rate for a variety of adjustable-rate consumer financial products, including mortgages, credit cards, HELOCs, reverse mortgages, and student loans. Typically, the consumer pays an interest rate that is calculated as the sum of a benchmark index and a margin. For example, a consumer may pay an interest rate equal to the 1-year USD LIBOR plus two percentage points.

Financial institutions have been developing plans and procedures to transition from the use of LIBOR indices to replacement indices for products that are being newly issued and existing accounts that were originally benchmarked to a LIBOR index. In some markets, such as for HELOCs and credit cards, the vast majority of newly originated lines of credit are already based on indices other than a LIBOR index.

C. Additional Written Guidance

In addition to this proposed rule, the Bureau is issuing separate written guidance in the form of Frequently Asked Questions (FAQs) for creditors and card issuers to use as they transition away from using LIBOR indices. These FAQs address regulatory questions where the existing rule is clear on the requirements and already provides necessary alternatives needed for the LIBOR transition. The guidance can be found at: *https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/amendments-facilitate-libor-transition-regulation-z/.* This guidance deals with issues related to: (1) Existing mortgage servicing notice requirements (including how servicers may notify consumers of the index change when sending the interest rate adjustment notices and periodic statements); (2) existing HELOC and adjustable-rate mortgage (ARM) loan program notice requirements disclosing historical index examples; (3) existing Alternative Mortgage Transaction Parity Act requirements for index changes that result in an increased interest rate or finance charge for alternative mortgage transactions; and (4) identification of implementation and consumer impacts for creditors or card issuers as they prepare for the LIBOR transition.

III. Outreach

The Bureau has received feedback through both formal and informal channels, regarding ways in which the Bureau could use rulemaking to facilitate the market's orderly transition from using LIBOR indices to alternate indices. The following is a brief summary of some of the Bureau's engagement with industry, consumer advocates, regulators, and other stakeholders regarding the transition away from the use of LIBOR indices. The Bureau discusses feedback received through these various channels that is relevant to this proposal throughout the document.

The Bureau is an *ex officio* member of the ARRC, a group of private-market participants convened by the Board of Governors of the Federal Reserve System (Board) and the Federal Reserve Bank of New York (New York Fed) to ensure a successful transition from the use of LIBOR as an index by December 2021. The group is comprised of financial institutions and other market participants such as exchanges, regulators, and consumer advocates. As an *ex officio* member, the Bureau does not have voting rights and may only offer views and analysis to support the ARRC's objectives. Through its interaction with other ARRC members, the Bureau has received questions and requests for clarification regarding certain provisions in the Bureau's rules that could affect the industry's LIBOR transition plans. For example, the Bureau has received informal requests from members of the ARRC for clarification that the spread-adjusted SOFR-based index being developed by the ARRC is a ''comparable index'' to the LIBOR index. The Bureau has also, in coordination with the ARRC, actively sought comments regarding a potential rulemaking related to the LIBOR transition. For example, the Bureau convened multiple meetings for members of the ARRC to hear consumer groups' views on potential issues consumers may face during the sunset of LIBOR and solicited suggestions for potential actions the regulators could take to facilitate a smooth transition.

The Bureau has engaged in ongoing market monitoring with individual institutions, trade associations, regulators, and other stakeholders to understand their plans for the LIBOR transition, their concerns, and potential impacts on consumers. Institutions and trade associations have met informally with the Bureau and sent letters outlining their concerns related to the sunset of LIBOR. The Bureau also has received feedback regarding the LIBOR transition through other formal channels that were related to general Bureau activities. For example, in January 2019, the Bureau solicited information from the public about several aspects of the consumer credit card market. The Bureau received comments submitted from a banking trade group regarding changes to Regulation Z that could support the transition away from using LIBOR indices.[9]

Through these various channels, industry trade associations, consumer groups, and other organizations have provided information about provisions in Bureau regulations that could be modified to reduce market confusion, enable institutions and consumers to transition away from using LIBOR indices in a timely manner, and lower market risk related to the LIBOR transition. A number of financial institutions raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable if, as expected, some panel banks stop submitting information before LIBOR finally is discontinued. Stakeholders noted that FCA could declare LIBOR to be ''unrepresentative'' at some point after 2021 and wanted clarity from U.S. Federal regulators about how U.S. firms should interpret such a declaration. Some industry participants asked that the Bureau declare LIBOR to be ''unavailable'' for the purposes of Regulation Z. They also requested that the Bureau facilitate a transition timeline that would provide sufficient time for financial institutions to inform consumers of the change and make the necessary changes to their systems.

Industry also recommended that the Bureau announce that it would not deem a replacement index to be unfair, deceptive, or abusive if it were recommended by the Board, the New York Fed, or a committee endorsed or convened by the Board or New York Fed.

Credit card issuers and related trade associations stated that the prime rate should be permitted to replace a LIBOR index, noting that while a SOFR-based index is expected to replace a LIBOR index in many commercial contexts, the prime rate is the industry standard rate index for credit cards. They also requested that the Bureau permit card issuers to replace the LIBOR index used in setting the variable rates on existing accounts before LIBOR becomes unavailable to facilitate compliance.

[8] Andrew Bailey, *LIBOR: Preparing for the End,* U.K. FCA, (July 15, 2019), *https://www.fca.org.uk/news/speeches/libor-preparing-end.*

[9] 84 FR 647 (Jan. 31, 2019).

They also requested guidance on how the rate reevaluation provisions applicable to credit card accounts apply to accounts that are transitioning away from using LIBOR indices.

Consumer advocates emphasized the need for transparency as institutions sunset their use of LIBOR indices and indicated a preference for replacement indices that are publicly available. They recommended regulators protect consumers by preventing institutions from changing the index or margin in a manner that would raise the interest rate paid by the consumer. They also shared industry's concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Advocates noted that existing contract language may limit how and when institutions can transition away from LIBOR. They also discussed issues specific to particular consumer products, expressing concern, for example, that the contract language in the private student loan market is ambiguous and gives lenders wide leeway in determining a comparable replacement index for LIBOR indices.

IV. Legal Authority

A. Section 1022 of the Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' Among other statutes, title X of the Dodd-Frank Act and TILA are Federal consumer financial laws.[10] Accordingly, in setting forth this proposal, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA and title X that carry out the purposes and objectives and prevent evasion of those laws.

B. The Truth in Lending Act

TILA is a Federal consumer financial law. In adopting TILA, Congress explained that:

> [E]conomic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.[11]

TILA and Regulation Z define credit broadly as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.[12] TILA and Regulation Z set forth disclosure and other requirements that apply to creditors. Different rules apply to creditors depending on whether they are extending ''open-end credit'' or ''closed-end credit.'' Under the statute and Regulation Z, open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.[13] Typically, closed-end credit is credit that does not meet the definition of open-end credit.[14]

The term ''creditor'' generally means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.[15] TILA defines ''finance charge'' generally as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.[16]

The term ''creditor'' also includes a card issuer, which is a person or its agent that issues credit cards, when that person extends credit accessed by the credit card.[17] Regulation Z defines the term ''credit card'' to mean any card, plate, or other single credit device that may be used from time to time to obtain credit.[18] A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge.[19] In addition to being creditors under TILA and Regulation Z, card issuers also generally must comply with the credit card rules set forth in the Fair Credit Billing Act[20] and in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act)[21] (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G.[22]

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a)[23] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. Pursuant to TILA section 102(a), a purpose of TILA is to assure a meaningful disclosure of credit terms to enable the consumer to avoid the uninformed use of credit and compare more readily the various credit terms available to the consumer. This stated purpose is tied to Congress's finding that economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.[24] Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This

[10] Dodd-Frank Act section 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12) (defining ''enumerated consumer laws'' to include TILA).

[11] TILA section 102(a), codified at 15 U.S.C. 1601(a).

[12] TILA section 103(f), codified at 15 U.S.C. 1602(f); 12 CFR 1026.2(a)(14).

[13] 12 CFR 1026.2(a)(20).

[14] 12 CFR 1026.2(a)(10).

[15] *See* TILA section 103(g), codified at 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17)(i).

[16] TILA section 106(a), codified at 15 U.S.C. 1605(a); *see* 12 CFR 1026.4.

[17] *See* TILA section 103(g), codified at 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17)(iii) and (iv).

[18] *See* 12 CFR 1026.2(a)(15).

[19] *See* 12 CFR 1026.2(a)(15)(iii).

[20] Title III of Public Law 93–495, 88 Stat. 1511 (1974).

[21] Public Law 111–24, 123 Stat. 1734 (2009).

[22] *See generally* 12 CFR 1026.5(b)(2)(ii), .7(b)(11), .12, .51–.60.

[23] 15 U.S.C. 1604(a).

[24] TILA section 102(a), codified at 15 U.S.C. 1601(a).

amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb).[25]

For the reasons discussed in this document, the Bureau is proposing amendments to Regulation Z with respect to certain provisions that impact the transition from LIBOR indices to other indices to carry out TILA's purposes and is proposing such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of the proposal pursuant to its authority under TILA section 105(a), the Bureau has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

TILA section 105(d). As amended by the Dodd-Frank Act, TILA section 105(d)[26] states that any Bureau regulations requiring any disclosure which differs from the disclosures previously required in certain sections shall have an effective date of that October 1 which follows by at least six months the date of promulgation. The section also states that the Bureau may in its discretion lengthen or shorten the amount of time for compliance when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. The section further states that any creditor or lessor may comply with any such newly promulgated disclosures requirements prior to the effective date of the requirements.

[25] 15 U.S.C. 1602(bb).

[26] 15 U.S.C. 1604(d).

V. Section-by-Section Analysis

Section 1026.9 Subsequent Disclosure Requirements

9(c) Change in Terms

9(c)(1) Rules Affecting Home-Equity Plans

9(c)(1)(ii) Notice Not Required

Section 1026.9(c)(1)(i) provides that for HELOCs subject to § 1026.40 whenever any term required to be disclosed in the account-opening disclosures under § 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor must mail or deliver written notice of the change to each consumer who may be affected. The notice must be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the notice must be given, however, before the effective date of the change. Section 1026.9(c)(1)(ii) provides that for HELOCs subject to § 1026.40, a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

A creditor for a HELOC subject to § 1026.40 is required under current § 1026.9(c)(1) to provide a change-in-terms notice disclosing the index that is replacing the LIBOR index. The index is a term that is required to be disclosed in the account-opening disclosures under § 1026.6(a) and thus, a creditor must provide a change-in-terms notice disclosing the index that is replacing the LIBOR index.[27] The exception in § 1026.9(c)(1)(ii) that provides that a change-in-terms notice is not required when a change involves a reduction in the finance or other charge does not apply to the index change. The change in the index used in making rate adjustments is a change in a term required to be disclosed in a change-in-terms notice under § 1026.9(c)(1) regardless of whether there is also a change in the index value or margin that involves a reduction in a finance or other charge.

Under current § 1026.9(c)(1), a creditor generally is required to provide a change-in-terms notice of a margin change if the margin is increasing. In disclosing the variable rate in the account-opening disclosures under § 1026.6(a), the creditor must disclose the margin as part of an explanation of how the amount of any finance charge will be determined.[28] Thus, a creditor must provide a change-in-terms notice under current § 1026.9(c)(1) disclosing the changed margin, unless § 1026.9(c)(1)(ii) applies. Current § 1026.9(c)(1)(ii) applies to a decrease in the margin because that change would involve a reduction in a component of a finance or other charge. Thus, under current § 1026.9(c)(1), a creditor would only be required to provide a change-in-terms notice of a change in the margin under § 1026.9(c)(1) if the margin is increasing.

[27] *See* 12 CFR 1026.6(a)(1)(ii) and (iv) and comment 6(a)(1)(ii)–5.

The Proposal

The Bureau is proposing to revise § 1026.9(c)(1)(ii) to provide that the exception in § 1026.9(c)(1)(ii) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2021, where the creditor is reducing the margin when a LIBOR index is replaced as permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B).[29] The proposed changes, if adopted, will ensure that the change-in-terms notices will disclose the replacement index and any adjusted margin that will be used to calculate a consumer's rate, regardless of whether the margin is being reduced or increased.

The Bureau also is proposing to add comment 9(c)(1)(ii)–3 to provide additional detail. Proposed comment 9(c)(1)(ii)–3 provides that for change-in-terms notices provided under § 1026.9(c)(1) on or after October 1, 2021, covering changes permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B), a creditor must provide a change-in-terms notice under § 1026.9(c)(1) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under proposed § 1026.40(f)(3)(ii)(A) or

[28] *See* 12 CFR 1026.6(a)(1)(iv).

[29] As discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau is proposing to move the provisions in current § 1026.40(f)(3)(ii) that allow a creditor for HELOC plans subject to § 1026.40 to replace an index and adjust the margin if the index is no longer available in certain circumstances to proposed § 1026.40(f)(3)(ii)(A) and to revise the proposed moved provisions for clarity and consistency. Also, as discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(B), to facilitate compliance, the Bureau is proposing to add new LIBOR-specific provisions to proposed § 1026.40(f)(3)(ii)(B) that would permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating a variable rate to replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, in certain circumstances.

§ 1026.40(f)(3)(ii)(B), even if the margin is reduced. Proposed comment 9(c)(1)(ii)–3 also provides that prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B).

To effectuate the purposes of TILA, the Bureau is proposing to use its TILA section 105(a) authority to amend § 1026.9(c)(1)(ii). TILA section 105(a) [30] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The Bureau believes that when a creditor for a HELOC plan that is subject to § 1026.40 is replacing the LIBOR index and adjusting the margin as permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B), it may be beneficial for consumers to receive notice not just of the replacement index, but also any adjustments to the margin, even if the margin is decreased. The Bureau believes that it may be important that consumers are informed of the replacement index and any adjusted margin (even a reduction in the margin) so that consumers will know how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced. Otherwise, a consumer that is only notified that the LIBOR index is being replaced with a replacement index that has a higher index value but is not notified that the margin is decreasing could reasonably but mistakenly believe that the APR on the plan is increasing. The Bureau solicits comment generally on the proposed revisions to § 1026.9(c)(1)(ii) and proposed comment 9(c)(1)(ii)–3.

The proposed revisions to § 1026.9(c)(1)(ii), if adopted as proposed, would apply to notices provided on or after October 1, 2021. TILA section 105(d) generally requires that changes in disclosures required by TILA or Regulation Z have an effective date of the October 1 that is at least six months after the date the final rule is adopted.[31] Proposed comment 9(c)(1)(ii)–3 clarifies that prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B). The Bureau believes that creditors for HELOC plans subject to § 1026.40 may want to provide the information about the decreased margin in the change-in-terms notice even if they replace the LIBOR index and adjust the margin pursuant to proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) earlier than October 1, 2021. The Bureau believes that these creditors may want to provide this information to avoid confusion by consumers and because this reduced margin is beneficial to consumers. Thus, proposed comment 9(c)(1)(ii)–3 would permit creditors for HELOC plans subject to § 1026.40 to provide the information about the decreased margin in the change-in-terms notice even if they replace the LIBOR index and adjust the margin pursuant to proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) earlier than October 1, 2021. The Bureau encourages creditors to include this information in change-in-terms notices provided earlier than October 1, 2021, even though they are not required to do so, to ensure that consumers are informed of how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced.

The Bureau recognizes that a LIBOR index may be replaced on a HELOC plan subject to § 1026.40 for reasons other than those set forth in proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B). For example, pursuant to current § 1026.40(f)(3)(iii), a creditor for a HELOC plan may replace the LIBOR index used under a plan and adjust the margin if a consumer specifically agrees to the change in writing at the time of the change. The Bureau solicits comment on whether the Bureau should revise § 1026.9(c)(1)(ii) to require that the creditor in those cases must disclose any decrease in the margin in change-in-terms notices provided on or after October 1, 2021, in the change-in-terms notice that discloses the replacement index for a LIBOR index used under the plan.

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

TILA section 127(i)(1), which was added by the Credit CARD Act, provides that in the case of a credit card account under an open-end consumer credit plan, a creditor generally must provide a written notice of an increase in an APR not later than 45 days prior to the effective date of the increase.[32] In addition, TILA section 127(i)(2) provides that in the case of a credit card account under an open-end consumer credit plan, a creditor must provide a written notice of any significant change, as determined by rule of the Bureau, in terms (other than APRs) of the cardholder agreement not later than 45 days prior to the effective date of the change.[33]

Section 1026.9(c)(2)(i)(A) provides that for plans other than HELOCs subject to § 1026.40, a creditor generally must provide a written notice of a ''significant change in account terms'' at least 45 days prior to the effective date of the change to each consumer who may be affected. Section 1026.9(c)(2)(ii) defines ''significant change in account terms'' to mean a change in the terms required to be disclosed under § 1026.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under § 1026.6(b)(4), or the acquisition of a security interest. Among other things, § 1026.9(c)(2)(v)(A) provides that a change-in-terms notice is not required when a change involves a reduction of any component of a finance or other charge. The change-in-terms provisions in § 1026.9(c)(2) generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, and to other open-end plans that are not subject to § 1026.40.

The creditor is required to provide a change-in-terms notice under § 1026.9(c)(2) disclosing the index that is replacing the LIBOR index pursuant to proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). The index is a term that meets the definition of a ''significant change in account terms'' under § 1026.6(b)(2)(i)(A) and (4)(ii) and thus, the creditor must provide a change-in-terms notice disclosing the index that is replacing the LIBOR index.[34] The exception in § 1026.9(c)(2)(v)(A) that provides that a change-in-terms notice is not required when a change involves a reduction in the finance or other charge does not apply to the index change. The change in the index used in making rate adjustments is a change in a term required to be disclosed in a change-in-terms notice under § 1026.9(c)(2) regardless of whether there is also a change in the index value or margin that involves a reduction in a finance or other charge.

[30] 15 U.S.C. 1604(a).

[31] 15 U.S.C. 1604(d).

[32] 15 U.S.C. 1637(i)(1).

[33] 15 U.S.C. 1637(i)(2).

[34] *See* 12 CFR 1026.6(a)(2) and (4) and 1026.9(c)(2)(iv)(D)(*1*) and comment 9(c)(2)(iv)–2.

Under current § 1026.9(c)(2), for plans other than HELOCs subject to § 1026.40, a creditor generally is required to provide a change-in-terms notice of a margin change if the margin is increasing. In disclosing the variable rate in the account-opening disclosures, the creditor must disclose the margin as part of an explanation of how the rate is determined.[35] Thus, a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the changed margin, unless § 1026.9(c)(2)(v)(A) applies. Current § 1026.9(c)(2)(v)(A) applies to a decrease in the margin because that change would involve a reduction in a component of a finance or other charge. Thus, under current § 1026.9(c)(2), a creditor would only be required to provide a change-in-terms notice of a change in the margin under § 1026.9(c)(2) if the margin is increasing.

The Bureau is proposing two changes to the provisions in § 1026.9(c)(2) and its accompanying commentary. First, the Bureau is proposing technical edits to comment 9(c)(2)(iv)–2 to replace LIBOR references with references to SOFR. Second, the Bureau is proposing changes to § 1026.9(c)(2)(v)(A) to provide that for plans other than HELOCs subject to § 1026.40, the exception in § 1026.9(c)(2)(v)(A) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(2) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2021, to margin reductions when a LIBOR index is replaced as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). The proposed changes, if adopted, will ensure that the change-in-terms notices will disclose the replacement index and any adjusted margin that will be used to calculate a consumer's rate, regardless of whether the margin is being reduced or increased.

9(c)(2)(iv) Disclosure Requirements

For plans other than HELOCs subject to § 1026.40, comment 9(c)(2)(iv)–2 explains that, if a creditor is changing the index used to calculate a variable rate, the creditor must disclose the following information in a tabular format in the change-in-terms notice: The amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). The comment provides an example, which indicates that, if a creditor is changing from using a prime rate to using LIBOR in calculating a variable rate, the creditor would disclose in the table required by § 1026.9(c)(2)(iv)(D)(*1*) the new rate (using the new index) and indicate that the rate varies with the market based on LIBOR. In light of the anticipated discontinuation of LIBOR, the proposed rule would amend the example in comment 9(c)(2)(iv)–2 to substitute a SOFR index for LIBOR. The proposed rule would also make technical changes for clarity by changing ''prime rate'' to ''prime index.''

9(c)(2)(v) Notice Not Required

The Bureau is proposing to revise § 1026.9(c)(2)(v)(A) to provide that for plans other than HELOCs subject to § 1026.40, the exception in § 1026.9(c)(2)(v)(A) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(2) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2021, to margin reductions when a LIBOR index is replaced as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).[36] The proposed changes, if adopted, will ensure that the change-in-terms notices will disclose the replacement index and any adjusted margin that will be used to calculate a consumer's rate, regardless of whether the margin is being reduced or increased.

The Bureau also is proposing to add comment 9(c)(2)(v)–14 to provide additional detail. Proposed comment 9(c)(2)(v)–14 provides that for change-in-terms notices provided under § 1026.9(c)(2) on or after October 1, 2021, covering changes permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), even if the margin is reduced. Proposed comment 9(c)(2)(v)–14 also provides that prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

The Bureau believes that when a creditor for plans other than HELOCs subject to § 1026.40 is replacing the LIBOR index and adjusting the margin as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), it may be beneficial for consumers to receive notice not just of the replacement index but also any adjustments to the margin, even if the margin is decreased. The Bureau believes that it may be important that consumers are informed of the replacement index and any adjusted margin (even a reduction in the margin) so that consumers will know how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced. Otherwise, a consumer that is only notified that the LIBOR index is being replaced with a replacement index that has a higher index value but is not notified that the margin is decreasing could reasonably but mistakenly believe that the APR on the plan is increasing. The Bureau solicits comment generally on the proposed revisions to § 1026.9(c)(2)(v)(A) and proposed comment 9(c)(2)(v)–14.

The proposed revisions to § 1026.9(c)(2)(v)(A), if adopted as proposed, would apply to notices provided on or after October 1, 2021. TILA section 105(d) generally requires that changes in disclosures required by TILA or Regulation Z have an effective date of the October 1 that is at least six months after the date the final rule is adopted.[37] Proposed comment 9(c)(2)(v)–14 clarifies that prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). The Bureau believes that creditors for plans other than HELOCs subject to § 1026.40 may want to provide the information about the decreased margin in the change-in-terms notice, even if they replace the LIBOR index and adjust the margin pursuant to proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) earlier than October 1, 2021. The Bureau believes that these creditors may want to provide this information to avoid confusion by consumers and because this reduced margin is beneficial to consumers. Thus, proposed comment

[35] 12 CFR 1026.6(b)(4)(ii)(B).

[36] As discussed in more detail in the section-by-section analysis of proposed § 1026.55(b)(7)(i), the Bureau is proposing to move the provisions in current comment 55(b)(2)–6 that allow a card issuer to replace an index and adjust the margin if the index becomes unavailable in certain circumstances to proposed § 1026.55(b)(7)(i) and to revise the proposed moved provisions for clarity and consistency. Also, as discussed in more detail in the section-by-section analysis of proposed § 1026.55(b)(7)(ii), to facilitate compliance, the Bureau is proposing to add new LIBOR-specific provisions to proposed § 1026.55(b)(7)(ii) that would permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that use a LIBOR index under the plan to replace the LIBOR index and change the margin on such plans on or after March 15, 2021, in certain circumstances.

[37] 15 U.S.C. 1604(d).

9(c)(2)(v)–14 would permit creditors for plans other than HELOCs subject to § 1026.40 to provide the information about the decreased margin in the change-in-terms notice even if they replace the LIBOR index and adjust the margin pursuant to proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) earlier than October 1, 2021. The Bureau encourages creditors to include this information in change-in-terms notices provided earlier than October 1, 2021, even though they are not required to do so, to ensure that consumers are informed of how the variable rates on their accounts will be determined going forward after the LIBOR index is replaced.

The Bureau recognizes that there may be open-end credit plans that use a LIBOR index to calculate variable rates on the plan where the plan is not a HELOC that is subject to § 1026.40 and is not a credit card account under an open-end (not home-secured) consumer credit plan. For example, there may be overdraft lines of credit and other types of open-end plans that are not HELOCs and are not credit card accounts that may use a LIBOR index. The proposed changes to § 1026.9(c)(2)(v)(A) requiring any reduced margin to be disclosed in a change-in-terms notice when the LIBOR index is being replaced would not apply to a decrease in the margin when a LIBOR index is replaced for these open-end plans because the proposed changes only apply when a LIBOR index is replaced under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). These open-end plans are not subject to the restrictions set forth in proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) for replacing the LIBOR index and adjusting the margin. The Bureau solicits comment on whether the Bureau should revise § 1026.9(c)(2)(v)(A) to require that creditors for those open-end plans must disclose any decrease in the margin in change-in-terms notices provided on or after October 1, 2021, where the creditor is replacing a LIBOR index used under the plan. The Bureau also solicits comment on the extent to which these types of open-end plans currently use a LIBOR index.

Section 1026.20 Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

Section 1026.20 includes disclosure requirements regarding post-consummation events for closed-end credit. Section 1026.20(a) and its commentary define when a refinancing occurs for closed-end credit and provide that a refinancing is a new transaction requiring new disclosures to the consumer. Comment 20(a)–3.ii.B explains that a new transaction subject to new disclosures results if the creditor adds a variable-rate feature to the obligation, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one. The comment also states that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. To clarify comment 20(a)–3.ii.B, the Bureau is proposing to add to the comment an illustrative example, which would indicate that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 1-year USD LIBOR index to the spread-adjusted index based on SOFR recommended by the ARRC to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index respectively because the replacement index is a comparable index to the corresponding USD LIBOR index.[38]

As discussed in part III, the Bureau has received requests from stakeholders for clarification that the spread-adjusted SOFR-based index being developed by the ARRC is a ''comparable index'' to LIBOR. The Bureau recognizes that this issue is of concern for a range of closed-end credit products because issuing new origination disclosures in connection with the LIBOR transition could be quite expensive. The Bureau also recognizes that the issue is of particular concern with respect to existing LIBOR closed-end mortgage loans because, if substitution of an index that is not a ''comparable index'' constitutes a refinancing under § 1026.20(a) for an ARM, § 1026.43 would require a new ability-to-repay determination if the requirements of § 1026.43 are otherwise applicable.[39]

The Bureau has reviewed the SOFR indices upon which the ARRC has indicated it will base its recommended replacement indices and the spread adjustment methodology that the ARRC is recommending using to develop the replacement indices. Based on this review, the Bureau anticipates that the spread-adjusted replacement indices that the ARRC is developing will provide a good example of a comparable index to the tenors of LIBOR that they are designated to replace.

On June 22, 2017, the ARRC identified SOFR as its recommended alternative to LIBOR after considering various potential alternatives, including other term unsecured rates, overnight unsecured rates, other secured repurchase agreements (repo) rates, U.S. Treasury bill and bond rates, and overnight index swap rates linked to the effective Federal funds rate.[40] The ARRC made its final recommendation of SOFR after evaluating and incorporating feedback from a 2016 consultation and from end users on its advisory group.[41]

As the ARRC has explained, SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[42] SOFR is determined based on transaction data composed of: (i) Tri-party repo, (ii) General Collateral Finance repo, and (iii) bilateral Treasury repo transactions cleared through Fixed Income Clearing Corporation. SOFR is representative of general funding conditions in the overnight Treasury repo market. As such, it reflects an economic cost of lending and borrowing relevant to the wide array of market participants active in the financial markets. In terms of the transactions underpinning SOFR, SOFR has the widest coverage of any Treasury repo rate available. Averaging over $1 trillion of daily trading, transaction volumes underlying SOFR are far larger than the transactions in any other U.S. money market.[43]

The ARRC intends to endorse forward-looking term SOFR rates provided a consensus among its members can be reached that robust

[38] By ''corresponding USD LIBOR index,'' the Bureau means the specific USD LIBOR index for which the ARRC is recommending the replacement index as a replacement. Thus, if SOFR term rates are not available and the ARRC recommends a specific spread-adjusted 30-day SOFR index as a replacement for the 1-year LIBOR, the 1-year USD LIBOR index would be the ''corresponding USD LIBOR index'' for that specific spread-adjusted 30-day SOFR index.

[39] Comment 43(a)–1 explains that § 1026.43 does not apply to any change to an existing loan that is not treated as a refinancing under § 1026.20(a). Comment 43(a)–1 further explains that § 1026.43 generally applies to consumer credit transactions secured by a dwelling, but certain dwelling-secured consumer credit transactions are exempt or partially exempt from coverage under § 1026.43(a)(1) through (3), and that § 1026.43 does not apply to an extension of credit primarily for a business, commercial, or agricultural purpose, even if it is secured by a dwelling.

[40] ARRC, *ARRC Consultation on Spread Adjustment Methodologies for Fallbacks in Cash Products Referencing USD LIBOR* at 3 (Jan. 21, 2020), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Consultation.pdf.*

[41] *Id.*

[42] *Id.* at 3.

[43] Fed. Reserve Bank of N.Y., *Additional Information About SOFR and Other Treasury Repo Reference Rates,* available at *https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information* (last visited May 11. 2020).

term benchmarks that are compliant with International Organization of Securities Commissions (IOSCO) standards and meet appropriate criteria set by the ARRC can be produced. If the ARRC has not recommended relevant forward-looking term SOFR rates, it will base its recommended indices on a compounded average of SOFR over a selected compounding period.[44] The ARRC has committed to making sure its recommended spread adjustments and the resulting spread-adjusted rates are published and to working with potential vendors to make sure that these spreads and spread-adjusted rates are made publicly available.[45] The New York Fed has already begun daily publication of three compounded averages of SOFR, including a 30-day compounded average of SOFR (30-day SOFR), and a daily index that allows for the calculation of compounded average rates over custom time periods.[46]

The Bureau notes that the government-sponsored enterprises (GSEs) announced in February 2020 that they will begin accepting ARMs based on 30-day average SOFR in 2020.[47] For purposes of this proposed rule, the Bureau has conducted its analysis below assuming that the ARRC will base its recommended replacement indices on 30-day SOFR. Prior to the start of official publication of SOFR in 2018, the New York Fed released data from August 2014 to March 2018 representing modeled, pre-production estimates of SOFR that are based on the same basic underlying transaction data and methodology that now underlie the official publication.[48] The ARRC and the Bureau have compared the rate history that is available for SOFR (to calculate compounded averages) with the rate history for the applicable LIBOR indices.[49] For the reasons discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau is proposing to determine that the historical fluctuations in the spread-adjusted index based on 30-day SOFR are substantially similar to those of 1-month, 3-month, 6-month, and 1-year USD LIBOR.

While robust, IOSCO-compliant SOFR term rates endorsed by the ARRC do not yet exist, the Board has published data on ''indicative'' 1-month, 3-month, and 6-month SOFR term rates.[50] The Bureau has compared this data to data for the applicable LIBOR indices. For the reasons discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau is proposing to determine that (1) the historical fluctuations of 1-year and 6-month USD LIBOR are substantially similar to those of the 1-month, 3-month, and 6-month spread-adjusted SOFR term rates; (2) the historical fluctuations of 3-month USD LIBOR are substantially similar to those of the 1-month and 3-month spread-adjusted SOFR term rates; and (3) the historical fluctuations of 1-month USD LIBOR are substantially similar to those of the 1-month spread-adjusted SOFR term rate.

The Bureau is proposing to make these determinations about the historical fluctuations in the spread-adjusted indices based on 30-day SOFR, 1-month term SOFR, 3-month term SOFR, and 6-month term SOFR, while analyzing data on 30-day SOFR, 1-month term SOFR, 3-month term SOFR, and 6-month term SOFR without spread adjustments. This analysis is valid because the ARRC has stated that the spread adjustments will be static, outside of a one-year transition period that has not yet started and so is not in the historical data. A static spread adjustment would have no effect on historical fluctuations.

30-day SOFR, the applicable SOFR term rates, and the applicable LIBOR indices all reflect the cost of borrowing in the United States and have all generally moved together during SOFR's available history. However, the ARRC and the Bureau recognize that the SOFR indices will differ in some respects from the LIBOR indices. The nature and extent of these differences will depend on whether the SOFR indices are based on 30-day SOFR or SOFR term rates.

30-day SOFR is a historical, backward-looking 30-day average of overnight rates, while the LIBOR indices are forward-looking term rates published with several different tenors (overnight, 1-week, 1-month, 2-month, 3-month, 6-month, and 1-year). The LIBOR indices, therefore, reflect funding conditions for a different length of time than 30-day SOFR does, and they reflect those funding conditions in advance rather than with a lag as 30-day SOFR does. The LIBOR indices may also include term premia missing from 30-day SOFR.[51] Moreover, SOFR is a secured rate while the LIBOR indices are unsecured and therefore include an element of bank credit risk. The LIBOR indices also may reflect supply and demand conditions in wholesale unsecured funding markets that also could lead to differences with SOFR.

SOFR term rates, if they are available, will have fewer differences with LIBOR term rates than 30-day SOFR does. Since they are also term rates, they will also include term premia, and these should usually be similar to the term premia embedded in LIBOR. Since SOFR term rates will also be forward-looking, they should adjust quickly to changing expectations about future funding conditions as LIBOR term rates do, rather than following them with a lag as 30-day SOFR does. However, SOFR term rates will still have differences with the LIBOR indices. As mentioned above, SOFR is a secured rate while the LIBOR indices are unsecured. SOFR and LIBOR also reflect supply and demand conditions in different credit markets.

Thus, whether the ARRC bases its recommended indices on forward-looking SOFR term rates or backward-looking historical averages of SOFR, its recommended indices will without adjustments differ in levels from the LIBOR indices. The ARRC intends to account for these differences from the historical levels of LIBOR term rates through spread adjustments in the replacement indices that it recommends. On January 21, 2020, the ARRC released a consultation on spread adjustment methodologies that provided historical analyses of a number of potential spread adjustment methodologies and that showed that the proposed methodology performed well relative to other options, including potential dynamic spread adjustments.[52] The ARRC's consultation

[44] ARRC Consultation on Spread Adjustment Methodologies, *supra* note 40, at 5.

[45] ARRC, *ARRC Announces Recommendation of a Spread Adjustment Methodology for Cash Products* (Apr. 8, 2020), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Methodology.pdf.*

[46] Fed. Reserve Bank of N.Y., *SOFR Averages and Index Data, https://apps.newyorkfed.org/markets/autorates/sofr-avg-ind* (last visited May 11, 2020).

[47] *See, e.g.,* Fed. Nat'l Mortgage Ass'n, *Lender Letter LL–2020–01* (Feb. 5, 2020), *https://singlefamily.fanniemae.com/media/21831/display;* Fed. Home Loan Mortgage Corp., *Bulletin 2020–1 Selling* (Feb. 5, 2020), *https://guide.freddiemac.com/app/guide/bulletin/2020-;1.*

[48] *See* David Bowman, *Historical Proxies for the Secured Overnight Financing Rate* (July 15, 2019), available at *https://www.federalreserve.gov/econres/notes/feds-notes/historical-proxies-for-the-secured-overnight-financing-rate-20190715.htm.*

[49] *See, e.g.,* ARRC Consultation on Spread Adjustment Methodologies, *supra* note 40, at 4 (comparing 3-month compounded SOFR relative to the 3-month USD LIBOR since 2014). The ARRC and the Bureau have also considered the history of other indices that could be viewed as historical proxies for SOFR. *See, e.g.,* Bowman, *supra* note 48.

[50] Eric Heitfield & Yang Ho-Park, *Indicative Forward-Looking SOFR Term Rates* (Apr. 19, 2019), available at *https://www.federalreserve.gov/econres/notes/feds-notes/indicative-forward-looking-sofr-term-rates-20190419.htm.* (last updated May 1, 2020).

[51] The ''term premium'' is the excess yield that investors require to buy a long-term bond instead of a series of shorter-term bonds.

[52] ARRC Consultation on Spread Adjustment Methodologies, *supra* note 40.

received over 70 responses from consumer advocacy groups, asset managers, corporations, banks, industry associations, GSEs, and others.[53] On April 8, 2020, the ARRC announced that it had agreed on a recommended spread adjustment methodology for cash products referencing USD LIBOR.[54] Following its consideration of feedback received on its public consultation, the ARRC is recommending a long-term spread adjustment equal to the historical median of the five-year spread between USD LIBOR and SOFR. For consumer products, the ARRC is additionally recommending a 1-year transition period to this five-year median spread adjustment methodology.[55] Thus, in the short term, the transition will be gradual. On the date specified by the ARRC, the spread adjustment will not be set immediately to its long-run value. Instead, on the date specified by the ARRC, the spread adjustment will be set to equalize the value of the SOFR-based spread-adjusted index and the LIBOR index. The spread adjustment will then transition steadily over the course of a year to its long-run value. The inclusion of a transition period for consumer products was endorsed by many respondents, including consumer advocacy groups.[56] Although the ARRC has not yet finalized certain aspects of its recommendations for replacement indices, it is actively working on doing so.[57]

The ARRC has stated that each spread-adjusted replacement index that it recommends will incorporate a spread adjustment that will be fixed at a specified time at or before LIBOR's cessation and will remain static after the 1-year transition period.[58] The ARRC intends for the adjustment to reflect and adjust for the historical differences between LIBOR and SOFR in order to make the spread-adjusted rate comparable to LIBOR in a fair and reasonable way, thereby minimizing the impact to borrowers and lenders.[59] Although the methodology will be the same across different tenors of LIBOR, it may be applied to each LIBOR tenor separately, so that there would be a separate recommended spread adjustment calculated for 1-month, 2-month, 3-month, 6-month, and 1-year USD LIBOR.[60]

The Bureau is proposing to determine that the spread-adjusted indices based on SOFR recommended by the ARRC as a replacement for the 1-month, 3-month, 6-month, and 1-year USD LIBOR index are comparable indices to the 1-month, 3-month, 6-month, and 1-year USD LIBOR index respectively. The spread-adjusted indices based on SOFR that the ARRC recommends will be published and made publicly available. The ARRC's Consultation on its spread adjustment methodology presents several pieces of evidence that, in the ARRC's view, suggest that spread-adjusted SOFR rates are likely to experience similar fluctuations to the corresponding tenors of LIBOR.[61] Using them as a replacement for the corresponding tenors of LIBOR does not seem likely to significantly change the economic position of the parties to the contract, given that SOFR and the LIBOR indices have generally moved together and the replacement index will be spread adjusted based on a methodology that derived through a public consultation.

The proposed example would be illustrative only, and the Bureau does not intend to suggest that the spread-adjusted SOFR indices recommended by the ARRC are the only indices that would be comparable to the LIBOR indices. The Bureau recognizes that there may be other comparable indices that creditors may use as replacements for the various tenors of LIBOR but believes it would be helpful to add this example in the commentary. The Bureau requests comment on whether it is appropriate to add the proposed example to comment 20(a)–3.ii.B and whether the Bureau should make any other amendments to § 1026.20(a) or its commentary in connection with the LIBOR transition. Specifically, the Bureau requests comment on whether there are any other replacement indices that it should identify as an example of a ''comparable index'' in comment 20(a)–3.ii.B, and if so, which indices and on what bases.

Section 1026.36 Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

36(a) Definitions

36(a)(4) Seller Financiers; Three Properties

36(a)(4)(iii)

36(a)(4)(iii)(C)

Section 1026.36(a)(1) defines the term ''loan originator'' for purposes of the prohibited acts or practices and requirements for credit secured by a dwelling in § 1026.36. Section 1026.36(a)(4) addresses the three-property exclusion for seller financers and provides that a person (as defined in § 1026.2(a)(22)) that meets all of the criteria specified in § 1026.36(a)(4)(i) to (iii) is not a loan originator under § 1026.36(a)(1). Pursuant to § 1026.36(a)(4)(iii)(C), one such criterion requires that, if the financing agreement has an adjustable rate, the index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR. In light of the anticipated discontinuation of LIBOR, the proposed rule would amend the examples of indices provided in § 1026.36(a)(4)(iii)(C) to substitute SOFR for LIBOR.

36(a)(5) Seller Financiers; One Property

36(a)(5)(iii)

36(a)(5)(iii)(B)

Section 1026.36(a)(1) defines the term ''loan originator'' for purposes of the prohibited acts or practices and requirements for credit secured by a dwelling in § 1026.36. Section 1026.36(a)(5) addresses the one-property exclusion for seller financers and provides that a natural person, estate, or trust that meets all of the criteria specified in § 1026.36(a)(5)(i) to (iii) is not a loan originator under § 1026.36(a)(1). Pursuant to § 1026.36(a)(5)(iii)(B), one such criterion currently requires that, if the financing agreement has an adjustable rate, the index the adjustable rate is based on is a widely available index such as indices

[53] ARRC, *Summary of Feedback Received in the ARRC Spread-Adjustment Consultation and Follow-Up Consultation on Technical Details* 2 (May 6, 2020), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Consultation_Follow_Up.pdf.* [hereinafter referred to as ARRC Supplemental Spread-Adjustment Consultation]

[54] ARRC Announces Recommendation of a Spread Adjustment Methodology, *supra* note 45.

[55] *Id.*

[56] ARRC Supplemental Spread-Adjustment Consultation, *supra* note 53, at 1.

[57] The ARRC issued a supplemental consultation on spread adjustment methodology on May 6, 2020, seeking further views on certain technical issues related to spread adjustment methodologies for cash products referencing USD LIBOR. *Id.*

[58] ARRC Consultation on Spread Adjustment Methodologies, *supra* note 40, at 1, 2.

[59] *Id.* at 2, 3.

[60] *Id.* at 7. Thus, the calculated spread adjustment may differ for each tenor of LIBOR, even if the methodology used to calculate each is the same. *Id.* The supplemental consultation issued by the ARRC on May 6, 2020, invites participants to consider the option to use the same spread adjustment values that will be used by the International Swaps and Derivatives Association (ISDA) across all of the different fallback rates, rather than using the same adjustment methodology to calculate a different spread adjustment for each potential fallback rate. ARRC Supplemental Spread-Adjustment Consultation, *supra* note 53, at 3–4. The supplemental consultation also seeks views on a second issue: Recognizing that ISDA will now include a pre-cessation trigger, the supplemental consultation seeks views on whether the timing of the calculation of the ARRC's spread adjustment should match ISDA's timing if a pre-cessation event is operative. *Id.*

[61] ARRC Consultation on Spread Adjustment Methodologies, *supra* note 40.

for U.S. Treasury securities or LIBOR. In light of the anticipated discontinuation of LIBOR, the proposed rule would amend the examples of indices provided in § 1026.36(a)(5)(iii)(B) to substitute SOFR for LIBOR.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

37(j) Adjustable Interest Rate Table

37(j)(1) Index and Margin

Section 1026.37 governs the content of the Loan Estimate disclosure for certain mortgage transactions. If the interest rate may adjust and increase after consummation and the product type is not a step rate, § 1026.37(j)(1) requires disclosure in the Loan Estimate of, *inter alia,* the index upon which the adjustments to the interest rate are based. Comment 37(j)(1)–1 explains that the index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. The comment further explains that a common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. The comment provides, as an example, that ''LIBOR'' may be disclosed instead of London Interbank Offered Rate. In light of the anticipated discontinuation of LIBOR, the proposed rule would amend this example in comment 37(j)(1)–1 to provide that ''SOFR'' may be disclosed instead of Secured Overnight Financing Rate.

Section 1026.40 Requirements for Home Equity Plans

40(f) Limitations on Home Equity Plans

40(f)(3)

40(f)(3)(ii)

TILA section 137(c)(1) provides that no open-end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term except in enumerated circumstances set forth in TILA section 137(c).[62] TILA section 137(c)(2)(A) provides that a creditor may change the index and margin applicable to extensions of credit under such a plan if the index used by the creditor is no longer available and the substitute index and margin will result in a substantially similar interest rate.[63] In implementing TILA section 137(c), § 1026.40(f)(3) prohibits a creditor from changing the terms of a HELOC subject to § 1026.40 except in enumerated circumstances set forth in § 1026.40(f)(3). Section 1026.40(f)(3)(ii) provides that a creditor may change the index and margin used under the HELOC plan if the original index is no longer available, the new index has a historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable.

Current comment 40(f)(3)(ii)–1 provides that a creditor may change the index and margin used under the HELOC plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)–1 also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable. As discussed in the section-by-section analysis of proposed § 1026.55(b)(7), card issuers for a credit card account under an open-end (not home-secured) consumer credit plan are subject to current comment 55(b)(2)–6, which provides a similar provision on the unavailability of an index as current comment 40(f)(3)(ii)–1.

The Proposal

As discussed in part III, the industry has requested that the Bureau permit card issuers to replace the LIBOR index used in setting the variable rates on existing accounts before LIBOR becomes unavailable to facilitate compliance. Among other things, the industry is concerned that if card issuers must wait until LIBOR become unavailable to replace the LIBOR indices used on existing accounts, these card issuers would not have sufficient time to inform consumers of the replacement index and update their systems to implement the change. To reduce uncertainty with respect to selecting a replacement index, the industry has also requested that the Bureau determine that the prime rate has ''historical fluctuations'' that are ''substantially similar'' to those of the LIBOR indices. The Bureau believes that similar issues may arise with respect to the transition of existing HELOC accounts away from using a LIBOR index.

To address these concerns, as discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(B), the Bureau is proposing to add new LIBOR-specific provisions to proposed § 1026.40(f)(3)(ii)(B) that would permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index under the plan to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, in certain circumstances without needing to wait for LIBOR to become unavailable.

Specifically, proposed § 1026.40(f)(3)(ii)(B) provides that if a variable rate on a HELOC subject to § 1026.40 is calculated using a LIBOR index, a creditor may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed § 1026.40(f)(3)(ii)(B) also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Also, as discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(B), to reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.40(f)(3)(ii)(B), the Bureau is proposing to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau also is proposing to determine that certain spread-adjusted indices based on SOFR recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau also is proposing additional detail in comments 40(f)(3)(ii)(B)–1 through –3 with respect to proposed § 1026.40(f)(3)(ii)(B).

[62] 15 U.S.C. 1647(c).

[63] 15 U.S.C. 1647(c)(2)(A).

In addition, as discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau is proposing to move the unavailability provisions in current § 1026.40(f)(3)(ii) and current comment 40(f)(3)(ii)–1 to proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)–1 respectively and to revise the proposed moved provisions for clarity and consistency. The Bureau also is proposing additional detail in comments 40(f)(3)(ii)(A)–2 through –3 with respect to proposed § 1026.40(f)(3)(ii)(A). For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards for selecting a replacement index under proposed § 1026.40(f)(3)(ii)(A), the Bureau is proposing the same determinations described above related to Prime and the spread-adjusted indices based on SOFR recommended by the ARRC in relation to proposed § 1026.40(f)(3)(ii)(A). The Bureau is proposing to make these revisions and provide additional detail because the Bureau understands that some HELOC creditors may use the unavailability provision in proposed § 1026.40(f)(3)(ii)(A) to replace a LIBOR index used under a HELOC plan, depending on the contractual provisions applicable to their HELOC plans, as discussed in more detail below.

Bureau is proposing new proposed LIBOR-specific provisions rather than interpreting when the LIBOR indices are unavailable. For several reasons, the Bureau is proposing new LIBOR-specific provisions under proposed § 1026.40(f)(3)(ii)(B), rather than interpreting the LIBOR indices to be unavailable as of a certain date prior to LIBOR being discontinued under current § 1026.40(f)(3)(ii) (as proposed to be moved to proposed § 1026.40(f)(3)(ii)(A)). First, the Bureau is concerned about making a determination for Regulation Z purposes under current § 1026.40(f)(3)(ii) (as proposed to be moved to proposed § 1026.40(f)(3)(ii)(A)) that the LIBOR indices are unavailable or unreliable when the FCA, the regulator of LIBOR, has not made such a determination.

Second, the Bureau is concerned that a determination by the Bureau that the LIBOR indices are unavailable for purposes of current § 1026.40(f)(3)(ii) (as proposed to be moved to proposed § 1026.40(f)(3)(ii)(A)) could have unintended consequences on other products or markets. For example, the Bureau is concerned that such a determination could unintentionally cause confusion for creditors for other products (*e.g.,* ARMs) about whether the LIBOR indices are unavailable for those products too and could possibly put pressure on those creditors to replace the LIBOR index used for those products before those creditors are ready for the change.

Third, even if the Bureau interpreted unavailability under current § 1026.40(f)(3)(ii) (as proposed to be moved to proposed § 1026.40(f)(3)(ii)(A)) to indicate that the LIBOR indices are unavailable prior to LIBOR being discontinued, this interpretation would not completely solve the contractual issues for creditors whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index. Creditors still would need to decide for their contracts whether the LIBOR indices are unavailable. Thus, even if the Bureau decided that the LIBOR indices are unavailable under Regulation Z as described above, creditors whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index essentially would remain in the same position of interpreting their contracts as they would have been under the current rule.

Thus, the Bureau is not proposing to interpret when the LIBOR indices are unavailable for purposes of current § 1026.40(f)(3)(ii) (as proposed to be moved to proposed § 1026.40(f)(3)(ii)(A)). The Bureau solicits comment, however, on whether the Bureau should interpret when the LIBOR indices are unavailable for purposes of current § 1026.40(f)(3)(ii) (as proposed to be moved to proposed § 1026.40(f)(3)(ii)(A)), and if so, why the Bureau should make that determination and when should the LIBOR indices be considered unavailable for purposes of that provision.

The Bureau also solicits comment on an alternative to interpreting the term ''unavailable.'' Specifically, should the Bureau make revisions to the unavailability provisions in current § 1026.40(f)(3)(ii) (as proposed to be moved to proposed § 1026.40(f)(3)(ii)(A)) in a manner that would allow those creditors who need to transition from LIBOR and, for contractual reasons, may not be able to switch away from LIBOR prior to it being unavailable to be better able to use the unavailability provisions for an orderly transition on or after March 15, 2021? If so, what should these revisions be?

Interaction among proposed § 1026.40(f)(3)(ii)(A) and (B) and contractual provisions. Proposed comment 40(f)(3)(ii)–1 addresses the interaction among the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B), and the contractual provisions that apply to the HELOC plan. The Bureau understands that HELOC contracts may be written in a variety of ways. For example, the Bureau recognizes that some existing contracts for HELOCs that use LIBOR as an index for a variable rate may provide that (1) a creditor can replace the LIBOR index and the margin for calculating the variable rate unilaterally only if the LIBOR index is no longer available or becomes unavailable; and (2) the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable. Other HELOC contracts may provide that a creditor can replace the LIBOR index and the margin for calculating the variable rate unilaterally only if the LIBOR index is no longer available or becomes unavailable but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable. In addition, other HELOC contracts may allow a creditor to change the terms of the contract (including the LIBOR index used under the plan) as permitted by law. To facilitate compliance, the Bureau is proposing detail on the interaction among the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B), and the contractual provisions for the HELOC.

Proposed comment 40(f)(3)(ii)–1 provides that a creditor may use either the provision in proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace a LIBOR index used under a HELOC plan subject to § 1026.40 so long as the applicable conditions are met for the provision used. This proposed comment makes clear, however, that neither proposed provision excuses the creditor from noncompliance with contractual provisions. As discussed in more detail below, proposed comment 40(f)(3)(ii)–1 provides examples to illustrate when a creditor may use the provisions in proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace the LIBOR index used under a HELOC plan and each of these examples assumes that the LIBOR index used under the plan becomes unavailable after March 15, 2021.

Proposed comment 40(f)(3)(ii)–1.i provides an example where a HELOC contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, proposed comment 40(f)(3)(ii)–1.i explains that the creditor may use the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Proposed comment 40(f)(3)(ii)–1.i also explains that the proposed LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B) provide that a creditor may replace the LIBOR index if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 40(f)(3)(ii)–1.i notes, however, that the creditor in this example would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable. The Bureau solicits comments on this proposed approach and example.

Proposed comment 40(f)(3)(ii)–1.ii provides an example of a HELOC contract under which a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

The Bureau is proposing to allow the creditor in this case to use either the proposed unavailability provisions in proposed § 1026.40(f)(3)(ii)(A) or the proposed LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B). If the creditor uses the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A), the creditor must use a replacement index and replacement margin that will produce an APR substantially similar to the rate in effect when the LIBOR index became unavailable. If the creditor uses the proposed LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B), the creditor must use the replacement index value in effect on December 31, 2020, and the replacement margin that will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

The Bureau is proposing to allow a creditor in this case to use the index values of the LIBOR index and replacement index on December 31, 2020, under proposed § 1026.40(f)(3)(ii)(B) to meet the ‘‘substantially similar’’ standard with respect to the comparison of the rates even if the creditor is contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. The Bureau recognizes that LIBOR may not be discontinued until the end of 2021, which is around a year later than the December 31, 2020, date. Nonetheless, the Bureau is proposing to allow creditors that are restricted by their contracts to replace the LIBOR index used under the HELOC plans until the LIBOR index becomes unavailable to use the LIBOR index values and the replacement index values in effect on December 31, 2020, under proposed § 1026.40(f)(3)(ii)(B), rather than the index values on the day that LIBOR becomes unavailable under proposed § 1026.40(f)(3)(ii)(A). This proposal would allow those creditors to use consistent index values to those creditors that are not restricted by their contracts in replacing the LIBOR index prior to LIBOR becoming unavailable. This proposal would also promote consistency for consumers in that all HELOC creditors would be permitted to use the same LIBOR values in comparing the rates.

In addition, as discussed in part III, the industry has raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Allowing creditors to use the December 31, 2020, values for comparison of the rates instead of the LIBOR values when the LIBOR indices become unavailable may address some of these concerns.

Thus, the Bureau is proposing to provide creditors with the flexibility to choose to compare the rates using the index values for the LIBOR index and the replacement index on December 31, 2020, by using the proposed LIBOR-specific provisions under proposed § 1026.40(f)(3)(ii)(B), rather than using the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A). The Bureau solicits comment on this proposed approach and example.

Proposed comment 40(f)(3)(ii)–1.iii provides an example of a HELOC contract under which a creditor may change the terms of the contract (including the index) as permitted by law. Proposed comment 40(f)(3)(ii)–1.iii explains in this case, if the creditor replaces a LIBOR index under a plan on or after March 15, 2021, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use proposed § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use proposed § 1026.40(f)(3)(ii)(A). Proposed comment 40(f)(3)(ii)–1.iii also explains that if the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using proposed § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

The Bureau is proposing to allow the creditor in this case to use either the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A) or the proposed LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B) if the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index. For the reasons explained above in the discussion of the example in proposed comment 40(f)(3)(ii)–1.ii, the Bureau is proposing in the situation described in proposed comment 40(f)(3)(ii)–1.iii to provide creditors with the flexibility to choose to use the index values of the LIBOR index and the replacement index on December 31, 2020, by using the proposed LIBOR-specific provisions under proposed § 1026.40(f)(3)(ii)(B), rather than using the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A). The Bureau solicits comment on this proposed approach and example.

40(f)(3)(ii)(A)

Current § 1026.40(f)(3)(ii) provides that a creditor may change the index and margin used under a HELOC plan subject to § 1026.40 if the original index is no longer available, the new index has a historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)–1 provides that a creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)–1 also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

The Proposal

The Bureau is proposing to move the unavailability provisions in current § 1026.40(f)(3)(ii) and current comment 40(f)(3)(ii)–1 to proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)–1 respectively and revise the moved provisions for clarity and consistency. In addition, the Bureau is proposing to add detail in proposed comments 40(f)(3)(ii)(A)–2 and –3 on the conditions set forth in proposed § 1026.40(f)(3)(ii)(A). For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards under proposed § 1026.40(f)(3)(ii)(A), the Bureau is proposing to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau also is proposing to determine that certain spread-adjusted indices based on SOFR recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau is proposing to make revisions and provide additional detail with respect to the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A) because the Bureau understands that some HELOC creditors may use these unavailability provisions to replace a LIBOR index used under a HELOC plan, depending on the contractual provisions applicable to their HELOC plans, as discussed above in more detail in the section-by-section of § 1026.40(f)(3)(ii).

The Bureau solicits comments on proposed § 1026.40(f)(3)(ii)(A) and proposed comments 40(f)(3)(ii)(A)–1 through –3. These proposed provisions are discussed in more detail below.

Proposed § 1026.40(f)(3)(ii)(A). Proposed § 1026.40(f)(3)(ii)(A) provides that a creditor for a HELOC plan subject to § 1026.40 may change the index and margin used under the plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Proposed § 1020.40(f)(3)(ii)(A) also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Proposed § 1026.40(f)(3)(ii)(A) differs from current § 1026.40(f)(3)(ii) in three ways. First, proposed § 1026.40(f)(3)(ii)(A) differs from current § 1040(f)(3)(ii) by using the term ''historical fluctuations'' rather than the term ''historical movement'' to refer to the original index and the replacement index. Under current § 1026.40(f)(3)(ii), ''historical fluctuations'' appears to be equivalent to ''historical movement'' because the regulatory text provision in § 1026.40(f)(3)(ii) uses the term ''historical movement'' while current comment 40(f)(3)(ii)–1 (that interprets current § 1026.40(f)(3)(ii)) uses the term ''historical fluctuations.'' For clarity and consistency, the Bureau is proposing to use ''historical fluctuations'' in both proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)–1, so that the proposed regulatory text and related commentary use the same term.

Second, proposed § 1026.40(f)(3)(ii)(A) differs from current § 1026.40(f)(3)(ii) by including a provision regarding newly established indices that is not contained in current § 1026.40(f)(3)(ii). This proposed provision is similar to the sentence in current comment 40(f)(3)(ii)–1 on newly established indices except that the proposed provision in proposed § 1026.40(f)(3)(ii)(A) makes clear that a creditor that is using a newly established index also may adjust the margin so that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. The newly established index may not have the same index value as the original index, and the creditor may need to adjust the margin to meet the condition that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Third, proposed § 1026.40(f)(3)(ii)(A) differs from current § 1026.40(f)(3)(ii) by using the terms ''replacement index'' and ''replacement index and replacement margin'' instead of using ''new index'' and ''new index and margin,'' respectively as contained in current § 1026.40(f)(3)(ii). These proposed changes are designed to avoid any confusion as to when the provision in proposed § 1026.40(f)(3)(ii)(A) is referring to a replacement index and replacement margin as opposed to a newly established index.

Proposed comment 40(f)(3)(ii)(A)–1. The Bureau is proposing to move current comment 40(f)(3)(ii)–1 to proposed comment 40(f)(3)(ii)(A)–1. The Bureau also is proposing to revise this proposed moved comment in three ways for clarity and consistency with proposed § 1026.40(f)(3)(ii)(A). First, proposed comment 40(f)(3)(ii)(A)–1 differs from current comment 40(f)(3)(ii)–1 by providing that if an index that is not newly established is used to replace the original index, the replacement index and replacement margin will produce a rate ''substantially similar'' to the rate that was in effect at the time the original index became unavailable. Current comment 40(f)(3)(ii)–1 uses the term ''similar'' instead of ''substantially similar'' for the comparison of these rates. Nonetheless, this use of the term ''similar'' in current comment 40(f)(3)(ii)–1 is inconsistent with the use of ''substantially similar'' in current § 1026.40(f)(3)(ii) for the comparison of these rates. To correct this inconsistency between the regulation text and the commentary provision that interprets it, the Bureau is proposing to use ''substantially similar'' consistently in proposed § 1026.40(f)(3)(ii)(A) and proposed comment 40(f)(3)(ii)(A)–1 for the comparison of these rates.

Second, consistent with the proposed new sentence in proposed § 1026.40(f)(3)(ii)(A) related to newly established indices, proposed comment 40(f)(3)(ii)(A)–1 differs from current comment 40(f)(3)(ii)–1 by clarifying that a creditor that is using a newly established index may also adjust the margin so that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Third, proposed comment 40(f)(3)(ii)(A)–1 differs from current comment 40(f)(3)(ii)–1 by using the term ''the replacement index and replacement margin'' instead of ''the replacement index and margin'' to make clear when the proposed comment is referring to a replacement margin and not the original margin.

Historical fluctuations substantially similar for the LIBOR index and replacement index. Proposed comment 40(f)(3)(ii)(A)–2 provides detail on determining whether a replacement index that is not newly established has ''historical fluctuations'' that are ''substantially similar'' to those of the LIBOR index used under the plan for purposes of proposed § 1026.40(f)(3)(ii)(A). Specifically, proposed comment 40(f)(3)(ii)(A)–2 provides that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.40(f)(3)(ii)(A), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

Prime has ''*historical fluctuations*'' *that are* ''*substantially similar*'' *to those of certain USD LIBOR indices.* To facilitate compliance, proposed comment 40(f)(3)(ii)(A)–2.i includes a proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and includes a placeholder for the date when this proposed determination would be effective, if adopted in the final rule. The Bureau understands that some HELOC creditors may choose to replace a LIBOR index with Prime.

The Bureau is proposing this determination after reviewing historical data from January 1986 through January 2020 on 1-month USD LIBOR, 3-month USD LIBOR, and Prime. The spread between 1-month USD LIBOR and Prime increased from roughly 142 basis points in 1986 to 281 basis points in 1993. The spread between 3-month USD LIBOR increased from roughly 151 basis points in 1986 to 270 basis points in 1993. Both spreads were fairly steady after 1993. Given that for the last 27 years of history the spreads have remained relatively stable, the data, analysis, and conclusion discussed below are restricted to the period beginning in 1993.

While Prime has not always moved in tandem with 1-month USD LIBOR and 3-month USD LIBOR after 1993, the Bureau believes that since 1993 the historical fluctuations in 1-month USD LIBOR and Prime have been substantially similar and that the historical fluctuations in 3-month USD LIBOR and Prime have been substantially similar.[64]

The historical correlation between 1-month USD LIBOR and Prime is .9956. The historical correlation between 3-month USD LIBOR and Prime is .9918. While the correlation between these rates is quite high, correlation is not the only statistical measure of similarity that may be relevant for comparing the historical fluctuations of these rates.[65] The Bureau has reviewed other statistical characteristics of these rates, such as the variance, skewness, and kurtosis,[66] and these characteristics imply that on average both the 1-month USD LIBOR and 3-month USD LIBOR tend to move closely with Prime and that the 1-month USD LIBOR and 3-month USD LIBOR tend to present consumers and creditors with payment changes that are similar to that presented by Prime.[67]

Theoretically, these statistical measures could mask important long-term differences in movements. However, as mentioned above, the spread between 1-month USD LIBOR and Prime and the spread between 3-month USD LIBOR and Prime have remained fairly steady after January 1993 to January 2020. For example, the average spread between 1-month USD LIBOR and Prime was 281 basis points in 1993, and 306 basis points in 2019. The average spread between 3-month USD LIBOR and Prime was 270 basis points in 1993, and 296 basis points in 2019.

Finally, in performing its analysis, the Bureau also considered the impact different indices would have on consumer payments. To that end, the Bureau considered a specific example of a debt with a variable rate that resets monthly, and a balance that accumulates over time with interest but without further charges, payments, or fees. The Bureau used this example for HELOCs and credit card accounts because the Bureau understands that the rates for many of those accounts reset monthly. The example considers debt that accumulates interest over a period of ten years, beginning in January of every year from 1994 to 2009. For this example, the Bureau found that since 1994 historical fluctuations in 1-month USD LIBOR and Prime, and 3-month USD LIBOR and Prime, produced substantially similar payment outcomes for consumers with debt similar to that considered.[68] For example, if the initial balance in this example is $10,000, the average difference between the debt outstanding under Prime and the debt outstanding under adjusted 1-month USD LIBOR after ten years is about $100. The Bureau also found similar results for Prime versus the adjusted 3-month USD LIBOR.

As discussed in the section-by-section analyses of proposed §§ 1026.40(f)(3)(ii)(B), 1026.55(b)(7)(i) and (ii), the Bureau also is proposing

[64] There was a temporary but large difference in the movements of LIBOR rates and Prime for roughly a month after Lehman Brothers filed for bankruptcy on September 15, 2008, reflecting the effects this event had on the perception of risk in the interbank lending market. For example, 1-month USD LIBOR increased over 200 basis points in the month after September 15, 2008, even as Prime and many other interest rates fell. The numbers presented in this analysis include this time period.

[65] For example, consider two wagers on a series of coin flips. The first wins one cent for every heads and loses one cent for every tails. The second wins a million dollars for every heads and loses a million dollars for every tails. These wagers are perfectly correlated (*i.e.,* they have a correlation of 1) but have very different statistical properties.

[66] Roughly, variance is a statistical measure of how much a random number tends to deviate from its average value. Skewness is a statistical measure of whether particularly large deviations in a random number from its average value tend to be below or above that average value. Kurtosis is a statistical measure of whether deviations of a random number from its average value tend to be small and frequent or rare and large.

[67] The variance, skewness, and kurtosis of Prime are 4.5605, .3115, and 1.5337 respectively. The variance, skewness, and kurtosis of 1-month USD LIBOR are 4.8935, .2715, and 1.5168 respectively. The variance, skewness, and kurtosis of 3-month USD LIBOR are 4.7955, .2605, and 1.5252, respectively.

[68] In this example, for each starting year, three versions of debt are considered: (1) One with an interest rate equal to Prime; (2) one with an interest rate equal to the 1-month USD LIBOR plus the average spread between 1-month USD LIBOR and Prime for the 12 months preceding the start date; and (3) one with an interest rate equal to 3-month USD LIBOR plus the average spread between 3-month USD LIBOR and Prime for the 12 months preceding the start date. For the 16 initial starting years considered, the average difference between the debt outstanding under Prime and the debt outstanding under the adjusted 1-month USD LIBOR after ten years is only around 1% of the initial balance. The average absolute value of the difference in debt outstanding is around 2% of the initial balance. For the adjusted 3-month USD LIBOR, the average of the difference is around 1% of the initial balance, and the average of the absolute value of the difference is around 3% of the initial balance.

The average difference can be small if the difference is often far from zero, as long as it is sometimes well above zero and it is sometimes well below zero. The absolute value of the difference will be small only if the difference is usually close to zero. For example, suppose the difference is $1 million one year and −$1 million the next year. The average difference these two years is zero, indicating that the difference is close to zero on average. But the average of the absolute value of the difference is $1 million, indicating that the difference is typically far from zero. Consumers and creditors should care more about the average difference, and less about the average of the absolute value of the difference, if they have more liquidity and risk tolerance.

this same determination for purposes of proposed §§ 1026.40(f)(3)(ii)(B) and 1026.55(b)(7)(i) and (ii). The Bureau solicits comment on this proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices pursuant to proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

Proposed comment 40(f)(3)(ii)(A)–2.i also clarifies that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that Prime and the replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. This condition for comparing the rates under proposed § 1026.40(f)(3)(ii)(A) is discussed in more detail below.

Certain SOFR-based spread-adjusted indices have ''*historical fluctuations*'' *that are* ''*substantially similar*'' *to those of certain USD LIBOR indices.* To facilitate compliance, proposed comment 40(f)(3)(ii)(A)–2.ii provides a proposed determination that the spread-adjusted indices based on SOFR recommended by the ARRC to replace the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices respectively. The proposed comment also provides a placeholder for the date when this proposed determination would be effective, if adopted in the final rule. The Bureau understands that some HELOC creditors may choose to replace a LIBOR index with a SOFR-based spread-adjusted index.

As discussed above in the section-by-section analysis of § 1026.20(a), the ARRC intends to endorse forward-looking term SOFR rates provided a consensus among its members can be reached that robust term benchmarks that are compliant with IOSCO standards and meet appropriate criteria set by the ARRC can be produced. If the ARRC has not recommended relevant forward-looking term SOFR rates, it will base its recommended indices on a compounded average of SOFR over a selected compounding period. The Bureau notes that the GSEs announced in February 2020 that they will begin accepting ARMs based on 30-day average SOFR in 2020.[69] For purposes of this proposed rule, the Bureau has conducted its analysis below assuming that the ARRC will base its recommended replacement indices on 30-day SOFR.

In determining whether the SOFR-based spread-adjusted indices have historical fluctuations substantially similar to those of the applicable LIBOR indices, the Bureau has reviewed the historical data on SOFR and historical data on 1-month, 3-month, 6-month, and 1-year LIBOR from August 22, 2014, to March 16, 2020.[70] With respect to the 1-year LIBOR, while 30-day SOFR has not always moved in tandem with 1-year LIBOR, the Bureau is proposing to determine that the historical fluctuations in 1-year LIBOR and the spread-adjusted index based on 30-day SOFR have been substantially similar. As discussed in more detail below, the Bureau also is proposing to determine that the historical fluctuations in the spread-adjusted index based on 30-day SOFR are substantially similar to those of 1-month, 3-month, and 6-month LIBOR.

The Bureau is proposing to make these determinations about the historical fluctuations in the spread-adjusted indices based on 30-day SOFR, while analyzing data on 30-day SOFR without spread adjustments. This analysis is valid because the ARRC has stated that the spread adjustments will be static, outside of a one-year transition period that has not yet started and so is not in the historical data. A static spread adjustment would have no effect on historical fluctuations.

The historical correlation between 1-year LIBOR and 30-day SOFR is .8987. This correlation is high and suggests that on average 30-day SOFR tends to move closely with 1-year LIBOR. However, the raw correlation understates the similarity in the movements of these two rates, because 1-year LIBOR is a forward-looking term rate and 30-day SOFR is a backward-looking moving average. This means that 30-day SOFR often moves closely with 1-year LIBOR, but with a lag. For example, the historical correlation between 30-day SOFR and a 60-day lag of 1-year LIBOR is .9584. However, as discussed above with respect to the proposed determination related to Prime, correlation is not the only statistical measure of similarity that may be relevant for comparing the historical fluctuations of these rates. The Bureau has reviewed other statistical characteristics of these rates, such as the variance, skewness, and kurtosis, and these imply that 30-day SOFR tends to present consumers and creditors with payment changes that are similar to that presented by 1-year LIBOR.[71]

Theoretically, these statistical measures could mask important long-term differences in movements. The spread between 1-year LIBOR and 30-day SOFR decreased from 68 basis points on average in 2015 to 13 basis points on average in 2019. However, this decrease is mainly due to the timing mismatch issue discussed above together with the fact that interest rates in general began to decrease at the end of 2018. Because the backward-looking 30-day moving average of SOFR began to respond to this decrease in rates well after the forward-looking 1-year LIBOR term rate did, 30-day SOFR was temporarily high relative to 1-year LIBOR for a short period in early 2019. The spread between a 60-day lag of 1-year LIBOR and 30-day SOFR was 59 basis points on average in 2015 and 39 basis points on average in 2019.

Finally, in performing this analysis, the Bureau also considered the impact different indices would have on consumer payments. To that end, the Bureau considered a specific example of a debt with a variable rate that resets monthly, and a balance that accumulates over time with interest but without further charges, payments, or fees. The Bureau used this example for HELOCs and credit card accounts because the Bureau understands that the rates for many of those accounts reset monthly. The example considers debt that accumulates interest over the period of four years, beginning in January of 2016 and ending in January 2020. For this example, the Bureau found historical fluctuations in 30-day SOFR and 1-year LIBOR produced substantially similar payment outcomes for consumers with debt similar to that

[69] *See, e.g.,* Lender Letter LL–2020–01; Bulletin 2020–1 Selling, *supra* note 47.

[70] Prior to the start of official publication of SOFR in 2018, the New York Fed released data from August 2014 to March 2018 representing modeled, pre-production estimates of SOFR that are based on the same basic underlying transaction data and methodology that now underlie the official publication. The New York Fed has published indicative SOFR averages going back only to May 2, 2018. *See* Fed. Reserve Bank of N.Y., *SOFR Averages and Index Data, https://apps.newyorkfed.org/markets/autorates/sofr-avg-ind* (last visited May 11, 2020). Therefore, the Bureau has used the estimated SOFR data going back to 2014 to estimate its own 30-day compound average of SOFR since 2014. The methodology to calculate compound averages of SOFR from daily data is described in Fed. Reserve Bank of N.Y., *Statement Regarding Publication of SOFR Averages and a SOFR Index, https://www.newyorkfed.org/markets/opolicy/operating_policy_200212.*

[71] The variance, skewness, and kurtosis of 30-day SOFR are .7179, .4098, and 1.6548 respectively. The variance, skewness, and kurtosis of 1-year LIBOR during the time period are .5829, .1179, and 1.9242, respectively.

considered.[72] For example, if the initial balance in this example is $10,000, the difference between the debt outstanding under 30-day SOFR and the debt outstanding under adjusted 1-year LIBOR after four years (called ''4-year balance difference'' in Table 1 below) is roughly $31.

The Bureau also is proposing to determine that historical fluctuations in the spread-adjusted index based on 30-day SOFR are substantially similar to those of 1-month, 3-month, and 6-month LIBOR. For the reasons discussed above, the Bureau is proposing to make these determinations about the historical fluctuations in the spread-adjusted indices based on 30-day SOFR, while analyzing data on 30-day SOFR without spread adjustments.

As discussed above, the largest differences between 30-day SOFR and 1-year LIBOR arise because 30-day SOFR is backward-looking and 1-year LIBOR is forward-looking. Shorter tenors of LIBOR are less forward-looking, and so in general have even smaller differences with 30-day SOFR. Echoing the analysis described above to compare historical fluctuations between 30-day SOFR and 1-year LIBOR, Table 1 provides statistics on the historical fluctuations in 1-month, 3-month, 6-month, and 1-year LIBOR during the time period in which data for 30-day SOFR is available. Based on this analysis, the Bureau is proposing to determine that historical fluctuations in the spread-adjusted index based on 30-day SOFR also are substantially similar to those of 1-month, 3-month, and 6-month LIBOR.

TABLE 1—COMPARISON OF HISTORICAL FLUCTUATIONS IN DIFFERENT TENORS OF LIBOR AND 30-DAY SOFR

Rate	Correlation with 30-day SOFR	Variance	Skewness	Kurtosis	4-Year balance difference
30-day SOFR	N/A	0.7179	0.4098	1.6548	N/A
1-month LIBOR	.9893	0.6977	0.2376	1.5305	$26
3-month LIBOR	.9746	0.7241	0.1952	1.5835	60
6-month LIBOR	.9436	0.652	0.1038	1.7556	63
1-year LIBOR	.8987	0.5829	0.1179	1.9242	31

As discussed above, the ARRC intends to endorse forward-looking term SOFR rates provided a consensus among its members can be reached that robust term benchmarks that are compliant with IOSCO standards and meet appropriate criteria set by the ARRC can be produced. These term rates do not yet exist. However, the Board has produced data on ''indicative'' SOFR term rates that likely provide a good indication of how SOFR term rates would perform.[73] The Bureau understands that if a SOFR term rate does not exist for a particular LIBOR tenor, the ARRC may use the next-longest SOFR term rate to develop the replacement index for the LIBOR tenor if any applicable SOFR term rate exists. For example, if there is not a 1-year SOFR term rate, the replacement for the 1-year LIBOR may be determined using the SOFR term rates in the following order if they exist: (1) 6-month SOFR; (2) 3-month SOFR; and (3) 1-month SOFR.

As discussed above, the largest difference between different LIBOR tenors and 30-day SOFR arises because LIBOR is forward-looking and 30-day SOFR is backward-looking. Because SOFR term rates are forward-looking like LIBOR, the differences between SOFR term rates and LIBOR should in general be smaller than the differences between 30-day SOFR and LIBOR. The Bureau has reviewed the historical data on these indicative SOFR term rates and on 1-month, 3-month, 6-month, and 1-year LIBOR from June 11, 2018 to March 16, 2020.[74] While the indicative SOFR term rates have not always moved in tandem with LIBOR, the Bureau is proposing to determine that (1) the historical fluctuations of 1-year and 6-month USD LIBOR are substantially similar to those of the 1-month, 3-month, and 6-month spread-adjusted SOFR term rates; (2) the historical fluctuations of 3-month USD LIBOR are substantially similar to those of the 1-month and 3-month spread-adjusted SOFR term rates; and (3) the historical fluctuations of 1-month USD LIBOR are substantially similar to those of the 1-month spread-adjusted SOFR term rate.

The Bureau is proposing to make these determinations about the historical fluctuations in the spread-adjusted indices based on 1-month term SOFR, 3-month term SOFR, and 6-month term SOFR, while analyzing data on 1-month term SOFR, 3-month term SOFR, and 6-month term SOFR without spread adjustments. This analysis is valid because the ARRC has stated that the spread adjustments will be static, outside of a one-year transition period that has not yet started and so is not in the historical data. A static spread adjustment would have no effect on historical fluctuations.

Statistics that have led the Bureau to propose these determinations are in Tables 2 and 3.

TABLE 2—CORRELATIONS BETWEEN LIBOR AND INDICATIVE SOFR TERM RATES[75]

LIBOR tenor	1-month SOFR	3-month SOFR	6-month SOFR
1-month	.9890	N/A	N/A
3-month	.8955	.9606	N/A
6-month	.7606	.8923	.9691

[72] In this example, two versions of debt are considered: (1) One with an interest rate equal to 30-day SOFR; and (2) one with an interest rate equal to 1-year LIBOR plus the average spread between 1-year LIBOR and 30-day SOFR for the 12 months preceding the start date. The average difference between the debt outstanding after four years under 30-day SOFR and the adjusted 1-year LIBOR is only around .3% of the initial debt.

[73] *See* Heitfield & Ho-Park, *supra* note 50.

[74] June 11, 2018, is the first date for which indicative SOFR term rate data are available.

[75] These correlations are for the period beginning June 11, 2018, the first date for which indicative SOFR term rate data are available. These correlations are not directly comparable to those in Table 1, which uses data beginning August 22, 2014, the first date for which data for 30-day SOFR are available.

TABLE 2—CORRELATIONS BETWEEN LIBOR AND INDICATIVE SOFR TERM RATES [75]—Continued

LIBOR tenor	1-month SOFR	3-month SOFR	6-month SOFR
1-year	.6295	.8000	.9274

The historical correlations presented in Table 2 are high, suggesting that the given SOFR term rates tend to move closely with the given LIBOR tenors. However, the raw correlations understate the similarity in the movements of the SOFR term rates and the LIBOR tenors when comparing a LIBOR tenor to a shorter SOFR term rate. This is because the SOFR term rate is less forward-looking than the LIBOR tenor, so the SOFR term rate moves closely with the LIBOR tenor but with a lag. This consideration is especially important during the time period for which indicative SOFR term rate data are available, when interest rates in general started to decrease. For example, the historical correlation between 1-month term SOFR and a 60-day lag of 1-year LIBOR is .9039.

TABLE 3—STATISTICS ON LIBOR AND INDICATIVE SOFR TERM RATES [76]

Rate	Variance	Skewness	Kurtosis
1-month LIBOR	0.0735	−0.5459	2.1022
3-month LIBOR	0.0852	−0.2913	2.0771
6-month LIBOR	0.1219	−0.3037	1.6886
12-month LIBOR	0.1967	−0.2782	1.4281
1-month SOFR	0.093	−0.4791	1.8832
3-month SOFR	0.0952	−0.4804	1.8558
6-month SOFR	0.1168	−0.4671	1.6877

The Bureau has reviewed other statistical characteristics of the LIBOR rates and the indicative SOFR term rates, such as the variance, skewness, and kurtosis, as shown in Table 3 and these imply that the indicative SOFR term rates tend to present consumers and creditors with payment changes that are similar to that presented by the LIBOR rates.

As discussed in the section-by-section analyses of proposed §§ 1026.40(f)(3)(ii)(B), 1026.55(b)(7)(i) and (ii), the Bureau also is proposing the same determination for purposes of proposed §§ 1026.40(f)(3)(ii)(B) and 1026.55(b)(7)(i) and (ii). The Bureau solicits comment on this proposed determination that spread-adjusted indices based on SOFR recommended by the ARRC to replace the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices respectively, for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii).

The Bureau notes that the SOFR-based spread-adjusted indices are not yet being published and may not be published by the effective date of the final rule, if adopted. Nonetheless, the Bureau believes that it is appropriate to consider the underlying SOFR data that is available in proposing the determinations that the spread-adjusted indices based on SOFR recommended by the ARRC to replace the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices respectively. The Bureau solicits comment, however, on whether the Bureau should alternatively consider these SOFR-based spread-adjusted indices to be newly established indices for purposes of proposed §§ 1026.40(f)(3)(ii)(A) and (B) and 1026.55(b)(7)(i) and (ii), to the extent these indices are not being published by the effective date of the final rule, if adopted.

Proposed comment 40(f)(3)(ii)(A)–2.ii also clarifies that in order to use a SOFR-based spread-adjusted index described above as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. This condition under proposed § 1026.40(f)(3)(ii)(A) is discussed in more detail below. Also, as discussed in more detail below, the Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.40(f)(3)(ii)(A) that the rate using the SOFR-based spread-adjusted index is ''substantially similar'' to the rate in effect at the time the LIBOR index becomes unavailable, so long as the creditor uses as the replacement margin the same margin in effect on the day that the LIBOR index becomes unavailable.

The Bureau also solicits comment on whether there are other indices that are not newly established for which the Bureau should make a determination that the index has historical fluctuations that are substantially similar to those of the LIBOR indices. If so, what are these other indices, and why should the Bureau make such a determination with respect to those indices?

Newly established index as replacement for a LIBOR index. Proposed § 1026.40(f)(3)(ii)(A) provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. The Bureau solicits comment on whether the Bureau should provide any additional guidance on, or regulatory changes addressing, when an index is newly established with respect to replacing the LIBOR indices for purposes of proposed § 1026.40(f)(3)(ii)(A). The Bureau also solicits comment on whether the Bureau should provide any examples of indices that are newly established with respect to replacing the LIBOR indices for

[76] Table 3 does not report a balance difference as Table 1 does because data on the indicative SOFR term rates are not available for a sufficiently long period.

purposes of § 1026.40(f)(3)(ii)(A). If so, what are these indices and why should the Bureau determine these indices are newly established with respect to replacing the LIBOR indices?

Substantially similar rate when LIBOR becomes unavailable. Under proposed § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Proposed comment 40(f)(3)(ii)(A)–3 explains that for the comparison of the rates, a creditor must use the value of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. The Bureau solicits comment on whether it should address the situation where the replacement index is not be published on the day that the LIBOR index becomes unavailable. For example, should the Bureau provide that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor must use the previous calendar day that both indices are published as the date on which the annual percentage rate based on the replacement index must be substantially similar to the rate based on the LIBOR index?

Proposed comment 40(f)(3)(ii)(A)–3 also clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 40(f)(3)(ii)(A)–3.i provides an example to illustrate this comment.

The Bureau believes that it may raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate in effect calculated using the LIBOR index on the date that the LIBOR index became unavailable. Specifically, under § 1026.9(c)(1), the creditor must provide a change-in-terms notice of the replacement index and replacement margin (including disclosing any reduced margin in change-in-terms notices provided on or after October 1, 2021, as would be required by proposed § 1026.9(c)(1)(ii)) at least 15 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a creditor would not be able to ensure that the rate based on the replacement index and margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate in effect calculated using the LIBOR index at the time the LIBOR index becomes unavailable. The value of the replacement index may change after the LIBOR index becomes unavailable and before the change-in-terms notice becomes effective.

The Bureau notes that proposed § 1026.40(f)(3)(ii)(A) would require a creditor to use the index values of the replacement index and the original index on a single day (namely, the day that the original index becomes unavailable) to compare the rates to determine if they are ''substantially similar.'' In using a single day to compare the rates, this proposed provision is consistent with the condition in the unavailability provision in current § 1026.40(f)(3)(ii), in the sense that it provides that the new index and margin must result in an APR that is substantially similar to the rate in effect on a single day. The Bureau notes that if the replacement index and the original index have ''historical fluctuations'' that are substantially similar, the spread between the replacement index and the original index on a particular day typically will be substantially similar to the historical spread between the two indices. Nonetheless, the Bureau recognizes that there is a possibility that the spread between the replacement index and the original index could differ significantly on a particular day from the historical spread in certain unusual circumstances, such as occurred to spreads between LIBOR and other indices soon after the collapse of Lehman Brothers in 2008.[77] Therefore, it is possible that two rates may typically be substantially similar but may not be substantially similar on a given date. It is also possible that two rates may be substantially similar on a given date but may not typically be substantially similar. To the extent the historical spread better reflects the typical spread between the indices in the long run, it may be more appropriate to use the historical spread rather than the spread on a specific day in comparing the rates to help ensure the rates are ''substantially similar'' to each other in the long run. However, it is also possible that the spread on a specific, recent date may better reflect the typical spread between the indices in the future than a historical spread would, if the spread on that specific date deviates from the historical spread for reasons that are permanent rather than temporary.[78] Moreover, considering the historical spread raises questions about how to define the ''historical spread,'' such as the date range to consider, and whether to take a median, mean, trimmed mean, or other statistic from the data for the date range.

Given these considerations, the Bureau solicits comment on whether the Bureau should adopt a different approach to determine whether a rate using the replacement index is ''substantially similar'' to the rate using the original index for purposes of proposed § 1026.40(f)(3)(ii)(A) and, if so, what criteria the Bureau should use in selecting such a different approach. For example, the Bureau solicits comment on whether it should require creditors to use a historical median or average of the spread between the replacement index and the original index over a certain time frame (*e.g.,* the time period the historical data are available or 5 years, whichever is shorter) for purposes of determining whether a rate using the replacement index is ''substantially similar'' to the rate using the original index. The Bureau also solicits comments on any compliance challenges that might arise as a result of adopting a potentially more complicated method of comparing the rates calculated using the replacement index and the rates calculated using the original index, and for any identified compliance challenges, how the Bureau could ease those compliance challenges.

The Bureau is not proposing to address for purposes of proposed § 1026.40(f)(3)(ii)(A) when a rate calculated using the replacement index and replacement margin is ''substantially similar'' to the rate in effect when the LIBOR index becomes unavailable. The Bureau is concerned about providing a ''range'' of rates that

[77] The Bureau analyzed the daily spread between Prime and 1-month LIBOR from January 1, 1993, through April 23, 2020. For that timeframe, the median daily spread between those indices was 291 basis points. Since 1993, the spread reached a low of roughly *negative* nine basis points on October 10, 2008, soon after the collapse of Lehman Brothers. Since 1993, the spread has never been below 200 basis points aside from September, October, and November 2008. It has dipped below 250 basis points several times, including in May 2000 during the ''dotcom bust'' and in spring 2020 during the COVID–19 pandemic. As of April 23, 2020, the Prime-LIBOR spread had recovered to 276 basis points from a low of 223 basis points on April 1, 2020.

[78] For example, the spread between 1-month USD LIBOR and Prime increased from roughly 142 basis points in 1986 to 281 basis points in 1993 but has been fairly steady ever since. Therefore, the LIBOR-Prime spread in early 1993 was much closer to the typical spread from then on than a ''historical spread'' would have been.

would be considered to be ''substantially similar'' to the rate in effect at the time LIBOR becomes unavailable, and about providing other specific guidance on, or regulatory changes addressing, the ''substantially similar'' standard, because the rates that will be considered ''substantially similar'' will be context-specific. The Bureau is concerned that if it provides a range of rates that will be considered substantially similar, this range might be too narrow or too broad in some cases depending on the specific circumstances. The Bureau also is concerned that some creditors may decide to charge an APR that is the highest APR in the range, even though the specific circumstances would indicate that the highest APR should not be considered substantially similar in those circumstances. The Bureau solicits comment, however, on whether the Bureau should provide guidance on, or regulatory changes addressing, the ''substantially similar'' standard in comparing the rates for purposes of proposed § 1026.40(f)(3)(ii)(A), and if so, what guidance, or regulatory changes, the Bureau should provide. For example, should the Bureau provide a range of rates that would be considered ''substantially similar'' as described above, and if so, how should the range be determined? Should the range of rates depend on context, and if so, what contexts should be considered? As an alternative to the range of rates approach, the Bureau solicits comment on whether it should provide factors that creditors must consider in deciding whether the rates are ''substantially similar'' and if so, what those factors should be. Are there other approaches the Bureau should consider for addressing the ''substantially similar'' standard for comparing rates?

As discussed above, proposed comment 40(f)(3)(ii)(A)–2.ii clarifies that in order to use the SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the creditor must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. The Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.40(f)(3)(ii)(A) that the rate using the SOFR-based spread-adjusted index is ''substantially similar'' to the rate in effect at the time the LIBOR index becomes unavailable, so long as the creditor uses as the replacement margin the same margin in effect on the day that the LIBOR index becomes unavailable. As discussed in more detail in the section-by-section analysis of § 1026.20(a), the spread adjustments for the SOFR-based spread-adjusted indices are designed to reflect and adjust for the historical differences between LIBOR and SOFR in order to make the spread-adjusted rate comparable to LIBOR. Thus, to facilitate compliance, the Bureau believes that it may be appropriate to provide for purposes of proposed § 1026.40(f)(3)(ii)(A) that a creditor complies with the ''substantially similar'' standard for comparing the rates when the creditor replaces the LIBOR index used under the plan with the applicable SOFR-based spread-adjusted index and uses as the replacement margin the same margin in effect at the time the LIBOR index becomes unavailable.

40(f)(3)(ii)(B)

The Proposal

For the reasons discussed below and in the section-by-section analysis of § 1026.40(f)(3)(ii), the Bureau is proposing to add new LIBOR-specific provisions to § 1026.40(f)(3)(ii)(B) that would permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, in certain circumstances. Specifically, proposed § 1026.40(f)(3)(ii)(B) provides that if a variable rate on a HELOC subject to § 1026.40 is calculated using a LIBOR index, a creditor may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed § 1026.40(f)(3)(ii)(B) also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

In addition, proposed § 1026.40(f)(3)(ii)(B) provides that if either the LIBOR index or the replacement index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the APR based on the replacement index must be substantially similar to the rate based on the LIBOR index.

The Bureau also is proposing to add detail in proposed comments 40(f)(3)(ii)(B)–1 through –3 on the conditions set forth in proposed § 1026.40(f)(3)(ii)(B). For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.40(f)(3)(ii)(B), the Bureau is proposing to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau also is proposing to determine that certain spread-adjusted indices based on SOFR recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices.

To effectuate the purposes of TILA and to facilitate compliance, the Bureau is proposing to use its TILA section 105(a) authority to provide the new LIBOR-specific provisions under proposed § 1026.40(f)(3)(ii)(B). TILA section 105(a) [79] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The Bureau is proposing these LIBOR-specific provisions to facilitate compliance with TILA and effectuate its purposes. Specifically, the Bureau interprets ''facilitate compliance'' to include enabling or fostering continued operation in conformity with the law.

The Bureau is proposing to set March 15, 2021, as the date on or after which HELOC creditors are permitted to replace the LIBOR index used under the plan pursuant to proposed § 1026.40(f)(3)(ii)(B) prior to LIBOR

[79] 15 U.S.C. 1604(a).

becoming unavailable to facilitate compliance with the change-in-terms notice requirements applicable to creditors for HELOCs. As a practical matter, these proposed changes will allow creditors for HELOCs to provide the 15-day change-in-terms notices required under § 1026.9(c)(1) prior to the LIBOR indices becoming unavailable, and thus will allow those creditors to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, these proposed changes will allow HELOC creditors to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time as the LIBOR index used under the plan becomes unavailable.

Without the proposed LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B), as a practical matter, HELOC creditors would have to wait until the LIBOR index becomes unavailable to provide the 15-day change-in-terms notice under § 1026.9(c)(1), disclosing the replacement index and replacement margin (including disclosing any reduced margin in change-in-terms notices provided on or after October 1, 2021, as would be required by proposed § 1026.9(c)(1)(ii)). The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

For several reasons, HELOC creditors would not be able to send out change-in-terms notices disclosing the replacement index and replacement margin prior to LIBOR becoming unavailable. First, although LIBOR is expected to become unavailable around the end of 2021, there is no specific date known with certainty on which LIBOR will become unavailable. Thus, HELOC creditors could not send out the change-in-terms notices prior to LIBOR becoming unavailable because they will not know when it will become unavailable and thus would not know when to make the replacement index and replacement margin effective on the account.

Second, HELOC creditors would need to know the index values of the LIBOR index and the replacement index prior to sending out the change-in-terms notice so that they could disclose the replacement margin in the change-in-terms notice. HELOC creditors will not know these index values until the day that LIBOR becomes unavailable. Thus, HELOC creditors would have to wait until LIBOR becomes unavailable before the creditors could send the 15-day change-in-terms notices under § 1026.9(c)(1) to replace the LIBOR index with a replacement index. Some creditors could be left without a LIBOR index value to use during the 15-day period before the replacement index and replacement margin become effective, depending on their existing contractual terms. The Bureau is concerned this could cause compliance and systems issues.

Also, as discussed in part III, the industry has raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Allowing creditors to replace the LIBOR indices on existing HELOC accounts prior to LIBOR becoming unavailable may address some of these concerns.

The Bureau solicits comments on proposed § 1026.40(f)(3)(ii)(B) and proposed comments 40(f)(3)(ii)(B)–1 through –3. The proposed comments are discussed in detail below.

Consistent conditions with proposed § 1026.40(f)(3)(ii)(A). The Bureau is proposing conditions in the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B) for how a creditor must select a replacement index and compare rates that are consistent with the conditions set forth in the unavailability provisions set forth in proposed § 1026.40(f)(3)(ii)(A). For example, the availability provisions in proposed § 1026.40(f)(3)(ii)(A) and the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B) contain a consistent requirement that the APR calculated using the replacement index must be ''substantially similar'' to the rate calculated using the LIBOR index.[80] In addition, both proposed § 1026.40(f)(3)(ii)(A) and (B) contain consistent conditions for how a creditor must select a replacement index.

For several reasons, the Bureau is proposing to keep the conditions for these two provisions consistent. First, as discussed above in the section-by-section analysis of § 1026.40(f)(3)(ii), some HELOC creditors may need to wait until LIBOR become unavailable to transition to a replacement index because of contractual reasons. The Bureau believes that keeping the conditions consistent in the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A) and the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B) will help ensure that creditors must meet consistent conditions in selecting a replacement index and setting the rates, regardless of whether they are using the unavailability provisions in proposed § 1026.40(f)(3)(ii)(A), or the LIBOR-specific provisions in proposed § 1026.40(f)(3)(ii)(B).

Second, some creditors may have the ability to choose between the unavailability provisions and LIBOR-specific provisions to switch away from using a LIBOR index, and if the conditions between those two provisions are inconsistent, these differences could undercut the purpose of the LIBOR-specific provisions to allow creditors to switch out earlier. For example, if the conditions for selecting a replacement index or setting the rates were stricter in the LIBOR-specific provisions than in the unavailability provisions, this may cause a creditor to wait until LIBOR becomes unavailable to switch to a replacement index, which would undercut the purpose of the LIBOR-specific provisions to allow creditors to switch out earlier and prevent these creditors from having the time to transition from using a LIBOR index.

Historical fluctuations substantially similar for the LIBOR index and replacement index. Proposed comment 40(f)(3)(ii)(B)–1 provides detail on determining whether a replacement index that is not newly established has ''historical fluctuations'' that are ''substantially similar'' to those of the LIBOR index used under the plan for purposes of proposed § 1026.40(f)(3)(ii)(B). Specifically, proposed comment 40(f)(3)(ii)(B)-1 provides that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.40(f)(3)(ii)(B), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. The Bureau is proposing the December 31, 2020 date to be consistent with the date that creditors generally

[80] The conditions in proposed § 1026.40(f)(3)(ii)(A) and (B) are consistent, but they are not the same. For example, although both proposed provisions use the ''substantially similar'' standard to compare the rates, they use different dates for selecting the index values in calculating the rates. The proposed provisions in proposed § 1026.40(f)(3)(ii)(A) and (B) differ in the timing of when creditors are permitted to transition away from LIBOR, which creates some differences in how the conditions apply.

must use for selecting the index values to use in comparing the rates under proposed § 1026.40(f)(3)(ii)(B). The Bureau solicits comment on the December 31, 2020 date for purposes of proposed comment 40(f)(3)(ii)(B)–1 and whether another date or timeframe would be more appropriate for purposes of that proposed comment.

To facilitate compliance, proposed comment 40(f)(3)(ii)(B)–1.i includes a proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and includes a placeholder for the date when this proposed determination would be effective, if adopted in the final rule.[81] The Bureau understands that some HELOC creditors may choose to replace a LIBOR index with Prime. Proposed comment 40(f)(3)(ii)(B)–1.i also clarifies that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the creditor also must comply with the condition in proposed § 1026.40(f)(3)(ii)(B) that the Prime index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the prime rate is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the prime rate must be substantially similar to the rate based on the LIBOR index. This condition for comparing the rates under proposed § 1026.40(f)(3)(ii)(B) is discussed in more detail below.

To facilitate compliance, proposed comment 40(f)(3)(ii)(B)–1.ii provides a proposed determination that the spread-adjusted indices based on SOFR recommended by the ARRC to replace the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices respectively. The proposed comment also provides a placeholder for the date when this proposed determination would be effective, if adopted in the final rule.[82] The Bureau understands that some HELOC creditors may choose to replace a LIBOR index with a SOFR-based spread-adjusted index.

Comment 40(f)(3)(ii)(B)–1.ii also clarifies that in order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. This condition for comparing the rates under proposed § 1026.40(f)(3)(ii)(B) is discussed in more detail below. Also, for the reasons discussed below, the Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.40(f)(3)(ii)(B) that the rate using the SOFR-based spread-adjusted index is ''substantially similar'' to the rate calculated using the LIBOR index, so long as the creditor uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index.

The Bureau also solicits comment on whether there are other indices that are not newly established for which the Bureau should make a determination that the index has historical fluctuations that are substantially similar to those of the LIBOR indices for purposes of proposed § 1026.40(f)(3)(ii)(B). If so, what are these other indices, and why should the Bureau make such a determination with respect to those indices?

Newly established index as replacement for the LIBOR index. Proposed § 1026.40(f)(3)(ii)(B) provides if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The Bureau solicits comment on whether the Bureau should provide any additional guidance on, or regulatory changes addressing, when an index is newly established with respect to replacing the LIBOR indices for purposes of proposed § 1026.40(f)(3)(ii)(B). The Bureau also solicits comment on whether the Bureau should provide any examples of indices that are newly established with respect to replacing the LIBOR indices for purposes of § 1026.40(f)(3)(ii)(B). If so, what are these indices and why should the Bureau determine these indices are newly established with respect to replacing the LIBOR indices?

Substantially similar rate using index values in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Under proposed § 1026.40(f)(3)(ii)(B), if both the replacement index and LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and the replacement margin must produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 40(f)(3)(ii)(B)–2 also explains that the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. Proposed comment 40(f)(3)(ii)(B)–2.i provides an example to illustrate this comment, when the margin used to calculate the variable rate is increased pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin occurs after December 31, 2020, but prior to the date that the creditor provides a change-in-term notice under § 1026.9(c)(1)

[81] See the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau proposing this determination.

[82] See the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau proposing this determination. Also, as discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau solicits comment on whether the Bureau should alternatively consider these SOFR-based spread-adjusted indices to be newly established indices for purposes of proposed § 1026.40(f)(3)(ii)(B), to the extent these indices are not being published by the effective date of the final rule, if adopted.

disclosing the replacement index for the variable rate.

In calculating the comparison rates using the replacement index and the LIBOR index used under the HELOC plan, the Bureau generally is proposing to require creditors to use the index values for the replacement index and the LIBOR index in effect on December 31, 2020. The Bureau is proposing to require HELOC creditors to use these index values to promote consistency for creditors and consumers in which index values are used to compare the two rates. Under proposed § 1026.40(f)(3)(ii)(B), HELOC creditors are permitted to replace the LIBOR index used under the plan and adjust the margin used in calculating the variable rate used under the plan on or after March 15, 2021, but creditors may vary in the timing of when they provide change-in-terms notices to replace the LIBOR index used on their HELOC accounts and when these replacements become effective.

For example, one HELOC creditor may replace the LIBOR index used under its HELOC plans in April 2021, while another HELOC creditor may replace the LIBOR index used under its HELOC plans in October 2021. In addition, a HELOC creditor may not replace the LIBOR index used under all of its HELOC plans at the same time. For example, a HELOC creditor may replace the LIBOR index used under some of its HELOC plans in April 2021 but replace the LIBOR index used under other of its HELOC plans in May 2021.

Nonetheless, regardless of when a particular creditor replaces the LIBOR index used under its HELOC plans, proposed § 1026.40(f)(3)(ii)(B) generally would require that all creditors for HELOCs use December 31, 2020, as the day for determining the index values for the replacement index and the LIBOR index, to promote consistency for creditors and consumers with respect to which index values are used to compare the two rates.

In addition, using the December 31, 2020 date for the index values in comparing the rates may allow creditors for HELOCs to send out change-in-terms notices prior to March 15, 2021, and have the changes be effective on March 15, 2021, the proposed date on or after which creditors for HELOCs would be permitted to switch away from using LIBOR as an index on an existing HELOC account under proposed § 1026.40(f)(3)(ii)(B). If the Bureau instead required creditors to use the index values on March 15, 2021, creditors for HELOCs as a practical matter would not be able to provide change-in-terms notices of the replacement index and any adjusted margin until after March 15, 2021, because they would need the index values from that date in order to calculate the replacement margin. Thus, using the index values on March 15, 2021, would delay when creditors for HELOCs could switch away from using LIBOR as an index on an existing HELOC account.

Also, as discussed in part III, the industry has raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Using the index values for the replacement index and the LIBOR index used under the plan in effect on December 31, 2020, may address some of these concerns.

The Bureau solicits comment specifically on the use of the December 31, 2020 index values in calculating the comparison rates under proposed § 1026.40(f)(3)(ii)(B).

Proposed § 1026.40(f)(3)(ii)(B) provides one exception to the proposed general requirement to use the index values for the replacement index and the LIBOR index used under the plan in effect on December 31, 2020. Proposed § 1026.40(f)(3)(ii)(B) provides that if either the LIBOR index or the replacement index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the APR based on the replacement index must be substantially similar to the rate based on the LIBOR index.

As discussed above, proposed § 1026.40(f)(3)(ii)(B) would require a creditor to use the index values of the replacement index and the LIBOR index on a single day (generally December 31, 2020) [83] to compare the rates to determine if they are ''substantially similar.'' In using a single day to compare the rates, this proposed provision is consistent with the condition in the unavailability provision in current § 1026.40(f)(3)(ii), in the sense that it provides that the new index and margin must result in an APR that is substantially similar to the rate in effect on a single day. The Bureau notes that if the replacement index and the LIBOR index have ''historical fluctuations'' that are substantially similar, the spread between the replacement index and the LIBOR index on a particular day typically will be substantially similar to the historical spread between the two indices. Nonetheless, the Bureau recognizes that there is a possibility that the spread between the replacement index and the LIBOR index could differ significantly on a particular day from the historical spread in certain unusual circumstances, such as occurred to spreads between LIBOR and other indices soon after the collapse of Lehman Brothers in 2008.[84] Therefore, it is possible that two rates may typically be substantially similar but may not be substantially similar on a given date. It is also possible that two rates may be substantially similar on a given date but may not typically be substantially similar. To the extent the historical spread better reflects the typical spread between the indices in the long run, it may be more appropriate to use the historical spread rather than the spread on a specific day in comparing the rates to help ensure the rates are ''substantially similar'' to each other in the long run. However, it is also possible that the spread on a specific, recent date may better reflect the typical spread between the indices in the future than a historical spread would, if the spread on that specific date deviates from the historical spread for reasons that are permanent rather than temporary.[85] Moreover, considering the historical spread raises questions about how to define the ''historical spread,'' such as the date range to consider, and whether to take a median, mean, trimmed mean, or other statistic from the data for the date range.

Given these considerations, the Bureau solicits comment on whether the Bureau should adopt a different approach to determine whether a rate using the replacement index is ''substantially similar'' to the rate using the LIBOR index for purposes of proposed § 1026.40(f)(3)(ii)(B) and, if so, what criteria the Bureau should use in selecting such a different approach. For example, the Bureau solicits comment on whether it should require creditors to use a historical median or average of the spread between the replacement index and the LIBOR index over a certain time frame (*e.g.,* the time period the historical data are available or 5 years, whichever is shorter) for purposes of determining whether a rate using the replacement index is ''substantially similar'' to the rate using the LIBOR index. The Bureau also solicits comments on any compliance challenges that might arise as a result of adopting a potentially more complicated method of comparing rates calculated

[83] If one or both of the indices are not available on December 31, 2020, proposed § 1026.40(f)(3)(ii)(B) would require that the creditor use the index values of the indices on the next calendar day that both indices are published.

[84] *See supra* note 72.

[85] *See supra* note 78.

using the replacement index and the rates calculated using the LIBOR index, and for any identified compliance challenges, how the Bureau could ease those compliance challenges.

Under proposed § 1026.40(f)(3)(ii)(B), in calculating the comparison rates using the replacement index and the LIBOR index used under the HELOC plan, the creditor must use the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The Bureau is proposing that creditors must use this margin, rather than the margin in effect on December 31, 2020. The Bureau recognizes that creditors for HELOCs in certain instances may change the margin that is used to calculate the LIBOR variable rate after December 31, 2020, but prior to when the creditor provides a change-in-terms notice to replace the LIBOR index used under the plan. If the Bureau were to require that the creditor use the margin in effect on December 31, 2020, this would undo any margin changes that occurred after December 31, 2020, but prior to the creditor providing a change-in-terms notice of the replacement of the LIBOR index used under the plan, which would be inconsistent with the purpose of the comparisons of the rates under proposed § 1026.40(f)(3)(ii)(B).

Proposed comment 40(f)(3)(ii)(B)–3 clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 40(f)(3)(ii)(B)–3.i also provides an example to illustrate this comment. The Bureau believes that it would raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate calculated using the LIBOR index in effect on December 31, 2020. Under § 1026.9(c)(1), the creditor must provide a change-in-terms notice of the replacement index and replacement margin (including a reduced margin in a change-in-terms notice provided on or after October 1, 2021, as would be required by proposed § 1026.9(c)(1)(ii)) at least 15 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a creditor would not be able to ensure that the rate based on the replacement index and replacement margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate calculated using the LIBOR index in effect on December 31, 2020. The value of the replacement index may change after December 31, 2020, and before the change-in-terms notice becomes effective.

The Bureau is not proposing to address for purposes of proposed § 1026.40(f)(3)(ii)(B) when a rate calculated using the replacement index and replacement margin is ''substantially similar'' to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The Bureau is concerned about providing a ''range'' of rates that would be considered to be ''substantially similar'' to the LIBOR rate described above, and about providing other specific guidance on, or regulatory changes addressing, the ''substantially similar'' standard, because the rates that will be considered ''substantially similar'' will be context-specific. The Bureau is concerned that if it provides a range of rates that will be considered substantially similar, this range might be too narrow or too broad in some cases depending on the specific circumstances. The Bureau also is concerned that some creditors may decide to charge an APR that is the highest APR in the range, even though the specific circumstances would indicate that the highest APR should not be considered substantially similar in those circumstances. The Bureau solicits comment, however, on whether the Bureau should provide guidance on, or regulatory changes addressing, the ''substantially similar'' standard in comparing the rates for purposes of proposed § 1026.40(f)(3)(ii)(B), and if so, what guidance, or regulatory changes, the Bureau should provide. For example, should the Bureau provide a range of rates that would be considered ''substantially similar'' as described above, and if so, how should the range be determined? Should the range of rates depend on context, and if so, what contexts should be considered? As an alternative to the range of rates approach, the Bureau solicits comment on whether it should provide factors that creditors must consider in deciding whether the rates are ''substantially similar'' and if so, what those factors should be. Are there other approaches the Bureau should consider for addressing the ''substantially similar'' standard for comparing rates?

As discussed above, proposed comment 40(f)(3)(ii)(B)–1.ii clarifies that in order to use the SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the creditor must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. The Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.40(f)(3)(ii)(B) that the rate using the SOFR-based spread-adjusted index is ''substantially similar'' to the rate calculated using the LIBOR index, so long as the creditor uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. As discussed in more detail in the section-by-section analysis of § 1026.20(a), the spread adjustments for the SOFR-based spread-adjusted indices are designed to reflect and adjust for the historical differences between LIBOR and SOFR in order to make the spread-adjusted rate comparable to LIBOR. Thus, the Bureau believes that it may be appropriate to provide for purposes of proposed § 1026.40(f)(3)(ii)(B) that a creditor complies with the ''substantially similar'' standard for comparing the rates when the creditor replaces the LIBOR index used under the plan with the applicable SOFR-based spread-adjusted index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Section 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(b) Exceptions

55(b)(7) Index Replacement and Margin Change Exception

TILA section 171(a), which was added by the Credit CARD Act, provides that in the case of a credit card account under an open-end consumer credit plan, no creditor may increase any APR, fee, or finance charge applicable to any outstanding balance, except as permitted under TILA section 171(b).[86] TILA section 171(b)(2) provides that the prohibition under TILA section 171(a) does not apply to an increase in a variable APR in accordance with a credit card agreement that provides for changes in the rate according to the operation of an index that is not under the control of the creditor and is available to the general public.[87]

In implementing these provisions of TILA section 171, § 1026.55(a) prohibits a card issuer from increasing an APR or certain enumerated fees or charges set forth in § 1026.55(a) on a credit card account under an open-end (not home-secured) consumer credit plan, except as provided in § 1026.55(b). Section 1026.55(b)(2) provides that a card issuer may increase an APR when: (1) The APR varies according to an index that is not under the card issuer's control and is available to the general public; and (2) the increase in the APR is due to an increase in the index.

Comment 55(b)(2)–6 provides that a card issuer may change the index and margin used to determine the APR under § 1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

The Proposal

As discussed in part III, the industry has requested that the Bureau permit card issuers to replace the LIBOR index used in setting the variable rates on existing accounts prior to when the LIBOR indices become unavailable to facilitate compliance. Among other things, the industry is concerned that if card issuers must wait until LIBOR becomes unavailable to replace the LIBOR index used on existing accounts, card issuers would not have sufficient time to inform consumers of the replacement index and update their systems to implement the change. To reduce uncertainty with respect to selecting a replacement index, the industry also has requested that the Bureau determine that the prime rate has ''historical fluctuations'' that are ''substantially similar'' to those of the LIBOR indices.

To address these concerns, as discussed in more detail in the section-by-section analysis of proposed § 1026.55(b)(7)(ii), the Bureau is proposing to add new LIBOR-specific provisions to proposed § 1026.55(b)(7)(ii) that would permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan to replace LIBOR and change the margin on such plans on or after March 15, 2021, in certain circumstances.

Specifically, proposed § 1026.55(b)(7)(ii) provides that if a variable rate on a credit card account under an open-end (not home-secured) consumer credit plan is calculated using a LIBOR index, a card issuer may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Also, as discussed in more detail in the section-by-section analysis of proposed § 1026.55(b)(7)(ii), to reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.55(b)(7)(ii), the Bureau is proposing to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau also is proposing to determine that certain spread-adjusted indices based on SOFR recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau is also proposing additional detail in comments 55(b)(7)(ii)–1 through –3 with respect to proposed § 1026.55(b)(7)(ii).

In addition, as discussed in more detail in the section-by-section analysis of proposed § 1026.55(b)(7)(i), the Bureau is proposing to move the unavailability provisions in current comment 55(b)(2)–6 to proposed § 1026.55(b)(7)(i) and to revise the proposed moved provisions for clarity and consistency. The Bureau also is proposing additional detail in comments 55(b)(7)(i)–1 through –2 with respect to proposed § 1026.55(b)(7)(i). For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards under proposed § 1026.55(b)(7)(i), the Bureau is proposing to make the same determinations discussed above related to Prime and the spread-adjusted indices based on SOFR recommended by the ARRC in relation to proposed § 1026.55(b)(7)(i). The Bureau is proposing to make these revisions and provide additional detail in case card issuers use the unavailability provision in proposed § 1026.55(b)(7)(i) to replace a LIBOR index used for their credit card accounts, as discussed in more detail below.

Bureau is proposing new proposed LIBOR-specific provisions rather than interpreting when LIBOR is unavailable. For the same reasons that the Bureau is proposing LIBOR-specific provisions for HELOCs under proposed § 1026.40(f)(3)(ii)(B), the Bureau is proposing these new LIBOR-specific provisions under proposed § 1026.55(b)(7)(ii), rather than interpreting LIBOR indices to be unavailable as of a certain date prior to LIBOR being discontinued under current comment 55(b)(2)–6 (as proposed to be moved to proposed § 1026.55(b)(7)(i)). First, the Bureau is concerned about making a determination for Regulation Z purposes under current comment 55(b)(2)–6 (as proposed to be moved to proposed § 1026.55(b)(7)(i)) that the LIBOR indices are unavailable or unreliable when the FCA, the regulator of LIBOR, has not made such a determination.

Second, the Bureau is concerned that a determination by the Bureau that the

[86] 15 U.S.C. 1666i–1(a).

[87] 15 U.S.C. 1666i–1(b)(2).

LIBOR indices are unavailable for purposes of comment 55(b)(2)–6 (as proposed to be moved to proposed § 1026.55(b)(7)(i)) could have unintended consequences for other products or markets. For example, the Bureau is concerned that such a determination could unintentionally cause confusion for creditors for other products (*e.g.,* ARMs) about whether the LIBOR indices are unavailable for those products too and could possibly put pressure on those creditors to replace the LIBOR index used for those products before those creditors are ready for the change.

Third, even if the Bureau interpreted unavailability under comment 55(b)(2)–6 (as proposed to be moved to proposed § 1026.55(b)(7)(i)) to indicate that the LIBOR indices are unavailable prior to LIBOR being discontinued, this interpretation would not completely solve the contractual issues for card issuers whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index. Card issuers still would need to decide for their contracts whether the LIBOR indices are unavailable. Thus, even if the Bureau decided that the LIBOR indices are unavailable under Regulation Z as described above, card issuers whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index essentially would remain in the same position of interpreting their contracts as they would have been under the current rule.

Thus, the Bureau is not proposing to interpret when the LIBOR indices are unavailable for purposes of current comment 55(b)(2)–6 (as proposed to be moved to proposed § 1026.55(b)(7)(ii)). The Bureau solicits comment on whether the Bureau should interpret when the LIBOR indices are unavailable for purposes of current comment 55(b)(2)–6 (as proposed to be moved to proposed § 1026.55(b)(7)(i)), and if so, why the Bureau should make that determination and when should the LIBOR indices be considered unavailable for purposes of that provision.

The Bureau also solicits comment on an alternative to interpreting the term ''unavailable.'' Specifically, should the Bureau make revisions to the unavailability provisions in current comment 55(b)(2)–6 (as proposed to be moved to proposed § 1026.55(b)(7)(i)) in a manner that would allow those card issuers who need to transition from LIBOR and, for contractual reasons, may not be able to switch away from LIBOR prior to it being unavailable to be better able to use the unavailability provisions for an orderly transition on or after March 15, 2021? If so, what should these revisions be?

Interaction among proposed § 1026.55(b)(7)(i) and (ii) and contractual provisions. Proposed comment 55(b)(7)–1 addresses the interaction among the unavailability provisions in proposed § 1026.55(b)(7)(i), the LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii), and the contractual provisions applicable to the credit card account. The Bureau understands that credit card contracts generally allow a card issuer to change the terms of the contract (including the index) as permitted by law. Proposed comment 55(b)(7)–1 provides detail where this contract language applies. In addition, consistent with the detail proposed in relation to HELOCs subject to § 1026.40 in proposed comment 40(f)(3)(ii)–1, the Bureau also is providing detail on two other types of contract language, in case any credit card contracts include such language.

For example, the Bureau is proposing detail in proposed comment 55(b)(7)–1 for credit card contracts that contain language providing that (1) a card issuer can replace the LIBOR index and the margin for calculating the variable rate unilaterally only if the original index is no longer available or becomes unavailable; and (2) the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. The Bureau also is providing detail in proposed comment 55(b)(7)–1 for credit card contracts that include language providing that the card issuer can replace the original index and the margin for calculating the variable rate unilaterally only if the original index is no longer available or becomes unavailable, but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable.

Specifically, proposed comment 55(b)(7)–1 provides that a card issuer may use either the provision in proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace a LIBOR index used under a credit card account under an open-end (not home-secured) consumer credit plan so long as the applicable conditions are met for the provision used. This proposed comment makes clear, however, that neither proposed provision excuses the card issuer from noncompliance with contractual provisions. As discussed below, proposed comment 55(b)(7)–1 provides examples to illustrate when a card issuer may use the provisions in proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace the LIBOR index used under a credit card account under an open-end (not home-secured) consumer credit and each of these examples assumes that the LIBOR index used under the plan becomes unavailable after March 15, 2021.

Proposed comment 55(b)(7)–1.i provides an example where a contract for a credit card account under an open-end (not home-secured) consumer credit plan provides that a card issuer may not unilaterally replace an index under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, proposed comment 55(b)(7)–1.i explains that the card issuer may use the unavailability provisions in proposed § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Proposed comment 55(b)(7)–1.i also explains that the proposed LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 55(b)(7)–1.i notes, however, that the card issuer in this example would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an APR substantially similar to a rate that is in effect when the LIBOR index becomes unavailable. The Bureau solicits comments on this proposed approach and example.

Proposed comment 55(b)(7)–1.ii provides an example of a contract for a credit card account under an open-end (not home-secured) consumer credit plan under which a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of the applicable provision are met.

The Bureau is proposing to allow the card issuer in this case to use either the proposed unavailability provisions in proposed § 1026.55(b)(7)(i) or the proposed LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii). If the card issuer uses the unavailability provisions in proposed § 1026.55(b)(7)(i), the card issuer must use a replacement index and replacement margin that will produce an APR substantially similar to the rate in effect when the LIBOR index became unavailable. If the card issuer uses the proposed LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii), the card issuer generally must use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

The Bureau is proposing to allow a card issuer, in this case, to use the index values for the LIBOR index and the replacement index on December 31, 2020, to meet the ''substantially similar'' standard with respect to the comparison of the rates even if the card issuer is contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. The Bureau recognizes that LIBOR may not be discontinued until the end of 2021, which is around a year later than the December 31, 2020 date. Nonetheless, the Bureau is proposing to allow card issuers that are restricted by their contracts to replace the LIBOR index used under the credit card plans until LIBOR becomes unavailable to use the LIBOR index values and the replacement index values in effect on December 31, 2020 under proposed § 1026.55(b)(7)(ii), rather than the index values on the day that the LIBOR indices become unavailable under proposed § 1026.55(b)(7)(i). This proposal would allow those card issuers to use consistent index values to those card issuers that are not restricted by their contracts in replacing the LIBOR index prior to the LIBOR becoming unavailable. This proposal may also promote consistency for consumers in that all card issuers are permitted to use the same LIBOR values in comparing the rates.

In addition, as discussed in part III, the industry has raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Allowing card issuers to use the December 31, 2020, values for comparison of the rates instead of the LIBOR values when the LIBOR indices become unavailable may address some of these concerns.

Thus, the Bureau is proposing to provide card issuers with the flexibility to choose to use the index values for the LIBOR index and the replacement index on December 31, 2020, by using the proposed LIBOR-specific provisions under proposed § 1026.55(b)(7)(ii), rather than using the unavailability provisions in proposed § 1026.55(b)(7)(i). The Bureau solicits comment on this proposed approach and example.

Proposed comment 55(b)(7)–1.iii provides an example of a contract for a credit card account under an open-end (not home-secured) consumer credit plan under which a card issuer may change the terms of the contract (including the index) as permitted by law. Proposed comment 55(b)(7)–1.iii explains in this case, if the card issuer replaces a LIBOR index under a plan on or after March 15, 2021, but does not wait until LIBOR becomes unavailable to do so, the card issuer may only use proposed § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In this case, the card issuer may not use proposed § 1026.55(b)(7)(i). Proposed comment 55(b)(7)–1.iii also explains that if the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the card issuer has the option of using proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of the applicable provision are met.

The Bureau is proposing to allow the card issuer, in this case, to use either the unavailability provisions in proposed § 1026.55(b)(7)(i) or the proposed LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii) if the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index. For the reasons explained above in the discussion of the example in proposed comment 55(b)(7)–1.ii, the Bureau is proposing in the situation described in proposed comment 55(b)(7)–1.iii to provide card issuers with the flexibility to choose to use the index values for the LIBOR index and the replacement index on December 31, 2020, by using the proposed LIBOR-specific provisions under proposed § 1026.55(b)(7)(ii), rather than using the unavailability provision in proposed § 1026.55(b)(7)(i). The Bureau solicits comment on this proposed approach and example.

55(b)(7)(i)

Section 1026.55(a) prohibits a card issuer from increasing an APR or certain enumerated fees or charges set forth in § 1026.55(a) on a credit card account under an open-end (not home-secured) consumer credit plan, except as provided in § 1026.55(b). Section 1026.55(b)(2) provides that a card issuer may increase an APR when: (1) The APR varies according to an index that is not under the card issuer's control and is available to the general public; and (2) the increase in the APR is due to an increase in the index. Comment 55(b)(2)–6 provides that a card issuer may change the index and margin used to determine the APR under § 1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

The Proposal

The Bureau is proposing to move the unavailability provisions in current comment 55(b)(2)–6 to proposed § 1026.55(b)(7)(i) and to revise the proposed moved provisions for clarity and consistency. Proposed § 1026.55(b)(7)(i) provides that a card issuer may increase an APR when the card issuer changes the index and margin used to determine the APR if the original index becomes unavailable, as long as (1) the historical fluctuations in the original and replacement indices were substantially similar; and (2) the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

The Bureau also is proposing comments 55(b)(7)(i)–1 through –2 with respect to proposed § 1026.55(b)(7)(i).

For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards under proposed § 1026.55(b)(7)(i), the Bureau is proposing to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau also is proposing to determine that certain spread-adjusted indices based on SOFR recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau is proposing to make these revisions and provide additional detail, in case card issuers use the unavailability provisions in proposed § 1026.55(b)(7)(i) to replace a LIBOR index used for credit card accounts, as discussed in more detail above in the section-by-section analysis of proposed § 1026.55(b)(7).

Proposed § 1026.55(b)(7)(i) differs from current comment 55(b)(2)–6 in three ways. First, proposed § 1026.55(b)(7)(i) provides that if an index that is not newly established is used to replace the original index, the replacement index and replacement margin will produce a rate ''substantially similar'' to the rate that was in effect at the time the original index became unavailable. Currently, comment 55(b)(2)–6 uses the term ''similar'' instead of ''substantially similar'' for the comparison of these rates. Nonetheless, comment 55(b)(2)–6 provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate ''substantially similar'' to the rate in effect when the original index became unavailable. To correct this inconsistency between the comparison of rates when an existing replacement index is used and when a newly established index is used, the Bureau is proposing to use ''substantially similar'' consistently in proposed § 1026.55(b)(7)(i) for the comparison of rates. As discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau also is proposing to use ''substantially similar'' as the standard for the comparison of rates for HELOC plans when the LIBOR index used under the plan becomes unavailable.

Second, proposed § 1026.55(b)(7)(i) differs from current comment 55(b)(2)–6 in that the proposed provision makes clear that a card issuer that is using a newly established index may also adjust the margin so that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. The newly established index may not have the same index value as the original index, and the card issuer may need to adjust the margin to meet the condition that the newly established index and replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable.

Third, proposed § 1026.55(b)(7)(i) differs from current comment 55(b)(2)–6 in that the proposed provision uses the term ''the replacement index and replacement margin'' instead of ''the replacement index and margin'' to make clear when proposed § 1026.55(b)(7)(i) is referring to a replacement margin and not the original margin.

To effectuate the purposes of TILA and to facilitate compliance, the Bureau is proposing to use its TILA section 105(a) authority to propose § 1026.55(b)(7)(i). TILA section 105(a)[88] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The Bureau is proposing this exception to facilitate compliance with TILA and effectuate its purposes. Specifically, the Bureau interprets ''facilitate compliance'' to include enabling or fostering continued operation in conformity with the law.

The Bureau is proposing to move comment 55(b)(2)–6 to proposed § 1026.55(b)(7)(i) as an exception to the general rule in current § 1026.55(a) restricting rate increases. The Bureau believes that an index change could produce a rate increase at the time of the replacement or in the future. The Bureau is proposing to provide this exception to the general rule in § 1026.55(a) in the circumstances in which an index becomes unavailable in the limited conditions set forth in proposed § 1026.55(b)(7)(i) to enable or foster continued operation in conformity with the law. If the index that is used under a credit card account under an open-end (not home-secured) consumer credit plan becomes unavailable, the card issuer would need to replace the index with another index, so the rate remains a variable rate under the plan. The Bureau is proposing this exception to facilitate compliance with the rule by allowing the card issuer to maintain the rate as a variable rate, which is also likely to be consistent with the consumer's expectation that the rate on the account will be a variable rate. The Bureau is not aware of legislative history suggesting that Congress intended card issuers, in this case, to be required to convert variable-rate plans to a non-variable-rate plans when the index becomes unavailable.

The Bureau solicits comments on proposed § 1026.55(b)(7)(i) and proposed comments 55(b)(7)(i)–1 through –2. The proposed comments are discussed in more detail below.

Historical fluctuations substantially similar for the LIBOR index and replacement index. Proposed comment 55(b)(7)(i)–1 provides detail on determining whether a replacement index that is not newly established has ''historical fluctuations'' that are ''substantially similar'' to those of the LIBOR index used under the plan for purposes of proposed § 1026.55(b)(7)(i). Specifically, proposed comment 55(b)(7)(i)–1 provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(i), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. To facilitate compliance, proposed comment 55(b)(7)(i)–1.i includes a proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and includes a placeholder for the date when this proposed determination would be effective, if adopted in the final rule.[89] The Bureau understands that some card issuers may choose to replace a LIBOR index with Prime. Proposed comment 55(b)(7)(i)–1.i also clarifies that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that Prime and the replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. This condition for comparing the rates under

[88] 15 U.S.C. 1604(a).

[89] See the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau proposing this determination.

proposed § 1026.55(b)(7)(i) is discussed in more detail below.

To facilitate compliance, proposed comment 55(b)(7)(i)–1.ii provides a proposed determination that the spread-adjusted indices based on SOFR recommended by the ARRC to replace the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices respectively. The proposed comment provides a placeholder for the date when this proposed determination would be effective, if adopted in the final rule.[90] The Bureau is proposing this determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index.

Proposed comment 55(b)(7)(i)–1.ii also clarifies that in order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. This condition under proposed § 1026.55(b)(7)(i) is discussed in more detail below. Also, as discussed in more detail below, the Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.55(b)(7)(i) that the rate using the SOFR-based spread-adjusted index is ''substantially similar'' to the rate in effect at the time the LIBOR index becomes unavailable, so long as the card issuer uses as the replacement margin the same margin in effect on the day that the LIBOR index becomes unavailable.

The Bureau also solicits comment on whether there are other indices that are not newly established for which the Bureau should make a determination that the index has historical fluctuations that are substantially similar to those of the LIBOR indices for purposes of proposed § 1026.55(b)(7)(i). If so, what are these other indices, and why should the Bureau make such a determination with respect to those indices?

[90] See the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau proposing this determination. Also, as discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau solicits comment on whether the Bureau should alternatively consider these SOFR-based spread-adjusted indices to be newly established indices for purposes of proposed § 1026.55(b)(7)(i), to the extent these indices are not being published by the effective date of the final rule, if adopted.

Newly established index as replacement for a LIBOR index. Proposed § 1026.55(b)(7)(i) provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. The Bureau solicits comment on whether the Bureau should provide any additional guidance on, or regulatory changes addressing, when an index is newly established with respect to replacing the LIBOR indices for purposes of proposed § 1026.55(b)(7)(i). The Bureau also solicits comment on whether the Bureau should provide any examples of indices that are newly established with respect to replacing the LIBOR indices for purposes of § 1026.55(b)(7)(i). If so, what are these indices and why should the Bureau determine these indices are newly established with respect to replacing the LIBOR indices?

Substantially similar rate when LIBOR becomes unavailable. Under proposed § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Proposed comment 55(b)(7)(i)–2 explains that for the comparison of the rates, a card issuer must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. The Bureau solicits comment on whether it should address the situation where the replacement index is not be published on the day that the LIBOR index becomes unavailable. For example, should the Bureau provide that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer must use the previous calendar day that both indices are published as the date on which the annual percentage rate based on the replacement index must be substantially similar to the rate based on the LIBOR index?

Proposed comment 55(b)(7)(i)–2 clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 55(b)(7)(i)–2.i provides an example to illustrate this comment.

The Bureau believes that it may raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate calculated using the LIBOR index on the date that the LIBOR index became unavailable. Specifically, under § 1026.9(c)(2), the card issuer must provide a change-in-terms notice of the replacement index and replacement margin (including disclosing any reduced margin in change-in-terms notices provided on or after October 1, 2021, which would be required under proposed § 1026.9(c)(2)(v)(A)) at least 45 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a card issuer would not be able to ensure that the rate based on the replacement index and margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate calculated using the LIBOR index in effect at the time the LIBOR index becomes unavailable. The value of the replacement index may change after the LIBOR index becomes unavailable and before the change-in-terms notice becomes effective.

The Bureau notes that proposed § 1026.55(b)(7)(i) would require a card issuer to use the index values of the replacement index and the original index on a single day (namely, the day that the original index becomes unavailable) to compare the rates to determine if they are ''substantially similar.'' In using a single day to compare the rates, this proposed provision is consistent with the condition in the unavailability provision in current comment 55(b)(2)–6, in the sense that it provides that the new index and margin must result in an APR that is substantially similar to the rate in effect on a single day. For the reasons discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau solicits comment on whether the Bureau should adopt a different approach to determine whether a rate using the replacement index is ''substantially similar'' to the rate using the original index for purposes of § 1026.55(b)(7)(i) and, if so, what criteria the Bureau should use in selecting such a different approach. For example, the Bureau solicits comment on whether it should require card issuers to use a historical median or average of the spread between the replacement index and the original index over a certain time frame (*e.g.,* the time period the historical data are available or 5 years, whichever is shorter) for purposes of determining whether a rate using the replacement index is ''substantially similar'' to the rate using the original index. The Bureau also solicits comments on any compliance challenges that might arise as a result of adopting a potentially more complicated method of comparing the rates calculated using the replacement index and the rates calculated using the original index, and for any identified compliance challenges, how the Bureau could ease those compliance challenges.

For the reasons discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau is not proposing to address for purposes of proposed § 1026.55(b)(7)(i) when a rate calculated using the replacement index and replacement margin is ''substantially similar'' to the rate in effect when the LIBOR index becomes unavailable. The Bureau solicits comment, however, on whether the Bureau should provide guidance on, or regulatory changes addressing, the ''substantially similar'' standard in comparing the rates for purposes of proposed § 1026.55(b)(7)(i), and if so, what guidance, or regulatory changes, the Bureau should provide. For example, should the Bureau provide a range of rates that would be considered ''substantially similar'' as described above, and if so, how should the range be determined? Should the range of rates depend on context, and if so, what contexts should be considered? As an alternative to the range of rates approach, the Bureau solicits comment on whether it should provide factors that card issuers must consider in deciding whether the rates are ''substantially similar'' and if so, what those factors should be. Are there other approaches the Bureau should consider for addressing the ''substantially similar'' standard for comparing rates?

As discussed above, proposed comment 55(b)(7)(i)–1.ii clarifies that in order to use the SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. For the reasons discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.55(b)(7)(i) that the rate using the SOFR-based spread-adjusted index is ''substantially similar'' to the rate in effect at the time the LIBOR index becomes unavailable, so long as the card issuer uses as the replacement margin the same margin in effect on the day that the LIBOR index becomes unavailable.

55(b)(7)(ii)

The Proposal

For the reasons discussed below and in the section-by-section analysis of proposed § 1026.55(b)(7), the Bureau is proposing to add new LIBOR-specific provisions to proposed § 1026.55(b)(7)(ii) that would permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after March 15, 2021, in certain circumstances. Specifically, proposed § 1026.55(b)(7)(ii) provides that if a variable rate on a credit card account under an open-end (not home-secured) consumer credit plan is calculated using a LIBOR index, a card issuer may replace the LIBOR index and change the margin for calculating the variable rate on or after March 15, 2021, as long as (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed § 1026.55(b)(7)(ii) also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. In addition, proposed § 1026.55(b)(7)(ii) provides that if either the LIBOR index or the replacement index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the APR based on the replacement index must be substantially similar to the rate based on the LIBOR index.

In addition, the Bureau is proposing to add detail in proposed comments 55(b)(7)(ii)–1 through –3 on the conditions set forth in proposed § 1026.55(b)(7)(ii). For example, to reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.55(b)(7)(ii), the Bureau is proposing to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau also is proposing to determine that certain spread-adjusted indices based on SOFR recommended by the ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Proposed § 1026.55(b)(7)(ii) and proposed comments 55(b)(7)(ii)–1 through –3 applicable to credit card accounts under an open-end (not home-secured) consumer credit plan are similar to the LIBOR-specific provisions set forth in proposed § 1026.40(f)(3)(ii)(B) and proposed comments 40(f)(3)(ii)(B)–1 through –3 applicable to HELOCs subject to § 1026.40.

To effectuate the purposes of TILA and to facilitate compliance, the Bureau is proposing to use its TILA section 105(a) authority to propose new LIBOR-specific provisions under proposed § 1026.55(b)(7)(ii). TILA section 105(a) [91] directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The Bureau is proposing this exception to facilitate compliance with TILA and effectuate its purposes. Specifically, the Bureau interprets ''facilitate compliance'' to include enabling or fostering continued operation in conformity with the law.

The Bureau is proposing to set March 15, 2021, as the date on or after which card issuers are permitted to replace the LIBOR index used for a credit card account under an open-end (not home-secured) consumer credit plan under the plan pursuant to proposed § 1026.55(b)(7)(ii) prior to LIBOR becoming unavailable to facilitate compliance with the change-in-terms

[91] 15 U.S.C. 1604(a).

notice requirements applicable to card issuers by allowing them to provide the 45-day change-in-terms notices required under § 1026.9(c)(2) prior to the LIBOR indices becoming unavailable. This proposed change will allow those card issuers to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, it will allow card issuers to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time when the LIBOR index used under the plan becomes unavailable.

Without the proposed LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii), as a practical matter, card issuers would have to wait until LIBOR becomes unavailable to provide the 45-day change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index and replacement margin (including disclosing any reduced margin in change-in-terms notices provided on or after October 1, 2021, which would be required under proposed § 1026.9(c)(2)(v)(A)). The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

Card issuers would not be able to send out change-in-terms notices disclosing the replacement index and replacement margin prior to the LIBOR indices becoming unavailable for several reasons. First, although LIBOR is expected to become unavailable around the end of 2021, there is no specific date known with certainty on which LIBOR will become unavailable. Thus, card issuers could not send out the change-in-terms notices prior to the LIBOR index becoming unavailable because they will not know when it will become unavailable and thus would not know when to make the replacement index and replacement margin effective on the account.

Second, card issuers would need to know the index values of the LIBOR index and the replacement index prior to sending out the change-in-terms notice so that they could disclose the replacement margin in the change-in-terms notice. Card issuers will not know these index values until the day that LIBOR becomes unavailable. Thus, card issuers would have to wait until the LIBOR indices become unavailable before the card issuer could send the 45-day change-in-terms notice under § 1026.9(c)(2) to replace the LIBOR index with a replacement index. Some card issuers could be left without a LIBOR index value to use during the 45-day period before the replacement index and replacement margin become effective, depending on their existing contractual terms. The Bureau is concerned this could cause compliance and systems issues.

Also, as discussed in part III, the industry has raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Allowing card issuers to replace the LIBOR indices on existing credit card accounts prior to the LIBOR indices becoming unavailable may address some of these concerns.

The Bureau solicits comments on proposed § 1026.55(b)(7)(ii) and proposed comments 55(b)(7)(ii)–1 through –3. The proposed comments are discussed in more detail below.

Consistent conditions with proposed § 1026.55(b)(7)(i). The Bureau is proposing conditions in the LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii) for how a card issuer must select a replacement index and compare rates that are consistent with the conditions set forth in the unavailability provisions set forth in proposed § 1026.55(b)(7)(i). For example, the availability provisions in proposed § 1026.55(b)(7)(i) and the LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii) contain a consistent requirement that the APR calculated using the replacement index must be ''substantially similar'' to the rate calculated using the LIBOR index.[92] In addition, both proposed § 1026.55(b)(7)(i) and (ii) would allow a card issuer to use an index that is not newly established as a replacement index only if the index has historical fluctuations that are substantially similar to those of the LIBOR index.

For several reasons, the Bureau is proposing to keep the conditions for these two provisions consistent. First, as discussed above in the section-by-section analysis of proposed § 1026.55(b)(7), to the extent some card issuers may need to wait until the LIBOR indices become unavailable to transition to a replacement index because of contractual reasons, the Bureau believes that keeping the conditions consistent in the unavailability provisions in proposed § 1026.55(b)(7)(i) and the LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii) will help ensure that card issuers must meet consistent conditions in selecting a replacement index and setting the rates, regardless of whether they are using the unavailability provisions in proposed § 1026.55(b)(7)(i), or the LIBOR-specific provisions in proposed § 1026.55(b)(7)(ii).

Second, most card issuers may have the ability to choose between the unavailability provisions and LIBOR-specific provisions to switch away from using a LIBOR index, and if the conditions between those two provisions are inconsistent, these differences could undercut the purpose of the LIBOR-specific provisions to allow card issuers to switch out earlier. For example, if the conditions for selecting a replacement index or setting the rates were stricter in the LIBOR-specific provisions than in the unavailability provisions, this may cause a card issuer to wait until the LIBOR indices become unavailable to switch to a replacement index, which would undercut the purpose of the LIBOR-specific provisions to allow card issuers to switch out earlier and prevent these card issuers from having the time required to transition from using a LIBOR index.

Historical fluctuations substantially similar for the LIBOR index and replacement index. Proposed comment 55(b)(7)(ii)–1 provides detail on determining whether a replacement index that is not newly established has ''historical fluctuations'' that are ''substantially similar'' to those of the LIBOR index used under the plan for purposes of proposed § 1026.55(b)(7)(ii). Specifically, proposed comment 55(b)(7)(ii)–1 provides that for purposes of replacing a LIBOR index used under a plan pursuant to proposed § 1026.55(b)(7)(ii), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. The Bureau is proposing the December 31, 2020, date to be consistent with the date that card issuers generally must use for selecting the index values to use in comparing the rates under

[92] The conditions in proposed § 1026.55(b)(7)(i) and (ii) are consistent, but they are not the same. For example, although both proposed provisions use the ''substantially similar'' standard to compare the rates, they use different dates for selecting the index values in calculating the rates. The proposed provisions differ in the timing of when card issuers are permitted to transition away from LIBOR, which creates some differences in how the conditions apply.

proposed § 1026.55(b)(7)(ii). The Bureau solicits comment on the December 31, 2020 date for purposes of proposed comment 55(b)(7)(ii)–1 and whether another date or timeframe would be more appropriate for purposes of that proposed comment.

To facilitate compliance, proposed comment 55(b)(7)(ii)–1.i includes a proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and includes a placeholder for the date when this proposed determination would be effective, if adopted in the final rule.[93] The Bureau understands some card issuers may choose to replace a LIBOR index with Prime. Proposed comment 55(b)(7)(ii)–1.i also clarifies that in order to use Prime as the replacement index for the 1-month or 3-month USD LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the Prime index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the prime rate is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the prime rate must be substantially similar to the rate based on the LIBOR index. This condition for comparing the rates under proposed § 1026.55(b)(7)(ii) is discussed in more detail below.

To facilitate compliance, proposed comment 55(b)(7)(ii)–1.ii provides a proposed determination that the spread-adjusted indices based on SOFR recommended by the ARRC to replace the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices respectively. The proposed comment provides a placeholder for the date when this proposed determination would be effective, if adopted in the final rule.[94] The Bureau is making this proposed determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index. Proposed comment 55(b)(7)(ii)–1.ii also clarifies that in order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. This condition for comparing the rates under proposed § 1026.55(b)(7)(ii) is discussed in more detail below. For the reasons discussed below, the Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.55(b)(7)(ii) that the rate using the SOFR-based spread-adjusted index is ‘‘substantially similar’’ to the rate calculated using the LIBOR index, so long as the card issuer uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index.

The Bureau also solicits comment on whether there are other indices that are not newly established for which the Bureau should make a determination that the index has historical fluctuations that are substantially similar to those of the LIBOR indices for purposes of proposed § 1026.55(b)(7)(ii). If so, what are these other indices, and why should the Bureau make such a determination with respect to those indices?

Newly established index as replacement for a LIBOR index. Proposed § 1026.55(b)(7)(ii) provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The Bureau solicits comment on whether the Bureau should provide any additional guidance on, or regulatory changes addressing, when an index is newly established with respect to replacing the LIBOR indices for purposes of proposed § 1026.55(b)(7)(ii). The Bureau also solicits comment on whether the Bureau should provide any examples of indices that are newly established with respect to replacing the LIBOR indices for purposes of § 1026.55(b)(7)(ii). If so, what are these indices and why should the Bureau determine these indices are newly established with respect to replacing the LIBOR indices?

Substantially similar rate using index values on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Under proposed § 1026.55(b)(7)(ii), if both the replacement index and LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Proposed comment 55(b)(7)(ii)–2 explains that the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. Proposed comment 55(b)(7)(ii)–2.i and ii provides examples to illustrate this comment for the following two different scenarios: (1) When the margin used to calculate the variable rate is increased pursuant to § 1026.55(b)(3) for new transactions; and (2) when the margin used to calculate the variable rate is increased for the outstanding balances and new transactions pursuant to § 1026.55(b)(4) because the consumer pays the minimum payment more than 60 days late. In both these proposed examples, the change in the margin occurs after December 31, 2020, but prior to date that the card issuer provides a change-in-term notice under § 1026.9(c)(2),

[93] See the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau proposing this determination.

[94] See the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau proposing this determination. Also, as discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(A), the Bureau solicits comment on whether the Bureau should alternatively consider these SOFR-based spread-adjusted indices to be newly established indices for purposes of proposed § 1026.55(b)(7)(ii), to the extent these indices are not being published by the effective date of the final rule, if adopted.

disclosing the replacement index for the variable rates.

In calculating the comparison rates using the replacement index and the LIBOR index used under a credit card account under an open-end (not home-secured) consumer credit plan, the Bureau generally is proposing to require card issuers to use the index values for the replacement index and the LIBOR index in effect on December 31, 2020. The Bureau is proposing to require card issuers to use these index values to promote consistency for card issuers and consumers in which index values are used to compare the two rates. Under proposed § 1026.55(b)(7)(ii), card issuers are permitted to replace the LIBOR index used under the plan and adjust the margin used in calculating the variable rate used under the plan on or after March 15, 2021, but card issuers may vary in the timing of when they provide change-in-terms notices to replace the LIBOR index used on their credit card accounts and when these replacements become effective. For example, one card issuer may replace the LIBOR index used under its credit card plans in April 2021, while another card issuer may replace the LIBOR index used under its credit card plans in October 2021. In addition, a card issuer may not replace the LIBOR index used under its credit card plans at the same time. For example, a card issuer may replace the LIBOR index used under some of its credit card plans in April 2021 but replace the LIBOR index used under other of its credit card plans in May 2021. Nonetheless, regardless of when a particular card issuer replaces the LIBOR index used under its credit card plans, proposed § 1026.55(b)(7)(ii) generally would require that all card issuers to use the index values for the replacement index and the LIBOR index in effect on December 31, 2020, to promote consistency for card issuers and consumers in which index values are used to compare the two rates.

In addition, using the December 31, 2020 date for the index values in comparing the rates may allow card issuers to send out change-in-terms notices prior to March 15, 2021, and have the changes be effective on March 15, 2021, the proposed date on or after which card issuers would be permitted to switch away from using LIBOR as an index on an existing credit card account under proposed § 1026.55(b)(7)(ii). If the Bureau instead required card issuers to use the index values on March 15, 2021, card issuers as a practical matter would not be able to provide change-in-terms notices of the replacement index and any adjusted margin until after March 15, 2021, because they would need the index values from that date in order to calculate the replacement margin. Thus, using the index values on March 15, 2021, would delay when card issuers could switch away from using LIBOR as an index on an existing credit card account.

Also, as discussed in part III, the industry has raised concerns that LIBOR may continue for some time after December 2021 but become less representative or reliable until LIBOR finally is discontinued. Using the index values for the replacement index and the LIBOR index used under the plan in effect on December 31, 2020, may address some of these concerns.

The Bureau solicits comment specifically on the use of the December 31, 2020 index values in calculating the comparison rates under proposed § 1026.55(b)(7)(ii).

Proposed § 1026.55(b)(7)(ii) provides one exception to the proposed general requirement to use the index values for the replacement index and the LIBOR index used under the plan in effect on December 31, 2020. Proposed § 1026.55(b)(7)(ii) provides that if either the LIBOR index or the replacement index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the APR based on the replacement index must be substantially similar to the rate based on the LIBOR index.

As discussed above, proposed § 1026.55(b)(7)(ii) would require a card issuer to use the index values of the replacement index and the LIBOR index on a single day (generally December 31, 2020) [95] to compare the rates to determine if they are ''substantially similar.'' In using a single day to compare the rates, this proposed provision is consistent with the condition in the unavailability provision in current comment 55(b)(2)–6, in the sense that it provides that the new index and margin must result in an APR that is substantially similar to the rate in effect on a single day. For the reasons discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(B), the Bureau solicits comment on whether the Bureau should adopt a different approach to determine whether a rate using the replacement index is ''substantially similar'' to the rate using the LIBOR index for purposes of proposed § 1026.55(b)(7)(ii). For example, the Bureau solicits comment on whether it should require card issuers to use a historical median or average of the spread between the replacement index and the LIBOR index over a certain time frame (*e.g.,* the time period the historical data are available or 5 years, whichever is shorter) for purposes of determining whether a rate using the replacement index is ''substantially similar'' to the rate using the LIBOR index The Bureau also solicits comments on any compliance challenges that might arise as a result of adopting a potentially more complicated method of comparing the rates calculated using the replacement index and the rates calculated using the LIBOR index, and for any identified compliance challenges, how the Bureau could ease those compliance challenges.

Under proposed § 1026.55(b)(7)(ii), in calculating the comparison rates using the replacement index and the LIBOR index used under the plan, the card issuer must use the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The Bureau is proposing that card issuers must use this margin, rather than the margin that applied to the variable rate on December 31, 2020. The Bureau recognizes that card issuers in certain instances may change the margin that is used to calculate the LIBOR variable rate after December 31, 2020, but prior to when the card issuer provides a change-in-terms notice to replace the LIBOR index used under the plan. If the Bureau were to require that the card issuer use the margin that applied to the variable rate on December 31, 2020, this would undo any margin changes that occurred after December 31, 2020, but prior to the card issuer providing a change-in-terms notice of the replacement of the LIBOR index used under the plan, which is inconsistent with the purpose of the comparisons of the rates under proposed § 1026.55(b)(7)(ii).

Proposed comment 55(b)(7)(ii)–3 clarifies that the replacement index and replacement margin are not required to produce an APR that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. Proposed comment 55(b)(7)(ii)–3.i provides an example to illustrate this comment.

The Bureau believes that it may raise compliance issues if the rate calculated using the replacement index and replacement margin at the time the replacement index and replacement margin became effective had to be substantially similar to the rate calculated using the LIBOR index in effect on December 31, 2020. Under

[95] If one or both of the indices are not available on December 31, 2020, proposed § 1026.55(b)(7)(ii) would require that the card issuer use the index values of the indices on the next calendar day that both indices are published.

§ 1026.9(c)(2), the card issuer must provide a change-in-terms notice of the replacement index and replacement margin (including disclosing a reduced margin in a change-in-terms notice provided on or after October 1, 2021, which would be required under proposed § 1026.9(c)(2)(v)(A)) at least 45 days prior to the effective date of the changes. The Bureau believes that this advance notice is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced. Because advance notice of the changes must be given prior to the changes becoming effective, a card issuer would not be able to ensure that the rate based on the replacement index and margin at the time the change-in-terms notice becomes effective will be substantially similar to the rate calculated using the LIBOR index in effect on December 31, 2020. The value of the replacement index may change after December 31, 2020, and before the change-in-terms notice becomes effective.

For the reasons discussed in more detail in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(B), the Bureau is not proposing to address for purposes of proposed § 1026.55(b)(7)(ii) when a rate calculated using the replacement index and replacement margin is ''substantially similar'' to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The Bureau solicits comment, however, on whether the Bureau should provide guidance on, or regulatory changes addressing, the ''substantially similar'' standard in comparing the rates for purposes of proposed § 1026.55(b)(7)(ii), and if so, what guidance, or regulatory changes, the Bureau should provide. For example, should the Bureau provide a range of rates that would be considered ''substantially similar'' as described above, and if so, how should the range be determined? Should the range of rates depend on context, and if so, what contexts should be considered? As an alternative to the range of rates approach, the Bureau solicits comment on whether it should provide factors that card issuers must consider in deciding whether the rates are ''substantially similar'' and if so, what those factors should be. Are there other approaches the Bureau should consider for addressing the ''substantially similar'' standard for comparing rates?

As discussed above, proposed comment 55(b)(7)(ii)–1.ii clarifies that in order to use the SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. For the reasons discussed in the section-by-section analysis of proposed § 1026.40(f)(3)(ii)(B), the Bureau solicits comment on whether the Bureau in the final rule, if adopted, should provide for purposes of proposed § 1026.55(b)(7)(ii) that the rate using the SOFR-based spread-adjusted index is ''substantially similar'' to the rate calculated using the LIBOR index, so long as the card issuer uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Section 1026.59 Reevaluation of Rate Increases

TILA section 148, which was added by the Credit CARD Act, provides that if a creditor increases the APR applicable to a credit card account under an open-end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the APR for such obligor.[96] Section 1026.59 implements this provision. The provisions in § 1026.59 generally apply to card issuers that increase an APR applicable to a credit card account, based on the credit risk of the consumer, market conditions, or other factors. For any rate increase imposed on or after January 1, 2009, card issuers are required to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the APR. The requirement to reevaluate rate increases applies both to increases in APRs based on consumer-specific factors, such as changes in the consumer's creditworthiness, and to increases in APRs imposed based on factors that are not specific to the consumer, such as changes in market conditions or the card issuer's cost of funds. If based on its review a card issuer is required to reduce the rate applicable to an account, the rule requires that the rate be reduced within 45 days after completion of the evaluation. Section 1026.59(f) requires that a card issuer continue to review a consumer's account each six months unless the rate is reduced to the rate in effect prior to the increase.

As discussed in part III, the industry has raised concerns about how the requirements in § 1026.59 would apply to accounts that are transitioning away from using LIBOR indices. The Bureau believes that the sunset of the LIBOR indices and transition to a new index for credit card accounts presents two interrelated issues with respect to compliance with § 1026.59 generally. First, the transition from a LIBOR index to a different index on an account under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) may constitute a rate increase for purposes of whether an account is subject to § 1026.59. Under current § 1026.59 that potential rate increase could occur at the time of transition from the LIBOR index to a different index, or it could occur at a later time. Second, § 1026.59(f) states that, once an account is subject to the general provisions of § 1026.59, the obligation to review factors under § 1026.59(a) ceases to apply if the card issuer reduces the APR to a rate equal to or less than the rate applicable immediately prior to the increase, or if the rate immediately prior to the increase was a variable rate, to a rate equal to or less than a variable rate determined by the same index and margin that applied prior to the increase. In the case where the LIBOR index is no longer available to serve as the ''same index'' that applied prior to the increase, the current regulation does not provide a mechanism by which a card issuer can determine the rate at which it can discontinue the obligation to review factors.

The proposed revisions and additions to the regulation and commentary of § 1026.59 are meant to address these two issues. With respect to the first issue, the addition of proposed § 1026.59(h) excepts rate increases that occur as a result of the transition from the LIBOR index to another index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) from triggering the requirements of § 1026.59. The proposed provision does not except rate

[96] 15 U.S.C. 1665c.

increases already subject to the requirements of § 1026.59 prior to the transition from the LIBOR index from the requirements of § 1026.59. With respect to the second issue, proposed § 1026.59(f)(3) provides a mechanism by which card issuers can determine the rate at which they can discontinue the obligations under § 1026.59 where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index.

As discussed in more detail below, the Bureau also is proposing technical edits to comment 59(d)–2 to replace references to LIBOR with references to the SOFR index.

59(d) Factors

Section 1026.59(d) identifies the factors that card issuers must review if they increase an APR that applies to a credit card account under an open-end (not home-secured) consumer credit plan. Under § 1026.59(a), if a card issuer evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a creditor imposes on similar new accounts. Comment 59(d)–2 provides an illustrative example in which a creditor may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of the LIBOR index. In light of the anticipated discontinuation of LIBOR, the proposed rule would amend the example in comment 59(d)–2 to substitute a SOFR index for the LIBOR index. The proposed rule would also make technical changes for clarity by changing ''prime rate'' to ''prime index.'' In addition, the proposed rule would change ''creditor'' to ''card issuer'' in the comment to be consistent with the terminology used in § 1026.59.

59(f) Termination of the Obligation To Review Factors

59(f)(3)

Current § 1026.59(f) provides that the obligation to review factors under § 1026.59(a) ceases to apply if the card issuer reduces the APR to a rate equal to or less than the rate applicable immediately prior to the increase, or if the rate applicable immediately prior to the increase was a variable rate, to a rate determined by the same index and margin (previous formula) that applied prior to the increase. Once LIBOR is discontinued, it will not be possible for card issuers to use the ''same index.'' Thus, neither current § 1026.59(f)(1) nor § 1026.59(f)(2) would appear to allow termination of the obligation to review.

Accordingly, proposed § 1026.59(f)(3) provides, effective March 15, 2021, a replacement formula that the card issuers can use to terminate the obligation to review factors under § 1026.59(a) when the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index. Proposed § 1026.59(f)(3) is intended to apply to situations in which a LIBOR index is used as the index in the formula used to determine the rate at which the obligation to review factors ceases,[97] and is intended to cover situations where LIBOR will be discontinued.

Proposed § 1026.59(f)(3), if adopted, will be effective as of March 15, 2021, for accounts that are subject to § 1026.59 and use a LIBOR index as the index in the formula to determine the rate at which a card issuer can cease the obligation to review factors under § 1026.59(a). The Bureau believes that March 15, 2021, may be a reasonable date at which issuers can begin using the replacement formula outlined in proposed § 1026.59(f)(3). It is the date when the proposed rulemaking generally is proposed to be effective and provides issuers with a sufficient amount of time to transition to the replacement formula before the estimated sunset of LIBOR. The Bureau solicits comment on whether proposed § 1026.59(f)(3) should have an effective date different than March 15, 2021.

Proposed § 1026.59(f)(3) provides a replacement formula that issuers can use to determine the rate at which a card issuer can cease the obligation to review factors under § 1026.59(a). Under proposed § 1026.59(f)(3), the replacement formula, which includes the replacement index on December 31, 2020, plus replacement margin, must equal the LIBOR index value on December 31, 2020, plus the margin used to calculate the rate immediately prior to the increase. Proposed § 1026.59(f)(3) also provides that a card issuer must satisfy the conditions set forth in proposed § 1026.55(b)(7)(ii) for selecting a replacement index. The Bureau believes that the conditions set forth in proposed § 1026.55(b)(7)(ii) may provide a reasonable method of selecting a replacement index to the LIBOR index for the reasons set forth in the discussion regarding proposed § 1026.55(b)(7)(ii), above. Proposed comment 59(f)–4 provides further clarification on how the replacement index must be selected and refers to the requirements described in proposed § 1026.55(b)(7)(ii) and proposed comment 55(b)(7)(ii)–1.

Proposed § 1026.59(f)(3) uses, in part, the values of the replacement index and the LIBOR index on December 31, 2020, to determine the replacement formula. The Bureau believes that using the December 31, 2020, value of both indices provides a static and consistent reference point by which to determine the formula and is consistent with the index values used in proposed § 1026.55(b)(7)(ii). If either the replacement index or the LIBOR index is not published on December 31, 2020, the card issuer must use the next available date that both indices are published as the index values to use to determine the replacement formula. Proposed § 1026.59(f)(3) also provides that in calculating the replacement formula, the card issuer must use the margin used to calculate the rate immediately prior to the rate increase.

In essence, the replacement formula is calculated as: (Replacement index on December 31, 2020) plus (replacement margin) equals (LIBOR index on December 31, 2020) plus (margin immediately prior to the rate increase). If the replacement index on December 31, 2020, the LIBOR index on December 31, 2020, and the margin immediately prior to the rate increase are known, the replacement margin can be calculated. Once the replacement margin is calculated, the replacement formula is the replacement index value plus the replacement margin value. Proposed comment 59(f)–3 sets forth two examples of how to calculate the replacement formula. Proposed comment 59(f)–3ii.A provides an example of how to calculate the replacement formula in the scenario where the account was subject to § 1026.59 as of March 15, 2021. Proposed comment 59(f)–3ii.B provides an example of how to calculate the replacement formula in the scenario where the account was not subject to § 1026.59 as of March 15, 2021, but does become subject to § 1026.59 prior to the account being transitioned from a LIBOR index in accordance with proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

Proposed § 1026.59(f)(3) provides that the replacement formula must *equal* the

[97] As noted below in the discussion regarding proposed § 1026.59(h)(3), proposed § 1026.59(f)(3) is not intended to apply to rate increases that may result from the switch from a LIBOR index to another index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) as those potential rate increases will be excepted from the provisions of § 1026.59. Proposed § 1026.59(f)(3) is, however, intended to cover rate increases that were already subject to the provisions of § 1026.59 and use a formula under § 1026.59(f) based on a LIBOR index to determine whether to terminate the review obligations under § 1026.59.

previous formula, within the context of the timing constraints (namely the value of the replacement and LIBOR indices as of December 31, 2020). The Bureau believes that providing that the rates must match up when determining the replacement formula may provide the fairest way to produce a replacement mechanism where consumers will not be unduly harmed by the transition away from a LIBOR index used in the formula to determine the rate at which a card issuer may cease its review obligation under § 1026.59.

The Bureau recognizes that this may create some inconsistencies in the rates on some accounts. For example, assume that Account A is a variable-rate account with a LIBOR index where an APR increase occurred under § 1026.55(b)(4) prior to the transition from a LIBOR index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). In order to cease the obligation for review on Account A under § 1026.59, the card issuer must reduce the APR on Account A to an amount based on a formula that is ''equal'' to the LIBOR index value on December 31, 2020, plus the margin immediately prior to the rate increase. In contrast, Account B is a variable-rate account with a LIBOR index that is not subject to § 1026.59. Account B is transitioned from the LIBOR index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) and the resulting APR on Account B must be ''substantially similar'' to the account's pre-transition rate, which means the rate does not have to exactly equal to the pre-transition rate. Account B is subject to the exception in proposed § 1026.59(h)(3) with respect to the transition away from the LIBOR index, and will not be required to meet the requirements of proposed § 1026.59(f)(3). Thus, Account A and Account B may be treated differently with respect to what rate must be applied to the account. The Bureau solicits comment on whether the standard for proposed § 1026.59(f)(3) should be that the replacement formula should be substantially similar to the previous formula (rather than equal to as in the current proposal) to provide consistency with the language in proposed § 1026.55(b)(7)(ii).

59(h) Exceptions

59(h)(3) Transition From LIBOR Exception

Current § 1026.59(h) provides two situations that are excepted from the requirements of § 1026.59. Proposed § 1026.59(h)(3) would add a third exception based upon the transition from a LIBOR index to a replacement index used in setting a variable rate. Specifically, proposed § 1026.59(h)(3) excepts from the requirements of § 1026.59 increases in an APR that occur as the result of the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a replacement index in setting a variable rate if the change from the use of the LIBOR index to a replacement index occurs in accordance with proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). Proposed comment 59(h)–1 clarifies that the proposed exception to the requirements of § 1026.59 does not apply to rate increases already subject to § 1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate, where the change from the use of a LIBOR index to a different index occurred in accordance with proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii).

The Bureau is proposing this exception because the requirements of proposed § 1026.55(b)(7)(i) and (ii) may provide sufficient protection for the consumers when a card issuer is replacing an index under these circumstances for the reasons listed above in the discussion of proposed § 1026.55(b)(7)(i) and (ii). The Bureau believes that absent this proposed exception, some of the accounts transitioning away from a LIBOR index to a replacement index in setting a variable rate under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) would become subject to the requirements of § 1026.59, either at the time of transition or at a later date. The Bureau believes that the potential for compliance issues in transitioning away from a LIBOR index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) while also complying with the requirements of § 1026.59 may be heightened. The Bureau is concerned that requiring card issuers to comply with the rate reevaluation requirements under § 1026.59 with respect to the LIBOR transition under § 1026.55(b)(7)(ii) may cause some card issuers to delay the transition away from the LIBOR index so as to avoid the requirements under § 1026.59. Even if the requirements of § 1026.59 were to apply to the LIBOR transition under § 1026.55(b)(7)(ii), the card issuer would likely only be required to perform one review prior to LIBOR's expected discontinuance sometime after December 2021. Nonetheless, the card issuer could avoid this review if it delayed transitioning the account under § 1026.55(b)(7)(ii) so that the transition occurred within six months of when LIBOR is likely to be discontinued. The Bureau does not believe that this delay in the LIBOR transition would benefit card issuers or consumers. The Bureau seeks comment on issuers' understanding as to whether, and to what extent, the accounts in their portfolios will become subject to § 1026.59 in the transition away from a LIBOR index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii), absent the proposed § 1026.59(h)(3) exception. The Bureau also seeks comment on potential compliance issues in transitioning away from a LIBOR index while also becoming subject to the requirements of § 1026.59.

As noted above, proposed comment 59(h)–1 provides clarification that the exception in proposed § 1026.59(h)(3) does not apply to rate increases already subject to the requirements of § 1026.59 prior to the transition away from a LIBOR index to a replacement index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). In these circumstances, the Bureau is proposing that the accounts should continue to be subject to the requirements of § 1026.59 and consumers should not have to forego reviews on their accounts that could potentially result in rate reductions. The Bureau is proposing not to except these circumstances (where an account is already subject to the requirements of § 1026.59 prior to the transition away from a LIBOR index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii)) because they differ from the situation where an account may become subject to the requirements of § 1026.59 as a result of the transition away from a LIBOR index to a replacement index under proposed § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii). In particular, proposed § 1026.55(b)(7)(i) and (ii) provide that the replacement index plus replacement margin must produce a rate that is substantially similar to the rate in effect at the time the original index became unavailable or the rate that was in effect based on the LIBOR index on December 31, 2020, depending on the provision. These provisions provide safeguards that the consumer will not be unduly harmed after the transition away from a LIBOR index with a rate that is substantially dissimilar to the rate prior to the transition. No similar safeguard exists for accounts on which a rate increase occurred prior to the transition that subjected the account to the requirements of § 1026.59. Absent the requirements of § 1026.59, issuers would not have to continue to review these accounts for possible rate reductions that could potentially bring the rate on the account in line with the rate prior to the increase, as the requirements of § 1026.59 (and proposed § 1026.59(f)(3)) ensure that the account continues to be reviewed for a rate reduction that could potentially return the rate on the account to a rate that is the same as the rate before the increase.

Appendix H to Part 1026—Closed-End Model Forms and Clauses

Appendix H to part 1026 provides a sample form for ARMs for complying with the requirements of § 1026.20(c) in form H–4(D)(2) and a sample form for ARMs for complying with the requirements of § 1026.20(d) in form H–4(D)(4).[98] Both of these sample forms refer to the 1-year LIBOR. In light of the anticipated discontinuation of LIBOR, the proposed rule would substitute the 30-day average SOFR index for the 1-year LIBOR index in the explanation of how the interest rate is determined in sample forms H–4(D)(2) and H–4(D)(4) in appendix H to provide more relevant samples. The proposed rule would also make related changes to other information listed on these sample forms, such as the effective date of the interest rate adjustment, the dates when future interest rate adjustments are scheduled to occur, the date the first new payment is due, the source of information about the index, the margin added in determining the new payment, and the limits on interest rate increases at each interest rate adjustment. To conform to the requirements in § 1026.20(d)(2)(i) and (d)(3)(ii) and to make form H–4(D)(4) consistent with form H–4(D)(3), the Bureau is also proposing to add the date of the disclosure at the top of form H–4(D)(4), which was inadvertently omitted from the original form H–4(D)(4) as published in the **Federal Register** on February 14, 2013.[99]

The Bureau requests comment on whether these revisions to sample forms H–4(D)(2) and H–4(D)(4) are appropriate and whether the Bureau should make any other changes to the forms in appendix H in connection with the LIBOR transition. If the Bureau finalizes the proposed changes to forms H–4(D)(2) and H–4(D)(4), the Bureau also requests comment on whether some creditors, assignees, or servicers might still wish to use the original forms H–4(D)(2) and H–4(D)(4) as published on February 14, 2013, after this final rule's effective date. This might include, for example, creditors, assignees, or servicers who might wish to rely on the original sample forms for notices sent out for LIBOR loans after the proposed March 15, 2021 effective date but before the LIBOR index is replaced or, alternatively, for non-LIBOR loans after the proposed effective date. The Bureau requests comment on whether it would be helpful for the Bureau to indicate in the final rule that the Bureau will deem creditors, assignees, or servicers properly using the original forms H–4(D)(2) and H–4(D)(4) to be in compliance with the regulation with regard to the disclosures required by § 1026.20(c) and (d) respectively, even after the final rule's effective date.

[98] The Bureau notes that these are not required forms and that forms that meet the requirements of § 1026.20(c) or (d) would be considered in compliance with those subsections, respectively.

[99] 78 FR 10902, 11012 (Feb. 14, 2013).

VI. Effective Date

Except as noted below, the Bureau is proposing that the final rule would take effect on March 15, 2021. This proposed effective date generally would mean that the changes to the regulation and commentary would be effective around nine months prior to the expected discontinuation of LIBOR, which is some time after December 2021. For example, creditors for HELOCs and card issuers would have around nine months to transition away from using the LIBOR indices for existing accounts prior to the expected discontinuation of LIBOR. The Bureau requests comment on this proposed effective date.

The Bureau notes that the updated change-in-term disclosure requirements for HELOCs and credit card accounts in the final rule would apply as of October 1, 2021, if the final rule is adopted. This proposed October 1, 2021, date is consistent with TILA section 105(d), which generally requires that changes in disclosures required by TILA or Regulation Z have an effective date of the October 1 that is at least six months after the date the final rule is adopted.[100]

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered the proposed rule's potential benefits, costs, and impacts.[101] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. In developing the proposed rule, the Bureau has consulted, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The proposed rule is primarily designed to address potential compliance issues for creditors affected by the sunset of LIBOR. At this time, LIBOR is expected to be discontinued some time after 2021.

The proposed rule would amend and add several provisions for open-end credit. First, the proposed rule would add LIBOR-specific provisions that would permit creditors for HELOCs and card issuers for credit card accounts to replace the LIBOR index and adjust the margin used to set a variable rate on or after March 15, 2021, if certain conditions are met. Specifically, under the proposed rule, the APR calculated using the replacement index must be substantially similar to the rate calculated using the LIBOR index, based on the values of these indices on December 31, 2020. In addition, creditors for HELOCs and card issuers would be required to meet certain requirements in selecting a replacement index. Under the proposed rule, creditors for HELOCs and card issuers can select an index that is not newly established as a replacement index only if the index has historical fluctuations that are substantially similar to those of the LIBOR index. Creditors for HELOCs or card issuers can also use a replacement index that is newly established in certain circumstances. To reduce uncertainty with respect to selecting a replacement index that meets these standards, the Bureau is proposing to determine that Prime is an example of an index that has historical fluctuations that are substantially similar to those of certain USD LIBOR indices.[102] The Bureau is also proposing to determine that certain spread-adjusted indices based on the SOFR recommended by the ARRC are indices that have historical fluctuations that are substantially similar to those of certain USD LIBOR indices.[103]

[100] 15 U.S.C. 1604(d).

[101] 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 and services; the impact of proposed rules 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.

[102] Specifically, the Bureau is proposing to add to the commentary a proposed determination that Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR.

[103] Specifically, the Bureau is proposing to add to the commentary a proposed determination that the spread-adjusted indices based on SOFR

Second, the proposed rule also would revise existing language in Regulation Z that allows creditors for HELOCs and card issuers to replace an index and adjust the margin on an account if the index becomes unavailable if certain conditions are met.

Third, the proposed rule would revise change-in-terms notice requirements, effective October 1, 2021, for HELOCs and credit card accounts to provide that if a creditor is replacing a LIBOR index on an account pursuant to the proposed LIBOR-specific provisions or because the LIBOR index becomes unavailable as discussed above, the creditor must provide a change-in-terms notice of any reduced margin that will be used to calculate the consumer's variable rate. This would help ensure that consumers are informed of how their variable rates will be determined after the LIBOR index is replaced.

Fourth, the proposed rule would add a LIBOR-specific exception from the rate reevaluation requirements of § 1026.59 applicable to credit card accounts for increases that occur as a result of replacing a LIBOR index to another index in accordance with the LIBOR-specific provisions or as a result of the LIBOR indices becoming unavailable as discussed above.

Fifth, the proposed rule would add provisions to address how a card issuer, where an account was subject to the requirements of the reevaluation reviews in § 1026.59 prior to the switch from a LIBOR index, can terminate the obligation to review where the rate applicable immediately prior to the increase was a variable rate calculated using a LIBOR index.

Sixth, the proposed rule would make technical edits to several open-end provisions to replace LIBOR references with references to a SOFR index and to make related changes.

The Bureau is also proposing several amendments to the closed-end provisions to address the sunset of LIBOR. First, the Bureau is proposing to amend comment 20(a)–3.ii to identify specific indices as an example of a ''comparable index'' for purposes of the closed-end refinancing provisions.[104] Second, the Bureau is proposing technical edits to various closed-end provisions to replace LIBOR references with references to a SOFR index and to make related changes and corrections.

B. Provisions To Be Analyzed

The analysis below considers the potential benefits, costs, and impacts to consumers and covered persons of significant provisions of the proposed rule (proposed provisions), which include the first, third, and fourth open-end provisions described above. The analysis also includes the first closed-end provision described above.[105] Therefore, the Bureau has analyzed in more detail the following four proposed provisions:

1. LIBOR-specific provisions for index changes for HELOCs and credit card accounts,
2. Revisions to change-in-terms notices requirements for HELOCs and credit card accounts to disclose margin decreases, if any,
3. LIBOR-specific exception from the rate reevaluation provisions applicable to credit card accounts, and
4. Commentary stating that specific indices are comparable to certain LIBOR tenors for purposes of the closed-end refinancing provisions.

Because the proposed rule would address the transition of credit products from LIBOR to other indices, which should be complete within the next several years under both the baseline and the proposed rule, the analysis below is limited to considering the benefits, costs, and impacts of the proposed provisions over the next several years.

C. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. The Bureau has performed outreach on many of the issues addressed by the proposed rule, as described in part III. However, as discussed further below, the data are generally limited with which to quantify the potential costs, benefits, and impacts of the proposed provisions.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed provisions. General economic principles and the Bureau's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed provisions.

D. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the proposed rule, the Bureau takes as a baseline the current legal framework governing changes in indices used for variable-rate open-end and closed-end credit products, as applicable. The FCA has announced that it cannot guarantee the publication of LIBOR beyond 2021 and has urged relevant parties to prepare for the transition to alternative reference rates. Therefore, it is likely that even under current regulations, existing contracts for HELOCs, credit card accounts, and closed-end credit tied to a LIBOR index will have transitioned to other indices soon after the end of 2021. Furthermore, for HELOCs, credit card accounts, and closed-end credit, the proposed rule would not significantly alter the requirements that replacement indices for a LIBOR index must satisfy, nor would it alter how these requirements must be evaluated. Hence, the analysis below assumes the proposed rule would not substantially alter the number of HELOCs, credit card accounts, and closed-end credit accounts switched from a LIBOR index to other indices nor would it significantly alter the indices that HELOC creditors, card issuers, and closed-end creditors use to replace a LIBOR index. However, the proposed rule would enable HELOC creditors, card issuers, and closed-end creditors under Regulation Z to transfer existing contracts away from a LIBOR index with more certainty about what is required by and permitted under Regulation Z. The proposed rule would also enable HELOC creditors and card issuers to transfer existing contracts away from a LIBOR index earlier they could under the baseline, if they choose to do so.

The proposed rule, however, would not excuse creditors or card issuers from noncompliance with contractual provisions. For example, a contract for a HELOC or a credit card account may provide that the creditor or card issuer respectively may not replace an index unilaterally under a plan unless the original index becomes unavailable. In this case, even under the proposed rule, the creditor or card issuer would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until LIBOR becomes unavailable.

recommended by the ARRC to replace the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year USD LIBOR indices respectively.

[104] Specifically, the Bureau is proposing to add to the comment an illustrative example indicating that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 1-year USD LIBOR index to the spread-adjusted index based on the SOFR recommended by the ARRC as replacements for these indices, because the replacement index is a comparable index to the corresponding USD LIBOR index.

[105] The Bureau does not believe that the other provisions described above would have any significant costs, benefits, or impacts for consumers or covered persons.

E. Potential Benefits and Costs of the Proposed Rule for Consumers and Covered Persons

Reliable data on the indices credit products are linked to is not generally available, so the Bureau cannot estimate the dollar value of debt tied to LIBOR in the distinct credit markets that may be impacted by the proposed rule. However, the ARRC has estimated that, at the end of 2016, there was $1.2 trillion of mortgage debt (including ARMs, HELOCs, and reverse mortgages) and $100 billion of non-mortgage debt tied to LIBOR.[106]

1. LIBOR-Specific Provisions for Index Changes for HELOCs and Credit Card Accounts

For consumers with HELOCs and credit card accounts with APRs tied to a LIBOR index, and for creditors of HELOCs and card issuers with APRs tied to a LIBOR index, the main effect of the LIBOR-specific provisions that allows HELOC creditors or card issuers under Regulation Z to replace a LIBOR index before it becomes unavailable would be that some creditors and card issuers for HELOCs and credit card accounts respectively would switch those contracts from a LIBOR index to other indices earlier than they would have without the proposed provision. Since the LIBOR indices are likely to become unavailable some time after December 2021, and the proposed provision would allow many creditors and card issuers under Regulation Z to switch on or after March 15, 2021, creditors and card issuers would likely switch contracts from a LIBOR index to other indices at most around nine months earlier than they would without the proposed provision (if permitted by the contractual provisions as discussed above). The Bureau cannot estimate when these accounts will be switched from a LIBOR index under the proposed provision. The Bureau also cannot estimate the number of accounts that contractually cannot be switched from a LIBOR index until that LIBOR index becomes unavailable, although the Bureau believes that a larger proportion of HELOC contracts than credit card contracts are affected by this issue.[107]

The proposed provision also would include revisions to commentary to Regulation Z to state that certain SOFR-based indices have historical fluctuations that are substantially similar to those of certain tenors of LIBOR and that Prime has historical fluctuations that are substantially similar to those of certain tenors of LIBOR. The Bureau believes that market participants, using analysis similar to that the Bureau has performed, would come to these conclusions even without the proposed commentary. Therefore, the Bureau estimates that the proposed commentary would not significantly change the indices that HELOC creditors or card issuers switch to, the dates on which indices are switched, or the manner in which those switches are made.

Potential Benefits and Costs to Consumers

The Bureau believes that the proposed provision would benefit consumers primarily by making their experience transitioning from a LIBOR index more informed and less disruptive than it otherwise could be, although the Bureau does not have the data to quantify the value of this benefit. The Bureau expects this consumer benefit to arise because creditors for HELOCs and card issuers would have more time to transition contracts from LIBOR indices to replacement indices, giving them more time to plan for the transition, communicate with consumers about the transition, and avoid technical or system issues that could affect consumers' accounts during the transition.

The Bureau does not anticipate that the proposed provision would impose any significant costs on consumers on average. Under the proposed provision, creditors for HELOCs and card issuers would have to adjust margins used to calculate the variable rates on the accounts so that consumers' APRs calculated using the value of the replacement index in effect on December 31, 2020, and the replacement margin will produce a rate that is substantially similar to their rates calculated using the value of the LIBOR index in effect on December 31, 2020, and the margins that applied to the variable rates immediately prior to the replacement of the LIBOR index. After the transition, consumers' APRs will be tied to the replacement indices and not to the LIBOR indices. Because the replacement indices creditors for HELOCs and card issuers would switch to are not identical to the LIBOR indices, they will not move identically to the LIBOR indices, and so for the roughly nine months affected by this proposed provision, affected consumers' payments will be different under the proposed provision than they would be under the baseline. On some dates in which indexed rates reset, some replacement indices may have increased relative to the LIBOR index. Consumers with these indices would then pay a cost due to the proposed provision until the next rate reset. On some dates in which indexed rates reset, some replacement indices may have decreased relative to the LIBOR index. Consumers with these indices would then benefit from the proposed provision until the next rate reset. Consumers vary in their constraints and preferences, the credit products they have, the dates those credit products reset, the replacement indices their creditors or card issuers would choose, and the transition dates their creditors or card issuers would choose. The benefits and costs that would accrue to consumers from the proposed provision and that arise because of differences in index movements will vary across consumers and over time. However, the Bureau expects ex-ante for these benefits and costs to be small on average, because the rates creditors or card issuers switch to must be substantially similar to existing LIBOR-based rates using index values in effect on December 31, 2020, and because replacement indices that are not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index.

Potential Benefits and Costs to Covered Persons

The Bureau believes the proposed provision will have three primary benefits for creditors for HELOCs and card issuers. First, under the proposed provision these creditors and card issuers would have more certainty about the transition date and more time to make the transition away from the LIBOR indices. This should increase the ability of HELOC creditors and card issuers to plan for the transition, improving their communication with consumers about the transition, and decreasing the likelihood of technical or system issues that affect consumers' accounts during the transition. Both of these effects should lower the cost of the transition to creditors. Second, the proposed provision will provide creditors for HELOCs and card issuers with additional detail for how to comply with their legal obligations

[106] ARRC, *Second Report* (Mar. 2018), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

[107] Furthermore, some HELOC creditors and card issuers may be able to switch indices from LIBOR to replacement indices even before LIBOR becomes unavailable (under the baseline) or March 15, 2021 (under the proposed rule). For HELOCs, some creditors may be able to switch earlier if the consumer specifically agrees to the change in writing under § 1026.40(f)(3)(iii). For credit card accounts that have been open for at least a year, card issuers may be able to switch indices earlier for new transactions under § 1026.55(b)(3). The Bureau cannot estimate the number of such accounts that could be switched early.

under Regulation Z with respect to the LIBOR transition. This should decrease the cost of legal and compliance staff time preparing for the transition beforehand and dealing with litigation after. Third, the proposed provision also would include revisions to commentary on Regulation Z stating that certain SOFR-based indices have historical fluctuations that are substantially similar to those of certain tenors of LIBOR and that Prime has historical fluctuations that are substantially similar to those of certain tenors of LIBOR. This should decrease the cost of compliance staff time coming to the same conclusions as the proposed commentary before the transition from LIBOR, and it should decrease the cost of litigation after.

As discussed under ''Potential Benefits and Costs to Consumers'' above, because the replacement indices creditors for HELOCs and card issuers would switch to are not identical to the LIBOR indices, they will not move identically to the LIBOR indices, and so for the roughly nine months affected by this proposed provision, affected consumers' payments will be different under the proposed provision than they would be under the baseline. On some dates in which indexed rates reset, some replacement indices will have increased relative to the LIBOR index. HELOC creditors and card issuers with rates linked to these indices will then benefit from the proposed provision until the next rate reset. On some dates in which indexed rates reset, some replacement indices will have decreased relative to the LIBOR index. HELOC creditors and card issuers with rates linked to these indices will then pay a cost due to the proposed provision until the next rate reset. Creditors and card issuers vary in their constraints and preferences, the credit products they issue, the dates those credit products reset, the replacement indices they would choose under the proposed provision, and the transition dates they would choose under the proposed provision. The benefits and costs that would accrue to HELOC creditors and card issuers from the proposed provision and that arise because of differences in index movements will vary across creditors and card issuers and over time. However, the Bureau expects ex-ante for these benefits and costs to be small on average, because the rates creditors or card issuers switch to must be substantially similar to existing LIBOR-based rates using index values in effect on December 31, 2020, and replacement indices that are not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index.

The proposed provision would allow creditors for HELOCs and card issuers under Regulation Z to switch contracts from a LIBOR index earlier than they otherwise would have, but it does not require them to do so. Therefore, this aspect of the proposed provision does not impose any significant costs on HELOC creditors and card issuers. The proposed commentary would not determine that any specific indices have historical fluctuations that are not substantially similar to those of LIBOR, so the proposed revisions would not prevent creditors or card issuers from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, the proposed commentary also does not impose any significant costs on HELOC creditors and card issuers. However, as noted above, the replacement indices HELOC creditors and card issuers choose may move less favorably for them than the LIBOR indices would have.

2. Revisions to Change-in-Terms Notices Requirements for HELOCs and Credit Card Accounts To Disclose Margin Decreases, if Any

The proposed provision would, effective October 1, 2021, require creditors for HELOCs and card issuers to disclose margin reductions to consumers when they switch contracts from using LIBOR indices to other indices. Under both the existing regulation and this proposed provision, creditors for HELOCs and card issuers are required to send consumers change-in-term notices when indices change, disclosing the replacement index and any increase in the margin. Therefore, this proposed provision would not affect the number of consumers who receive change-in-terms notices nor the number of change-in-terms notices creditors for HELOCs or card issuers must provide.

The benefits, costs, and impacts of this proposed provision depend on whether HELOC creditors or card issuers would choose to disclose margin decreases even if not required to do so under the existing regulation. Creditors for HELOCs or card issuers that would not otherwise disclose margin decreases in their change-in-term notices would bear the cost of having to provide slightly longer notices. They may also have to develop distinct notices for different groups of consumers with different initial margins. Consumers with HELOC or credit card accounts from those creditors or card issuers would benefit by having an improved understanding of how and why their APRs would change. However, the Bureau believes it is likely that most creditors for HELOCs and card issuers would choose to disclose margin decreases in their change-in-terms notices even if the existing regulation does not require them to so, because margin decreases are beneficial for consumers, and because in these situations the creditors or card issuers likely benefit from improved consumer understanding. Further, this proposed provision would be effective only beginning October 1, 2021. HELOC creditors and card issuers that would prefer not to disclose margin decreases could choose to change indices before this proposed provision becomes effective (if the change in indices are permitted by the contractual provisions at that time). Therefore, the Bureau expects that both the benefits and costs of this proposed provision for consumers and for HELOC creditors and card issuers would be small.

3. LIBOR-Specific Exception From the Rate Reevaluation Provisions Applicable to Credit Card Accounts

Rate increases may occur due to the LIBOR transition either at the time of transition from the LIBOR index to a different index or at a later time. Under current § 1026.59, in these scenarios card issuers would have to reevaluate the APRs until they equal or fall below what they would have been had they remained tied to LIBOR. The proposed provision would except card issuers from these rate reevaluation requirements for rate increases that occur as a result of the transition from the LIBOR index to another index under the LIBOR-specific provisions discussed above or under the existing regulation that allows card issuers to replace an index when the index becomes unavailable. The proposed provision does not except rate increases already subject to the rate reevaluation requirements prior to the transition from the LIBOR index to another index as discussed above. Because relative rate movements are hard to anticipate ex-ante, it is unlikely that this proposed provision would affect the indices that card issuers use as replacements. Because card issuers can only switch from LIBOR-based rates to rates that are substantially similar using index values in effect on December 31, 2020, and use a replacement index (if the replacement index is not newly established) that has historical fluctuations that are substantially similar to those of the LIBOR index, it is unlikely such rate reevaluations would result in significant rate reductions for consumers before LIBOR is discontinued. Therefore, before LIBOR is discontinued, the impact of this proposed provision on consumers is likely to be small. After LIBOR is discontinued, it will not be possible to compute what consumer rates would have been under the LIBOR indices, and so it is not clear how card issuers would conduct such rate reevaluations after that time. Therefore, after LIBOR is discontinued, the impact of this proposed provision on consumers is not clear. This proposed provision would benefit affected card issuers by saving them the cost of reevaluating rates until LIBOR is discontinued. This proposed provision would impose no costs on affected card issuers because they could still perform rate reevaluations if they choose to do so prior to LIBOR being discontinued.

4. Commentary Stating That Specific Indices are Comparable to Certain LIBOR Tenors for Purposes of the Closed-End Refinancing Provisions

The Bureau is proposing to revise comment 20(a)–3.ii to Regulation Z to state that certain SOFR-based indices are comparable to certain tenors of LIBOR. The Bureau believes that market participants, using analysis similar to that the Bureau has performed, would come to this conclusion even without the proposed commentary. Therefore, the Bureau believes that the proposed commentary would not significantly change the indices that creditors switch to, the dates on which indices are switched, or the manner in which those switches are made. Hence, the Bureau estimates that the proposed revisions would have no significant benefits, costs, or impacts for consumers.

For covered persons, the proposed provision would decrease costs by providing additional clarity and certainty about whether indices are comparable for purposes of Regulation Z. For creditors that would switch from certain LIBOR indices to certain SOFR indices, the proposed provision would decrease the compliance staff time required to come to the conclusion that the SOFR index is comparable to the LIBOR index. The proposed provision could also decrease litigation costs for creditors after the transition from certain LIBOR indices to certain SOFR indices.

The proposed commentary would not determine that any specific indices are not comparable to LIBOR. Therefore, the proposed provision would not prevent creditors from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, the proposed provision would impose no significant costs on creditors.

F. Alternative Provisions Considered

As discussed above in the section-by-section analyses of § 1026.40(f)(3)(ii) and proposed § 1026.55(b)(7), the Bureau considered interpreting the LIBOR indices to be unavailable as of a certain date prior to LIBOR being discontinued. The Bureau briefly discusses the costs, benefits, and impacts of the considered interpretation below.

If the Bureau were to interpret the LIBOR indices to be unavailable under the existing Regulation Z rules prior to LIBOR being discontinued, it could provide benefits similar to those of the proposed rule by allowing creditors and card issuers to switch away from LIBOR indices before LIBOR is discontinued. It might also potentially provide some benefit to consumers and covered persons whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index, by providing some additional clarity in interpreting that provision of their contracts.

However, a determination by the Bureau that the LIBOR indices are unavailable could have unintended consequences on other products or markets. For example, the Bureau is concerned that such a determination could unintentionally cause confusion for creditors for other products (*e.g.,* ARMs) about whether the LIBOR indices are also unavailable for those products and could possibly put pressure on those creditors to replace the LIBOR index used for those products before those creditors are ready for the change. This could impose significant costs on affected consumers and creditors in the markets for these other products.

In addition, even if the Bureau interpreted unavailability to indicate that the LIBOR indices are unavailable prior to LIBOR being discontinued, this interpretation would not completely solve the contractual issues for creditors and card issuers whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index. Creditors and card issuers still would need to decide for their contracts whether the LIBOR indices are unavailable, and that decision could result in litigation or arbitration under the contracts. Thus, even if the Bureau decided that the LIBOR indices are unavailable under Regulation Z as described above, creditors and card issuers whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index essentially would be in the same position under the proposed rule as they would be under the current rule. Therefore, the benefits of the considered interpretation would be small even for the main intended beneficiaries of such an interpretation, specifically the consumers, creditors, and card issuers under contracts that require creditors and card issuers to wait until the LIBOR indices become unavailable before replacing the LIBOR index.

G. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the proposed provisions on depository institutions and credit unions with $10 billion or less in total assets that issue credit products that are tied to LIBOR and are covered by the proposed provisions.

2. Impact of the Proposed Rule on Consumer Access to Credit and on Consumers in Rural Areas

Because the proposed rule would affect only existing accounts that are tied to LIBOR and would generally not affect new loans, the proposed rule would not directly impact consumer access to credit. While the proposed rule would provide some benefits and costs to creditors and card issuers in connection to the transition away from LIBOR, it is unlikely to affect the costs of providing new credit and therefore the Bureau believes that any impact on creditors and card issuers from the proposed rule is not likely to have a significant impact on consumer access to credit.

Consumers in rural areas may experience benefits or costs from the proposed rule that are larger or smaller than the benefits and costs experienced by consumers in general if credit products in rural areas are more or less likely to be linked to LIBOR than credit products in other areas. The Bureau does not have any data or other information to understand whether this is the case. The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results, and other information on the impact of the proposed rule on consumers in rural areas.

VIII. Regulatory Flexibility Act Analysis

A. Overview

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis 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.[108] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[109]

An IRFA is not required for this proposed rule because the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Impact of Proposed Provisions on Small Entities

The analysis below evaluates the potential economic impact of the proposed provisions on small entities as defined by the RFA.[110] A card issuer or depository institution is considered ''small'' if it has $600 million or less in assets.[111] Except for card issuers, non-depository creditors are considered ''small'' if their average annual receipts are less than $41.5 million.[112]

Based on its market intelligence, the Bureau believes that there are few, if any, small card issuers with LIBOR-based cards. Based on its market intelligence, the Bureau estimates that there are approximately 200 to 300 small institutional lenders with variable-rate student loans tied to LIBOR. There are also a few state-sponsored nonbank lenders that offer variable-rate student loans based on LIBOR.

To estimate the number of small mortgage lenders that may be impacted by the proposed rule, the Bureau has analyzed the 2018 Home Mortgage Disclosure Act (HMDA) data.[113] The HMDA data cover mortgage originations, while entities may be impacted by the proposed rule if they hold debt tied to LIBOR. The data will therefore not include entities that originated LIBOR-linked debt before 2018 but not during 2018, even if those entities still hold that debt. The data will include entities that originated LIBOR-linked debt in 2018 but will have sold it before the proposed rule would come into effect, and so would not be impacted by the proposed rule. Other limitations of the data are discussed below. Despite these limitations, the HMDA data are the best data source currently available to the Bureau to quantify the number of small mortgage lenders that may be impacted by the proposed rule.

The HMDA data include entities that originate ARMs, HELOCs, and reverse mortgages. The data include information on whether mortgages are open-end or closed-end, although some entities are exempt from reporting this information.[114] The data do not include information on whether or not mortgages have rates that are tied to LIBOR. The data do indicate whether or not mortgages have rates that may change. This measure is used as a proxy for potential exposure to the proposed rule. Mortgages may have rates that are linked to indices besides LIBOR. They may also have ''step rates'' that switch from one pre-determined rate to another pre-determined rate that is not linked to any index. Therefore, the proxy for potential exposure to the proposed rule likely overstates the number of entities with rates tied to LIBOR.

Based on this data, the Bureau estimates that there are 117 small depositories that originated at least one closed-end adjustable-rate mortgage product in 2018 and so may be affected by the closed-end provisions of the proposed rule, and there are 669 small depositories that originated at least one open-end adjustable-rate mortgage product and so may be affected by the open-end provisions of the proposed rule. Of these, 82 small depositories originated at least one closed-end adjustable rate mortgage product and one open-end adjustable rate mortgage product, and so may be affected by both the open-end and closed-end provisions of the proposed rule.

The definition of ''small'' for purposes of the RFA for non-depository institutions that originate mortgages depends on average annual receipts. The HMDA data do not include this information, and so the Bureau cannot estimate the number of small non-depository mortgage lenders that may be affected by the proposed rule. The Bureau estimates that there are 50 non-depository mortgage lenders that originated at least one closed-end adjustable-rate mortgage product and 640 non-depository mortgage lenders that originated at least one open-end adjustable-rate mortgage product. Of these, 43 originated at least one closed-end and one open-end adjustable-rate mortgage product.

The numbers above do not include entities that reported originating mortgages but under the EGRRCPA were exempt from reporting whether or not those mortgages had adjustable rates. There are 1,530 such small depositories in the 2018 HMDA data. There are five such non-depository institutions in the 2018 HMDA data. These entities may have originated adjustable-rate mortgage products that were not explicitly reported as such.

Finally, the numbers above also do not include entities that may have originated adjustable-rate mortgages in 2018 that were exempt entirely from reporting any 2018 HMDA data. The Bureau has estimated that approximately 11,800 institutions originated at least one closed-end mortgage loan in 2018, and 5,666 institutions reported HMDA data in 2018.[115] This implies that approximately 6,134 institutions originated at least one closed-end

[108] 5 U.S.C. 601 *et seq.*

[109] 5 U.S.C. 609.

[110] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[111] U. S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf* (current SBA size standards).

[112] *Id.*

[113] *See* Bureau of Consumer Fin. Prot., *Introducing New and Revised Data Points in HMDA* (Aug. 2019), available at *https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf.*

[114] In May 2017, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) that granted certain HMDA reporters partial exemptions from HMDA reporting. The closed-end partial exemption applies to HMDA reporters that are insured depository institutions or insured credit unions and that originated fewer than 500 closed-end mortgages in each of the two preceding years. HMDA reporters that are insured depository institutions or insured credit unions that originated fewer than 500 open-end lines of credit in each of the two preceding years also qualify for a partial exemption with respect to reporting their open-end transactions. The insured depository institutions must also not have received certain less than satisfactory examination ratings under the Community Reinvestment Act of 1977 to qualify for the partial exemptions.

[115] *See* Bureau of Consumer Fin. Prot., *Data Point: 2018 Mortgage Market Activity and Trends* (Aug. 2019), available at *https://files.consumerfinance.gov/f/documents/cfpb_2018-mortgage-market-activity-trends_report.pdf.*

mortgage in 2018 but are not in the HMDA data. Because these institutions are not in the HMDA data, the Bureau cannot estimate the number that may have originated adjustable-rate mortgages. Furthermore, the Bureau cannot confirm that they are small for purposes of the RFA, although it is likely they are because HMDA reporting thresholds are based in part on origination volume. Finally, the Bureau cannot estimate the number of institutions that did not report HMDA data in 2018 but did originate at least one open-end mortgage loan in 2018, or at least one closed-end and one open-end mortgage loan in 2018.

As discussed above in part VII, there are four main proposed provisions:

1. LIBOR-specific provisions for index changes for HELOCs and credit card accounts,

2. Revisions to change-in-terms notices requirements for HELOCs and credit card accounts to disclose margin decreases, if any,

3. LIBOR-specific exception from the rate reevaluation provisions applicable to credit card accounts, and

4. Commentary stating that specific indices are comparable to certain LIBOR tenors for purposes of the closed-end refinancing provisions.

The proposed LIBOR-specific provisions for index change requirements for open-end credit would allow HELOC creditors and card issuers, including small entities, under Regulation Z to switch away from LIBOR earlier than they would under the baseline, but it does not require them to do so.[116] This additional flexibility would benefit small entities with these outstanding credit products tied to LIBOR, by reducing uncertainty and allowing them to implement the switch in a more orderly way. This additional flexibility would not impose any significant costs on HELOC creditors and card issuers, including small entities.

The proposed LIBOR-specific provisions for index change requirements for open-end credit also would include revisions to commentary to Regulation Z to state that certain SOFR-based indices have historical fluctuations that are substantially similar to those of certain tenors of LIBOR and that Prime has historical fluctuations that are substantially similar to those of certain tenors of LIBOR. The proposed commentary would not determine that any specific indices have historical fluctuations that are not substantially similar to those of LIBOR, so the proposed revisions would not prevent creditors or card issuers from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, the proposed commentary does not impose any significant costs on HELOC creditors and card issuers, including small entities. Therefore, the proposed LIBOR-specific provisions for index change requirements for open-end credit would impose no significant burden on small entities.

The proposed revisions to change-in-terms notices requirements to disclose margin decreases, if any, expand regulatory requirements for creditors for HELOCs and card issuers, including small entities, and therefore may increase their compliance costs. The proposed provision would, effective October 1, 2021, require creditors for HELOCs and card issuers, including small entities, to disclose margin reductions to consumers when they switch contracts from using LIBOR indices to other indices. Under both the existing regulation and the proposed provision, creditors for HELOCs and card issuers, including small entities, are required to send consumers change-in-term notices when indices change, disclosing the replacement index and any increase in the margin. Therefore, this proposed provision would not affect the number of consumers who receive change-in-terms notices nor the number of change-in-terms notices creditors for HELOCs or card issuers, including small entities, must provide.

The benefits, costs, and impacts of this proposed provision depend on whether HELOC creditors or card issuers, including small entities, would choose to disclose margin decreases even if not required to do so under the existing regulation. Creditors for HELOCs or card issuers, including small entities, that would not otherwise disclose margin decreases in their change-in-term notices would bear the cost of having to provide slightly longer notices. They may also have to develop distinct notices for different groups of consumers with different initial margins. However, the Bureau believes it is likely that most creditors for HELOCs and card issuers, including small entities, would choose to disclose margin decreases in their change-in-terms notices even if the existing regulation does not require them to so, because margin decreases are beneficial for consumers, and because in these situations the creditors or card issuers likely benefit from improved consumer understanding. Further, this proposed provision would be effective only beginning effective October 1, 2021. HELOC creditors and card issuers, including small entities, that would prefer not to disclose margin decreases could choose to change indices before this proposed provision becomes effective (if the change in indices are permitted by the contractual provisions at that time). Therefore, the Bureau expects that both the benefits and costs of this proposed provision for HELOC creditors and card issuers, including small entities, would be small. Therefore, this proposed provision would not impose significant costs on a significant number of small entities.

The LIBOR-specific exception from the rate reevaluation provisions applicable to credit card accounts would benefit affected card issuers, including small entities, by saving them the cost of reevaluating rate increases that occur as a result of the transition from the LIBOR index to another index under the LIBOR-specific provisions discussed above or under the existing regulation that allows card issuers to replace an index when the index becomes unavailable. This proposed provision would impose no costs on affected card issuers, including small entities, because they could still perform rate reevaluations if they choose to do so until LIBOR is discontinued. Therefore, this proposed provision would impose no significant burden on small entities.

The Bureau is proposing to revise comment 20(a)–3.ii to Regulation Z to state that certain SOFR-based indices are comparable to certain tenors of LIBOR. The proposed commentary would not determine that any specific indices are not comparable to LIBOR. Therefore, the proposed provision would not prevent creditors from switching to other indices as long as those indices still satisfy regulatory requirements. Therefore, the proposed provision would impose no significant costs on creditors, including small entities.

Accordingly, the Director hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comment on the

[116] As discussed in the section-by-section analyses of § 1026.40(f)(3)(ii) and proposed § 1026.55(b)(7) above, the proposal, however, would not excuse creditors or card issuers from noncompliance with contractual provisions. For example, a contract for a HELOC or a credit card account may provide that the creditor or card issuer respectively may not replace an index unilaterally under a plan unless the original index becomes unavailable. In this case, even under the proposal the creditor or card issuer would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable.

analysis above and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[117] Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation. The collections of information related to Regulation Z have been previously reviewed and approved by OMB and assigned OMB Control number 3170–0015. 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.

The Bureau has determined that this proposed rule would not impose any new or revised information collection requirements (recordkeeping, reporting or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

X. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart B—Open-End Credit

■ 2. Section 1026.9 is amended by revising paragraphs (c)(1)(ii) and (c)(2)(v)(A) to read as follows:

[117] 44 U.S.C. 3501 *et seq.*

§ 1026.9 Subsequent disclosure requirements.

* * * * *

(c) * * *

(1) * * *

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge (except that on or after October 1, 2021, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or (B)) or when the change results from an agreement involving a court proceeding.

* * * * *

(2) * * *

(v) * * *

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge (except that on or after October 1, 2021, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by § 1026.55(b)(7)(i) or (ii)); suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 1026.36 [Amended]

■ 3. Section 1026.36 is amended by removing ''LIBOR'' and adding in its place ''SOFR'' in paragraphs (a)(4)(iii)(C) and (a)(5)(iii)(B).

■ 4. Section 1026.40 is amended by revising paragraph (f)(3)(ii) to read as follows:

§ 1026.40 Requirements for home equity plans.

* * * * *

(f) * * *

(3) * * *

(ii)(A) Change the index and margin used under the plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an annual percentage rate substantially similar to the rate in effect when the original index became unavailable; or

(B) If a variable rate on the plan is calculated using a LIBOR index, change the LIBOR index and the margin for calculating the variable rate on or after March 15, 2021, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the replacement index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the replacement index must be substantially similar to the rate based on the LIBOR index.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

■ 5. Section 1026.55 is amended by adding paragraph (b)(7) to read as follows:

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

* * * * *

(b) * * *

(7) *Index replacement and margin change exception.* A card issuer may

increase an annual percentage rate when:

(i) The card issuer changes the index and margin used to determine the annual percentage rate if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable; or

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after March 15, 2021, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on December 31, 2020, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the replacement index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the replacement index must be substantially similar to the rate based on the LIBOR index.

* * * * *

■ 6. Section 1026.59 is amended by adding paragraphs (f)(3) and (h)(3) to read as follows:

§ 1026.59 Reevaluation of rate increases.

* * * * *

(f) * * *

(3) Effective March 15, 2021, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on December 31, 2020, plus replacement margin that is equal to the LIBOR index value on December 31, 2020, plus the margin used to calculate the rate immediately prior to the increase (previous formula). A card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. If either the LIBOR index or the replacement index is not published on December 31, 2020, the card issuer must use the values of the indices on the next calendar day that both indices are published as the index values to use to determine the replacement formula.

* * * * *

(h) * * *

(3) *Transition from LIBOR.* The requirements of this section do not apply to increases in an annual percentage rate that occur as a result of the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a replacement index in setting a variable rate if the change from the use of the LIBOR index to a replacement index occurs in accordance with § 1026.55(b)(7)(i) or (ii).

■ 7. Appendix H to part 1026 is amended by revising the entries for H–4(D)(2) and H–4(D)(4) to read as follows:

Appendix H to Part 1026—Closed-End Model Forms and Clauses

* * * * *

H–4(D)(2) Sample Form for § 1026.20(c)

BILLING CODE 4810–AM–P

July 20, 2021

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2021

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2021, so on that date your interest rate and mortgage payment change. After that, your interest rate may change every six months for the rest of your loan term.

	Current Rate and Monthly Payment	**New** Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Total Monthly Payment	**$983.88**	**$1,211.81 (due October 1, 2021)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%.

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the SOFR index, your margin, your loan balance of $189,440, and your remaining loan term of 324 months.

Prepayment Penalty: Keep in mind that if you pay off your loan, refinance or sell your home before September 1, 2021, you could be charged a penalty. Contact Springside Mortgage at (800) 765-4321 for more information, such as the maximum amount of the penalty you could be charged.

* * * * *

H–4(D)(4) Sample Form for § 1026.20(d)

February 15, 2021

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Springside Mortgage
1234 Main St
Memphis, TN 31801

Changes to Your Mortgage Interest Rate and Payments on September 1, 2021

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2021, so on that date your interest rate may change. After that, your interest rate may change every six months for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of September 1, 2021 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	**Estimated** New Rate and Monthly Payment
Interest Rate	4.25%	6.25%
Principal	- **none** -	$237.70
Interest	$708.33	$1,041.66
Escrow (Taxes and Insurance)	$450.00	$450.00
Total Monthly Payment	**$1,158.33**	**$1,729.36 (due October 1, 2021)**

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is the 30-day Average SOFR (SOFR) and your margin is 2.75%. The SOFR index is published daily on the website of the Federal Reserve Bank of New York.

Rate Limits: Your rate cannot go higher than 11.625% over the life of the loan. Your rate can change every six months by no more than 1.00%. We did not include an additional 1.00% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on March 1, 2022.

New Interest Rate and Monthly Payment: The table above shows our estimate of your new interest rate and new monthly payment. These amounts are based on the SOFR index as of now, your margin, your loan balance of $200,000, and your remaining loan term of 324 months. **However, if the SOFR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- Contact Springside Mortgage at 1-800-555-4567 as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options **may** be possible (most are subject to lender approval):
  - Refinance your loan with us or another lender;
  - Sell your home and use the proceeds to pay off your current loan;
  - Modify your loan terms with us;
  - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at 800-569-4287 or visit www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. If you would like contact information for a State housing finance agency, visit the U.S. Consumer Financial Protection Bureau (CFPB) at http://www.consumerfinance.gov.

BILLING CODE 4810–AM–C

* * * * *

■ 8. In supplement I to part 1026:

■ a. Under *Section 1026.9—Subsequent Disclosure Requirements,* revise *9(c)(1)(ii) Notice not Required, 9(c)(2)(iv) Disclosure Requirements,* and *9(c)(2)(v) Notice not Required.*

■ b. Under *Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events,* revise *20(a) Refinancings.*

■ c. Under *Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate),* revise *37(j)(1) Index and margin.*

■ d. Under *Section 1026.40—Requirements for Home-Equity Plans,* revise *Paragraph 40(f)(3)(ii)* and add *Paragraph 40(f)(3)(ii)(A)* and *Paragraph 40(f)(3)(ii)(B).*

■ e. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges,* revise *55(b)(2) Variable rate exception* and add *55(b)(7) Index replacement and margin change exception.*

■ f. Under *Section 1026.59—Reevaluation of Rate Increases,* revise *59(d) Factors* and *59(f) Termination of Obligation to Review Factors* and add *59(h) Exceptions.*

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.9—Subsequent Disclosure Requirements

* * * * *

9(c)(1)(ii) Notice Not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (But see § 1026.40(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as ''You may skip your October payment,'' or ''We will waive your finance charges for January,'' may serve as the change-in-terms notice.

3. *Replacing LIBOR.* The exception in § 1026.9(c)(1)(ii) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2021, to margin reductions when a LIBOR index is replaced, as permitted by § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B). For change-in-terms notices provided under § 1026.9(c)(1) on or after October 1, 2021 covering changes permitted by § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B), a creditor must provide a change-in-terms notice under § 1026.9(c)(1) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B), even if the margin is reduced. Prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B).

* * * * *

9(c)(2)(iv) Disclosure Requirements

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime index to using a SOFR index in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on a SOFR index.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with § 1026.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with § 1026.55(b)(4). *See* comment 55(b)(2)–4 regarding the limitations in § 1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 1026.6(b)(1) and (2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater (Max: $100),'' and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater (Max: $100).''

7. *Combining a notice described in § 1026.9(c)(2)(iv) with a notice described in § 1026.9(g)(3).* If a creditor is required to provide a notice described in § 1026.9(c)(2)(iv) and a notice described in § 1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being

increased. The sample discloses the consumer's right to reject the changes in accordance with § 1026.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* § 1026.5(a)(2) for terminology requirements applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

11. *Reasons for increase.* i. *In general.* Section 1026.9(c)(2)(iv)(A)(*8*) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under § 1026.9(c)(2)(iv)(A)(*8*) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to ''a decline in your creditworthiness'' or ''a decline in your credit score.'' Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as ''a change in market conditions.'' In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, § 1026.9(c)(2)(iv)(A)(*8*) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

9(c)(2)(v) Notice Not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by § 1026.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* i. *Skipped or reduced payments.* If a credit program allows consumers to skip or reduce one or more payments during the year, no notice of the change in terms is required either prior to the reduction in payments or upon resumption of the higher payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original payment schedule, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the skip feature may also be used to notify the consumer of the resumption of the original payment schedule, either by stating explicitly when the higher resumes or by indicating the duration of the skip option. Language such as ''You may skip your October payment'' may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates or fees.* If a credit program involves temporary reductions in an interest rate or fee, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate or fee if these features are disclosed in advance in accordance with the requirements of § 1026.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate or fee, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate or fee must comply with the timing requirements of § 1026.9(c)(2)(i) and the content and format requirements of § 1026.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). *See* comment 55(b)–3 for guidance regarding the application of § 1026.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate.* See comment 9(c)(2)(iv)–3.

4. *Changing from a non-variable rate to a variable rate.* See comment 9(c)(2)(iv)–4.

5. *Temporary rate or fee reductions offered by telephone.* The timing requirements of § 1026.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 1026.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) or the imposition of a fee that will be in effect for a specified period of time (a temporary fee) if:

i. The consumer accepts the offer of the temporary rate or temporary fee by telephone;

ii. The creditor permits the consumer to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 1026.9(c)(2)(v)(B), except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee; and

iii. The disclosures required by § 1026.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's account reinstated, if applicable, are disclosed to the consumer as part of the temporary rate or temporary fee offer.

6. *First listing.* The disclosures required by § 1026.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate or fee in the disclosure provided to the consumer. For purposes of § 1026.9(c)(2)(v)(B), the first statement of the temporary rate or fee is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate or fee does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate or fee is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see § 1026.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by § 1026.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate or fee that would apply after expiration of the period on a separate page or document from the temporary rate or fee and the length of the period, provided that the disclosure of the annual percentage rate or fee that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate or fee and length of the period.

8. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state ''After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate.''

9. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in § 1026.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and § 1026.9(c)(2)(v)(B), ''deferred interest'' has the same meaning as in § 1026.16(h)(2) and associated commentary. For such programs, a creditor must disclose pursuant to § 1026.9(c)(2)(v)(B)(*1*) the length of the deferred interest period and the rate that will

apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 1026.9(c)(2)(v)(B)(*1*) include:

i. ''No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%.''

ii. ''No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%.''

10. *Relationship between §§ 1026.9(c)(2)(v)(B) and 1026.6(b).* A disclosure of the information described in § 1026.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with § 1026.6(b) complies with the requirements of § 1026.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6.

11. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 1026.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 1026.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(xi), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

12. *Index not under creditor's control. See* comment 55(b)(2)–2 for guidance on when an index is deemed to be under a creditor's control.

13. *Temporary rates—relationship to § 1026.59.* i. *General.* Section 1026.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 1026.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 1026.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 1026.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. *See* § 1026.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

i. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with § 1026.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under § 1026.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with § 1026.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

14. *Replacing LIBOR.* The exception in § 1026.9(c)(2)(v)(A) under which a creditor is not required to provide a change-in-terms notice under § 1026.9(c)(2) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2021, to margin reductions when a LIBOR index is replaced as permitted by § 1026.55(b)(7)(i) or (b)(7)(ii). For change-in-terms notices provided under § 1026.9(c)(2) on or after October 1, 2021, covering changes permitted by § 1026.55(b)(7)(i) or (b)(7)(ii), a creditor must provide a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under § 1026.55(b)(7)(i) or (b)(7)(ii), even if the margin is reduced. Prior to October 1, 2021, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by § 1026.55(b)(7)(i) or (b)(7)(ii).

* * * * *

Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

1. *Definition.* A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A transaction is subject to § 1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. For example, a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index to the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index respectively because the replacement index is a comparable index to the corresponding U.S. Dollar LIBOR index.

iii. If either of the events in paragraph 20(a)–3.ii.A or ii.B occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 1026.19(b) also must be given at that time.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer

nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A ''refinancing'' by any other person is a new transaction under the regulation, not a refinancing under this section.

Paragraph 20(a)(1)

1. *Renewal.* This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in § 1026.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2)

1. Annual *percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change.* A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in § 1026.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

Paragraph 20(a)(3)

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to § 1026.2(a)(14) for a discussion of court-approved agreements that are not considered ''credit.'')

Paragraph 20(a)(4)

1. *Workout agreements.* A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Paragraph 20(a)(5)

1. *Insurance renewal.* The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

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Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

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37(j)(1) Index and Margin

1. *Index and margin.* The index disclosed pursuant to § 1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, ''SOFR'' may be disclosed instead of Secured Overnight Financing Rate. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as ''4.25%.''

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Section 1026.40—Requirements for Home-Equity Plans

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Paragraph 40(f)(3)(ii)

1. *Replacing LIBOR.* A creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace a LIBOR index used under a plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the creditor from noncompliance with contractual provisions. The following examples illustrate when a creditor may use the provisions in § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace the LIBOR index used under a plan.

i. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor may use § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.40(f)(3)(ii)(B) provides that a creditor may replace the LIBOR index if, among other conditions, the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. In this case, however, the creditor would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a creditor may change the terms of the contract (including the index) as permitted by law. In this case, if the creditor replaces a LIBOR index under a plan on or after March 15, 2021, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use § 1026.40(f)(3)(ii)(A). If the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace the LIBOR index if the conditions of the applicable provision are met.

Paragraph 40(f)(3)(ii)(A)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

2. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the prime rate and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. See also comment 40(f)(3)(ii)(A)–3.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. See also comment 40(f)(3)(ii)(A)–3.

3. *Substantially similar rate when LIBOR becomes unavailable.* Under § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. For this comparison of the rates, a creditor must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under a plan becomes unavailable on December 31, 2021, and on that day the LIBOR index value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a creditor has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2021. The creditor would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on December 31, 2021.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on January 2, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on January 18, 2022, the creditor satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after December 31, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on January 18, 2022, is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2021.

Paragraph 40(f)(3)(ii)(B)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the prime rate index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the prime rate is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the prime rate must be substantially similar to the rate based on the LIBOR index. See also comments 40(f)(3)(ii)(B)–2 and –3.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the creditor must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. See also comments 40(f)(3)(ii)(B)–2 and –3.

2. *Using index values on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.40(f)(3)(ii)(B), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The following example illustrates this comment.

i. Assume a variable rate used under the plan that is based on a LIBOR index and assume that LIBOR becomes unavailable after March 15, 2021. On December 31, 2020, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume on January 1, 2021, a creditor provides a change-in-terms notice under § 1026.9(c)(1) disclosing a new margin of 12% for the variable rate pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin becomes effective on January 1, 2021, pursuant to § 1026.9(c)(1). Assume that there are no more changes in the margin that is used in calculating the variable rate prior to February 27, 2021, the date on which the creditor provides a change-in-term notice under § 1026.9(c)(1), disclosing the replacement index and replacement margin for the variable rate that will be effective on March 15, 2021. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 12%. Assume that the creditor has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A replacement margin of 9% is permissible under § 1026.40(f)(3)(ii)(B) because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan (which is 12%).

3. *Substantially similar rates using index values on December 31, 2020.* Under § 1026.40(f)(3)(ii)(B), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on

December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under the plan has a value of 2% on December 31, 2020, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the creditor has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A creditor would satisfy the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on February 27, 2021, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on March 15, 2021, the creditor satisfies the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR index value changes after December 31, 2020, and the annual percentage rate calculated using the prime index value and 7% margin on March 15, 2021, is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2020, or substantially similar to the rate calculated using the LIBOR index value on March 15, 2021.

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Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

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55(b)(2) Variable Rate Exception

1. *Increases due to increase in index.* Section 1026.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, from time to time, a card issuer may change the day on which index values are measured to determine changes to the rate.

2. *Index not under card issuer's control.* A card issuer may increase a variable annual percentage rate pursuant to § 1026.55(b)(2) only if the increase is based on an index or indices outside the card issuer's control. For purposes of § 1026.55(b)(2), an index is under the card issuer's control if:

i. The index is the card issuer's own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal,* even if the card issuer's own prime rate is one of several rates used to establish the published rate.

ii. The variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. A card issuer is permitted, however, to establish a fixed maximum rate that does not permit the variable rate to increase consistent with increases in an index. For example, assume that, under the terms of an account, a variable rate will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index. When the account is opened, the index is 10% and therefore the variable rate is 15%. If the terms of the account provide that the variable rate will not decrease below 15% even if the index decreases below 10%, the card issuer cannot increase that rate pursuant to § 1026.55(b)(2). However, § 1026.55(b)(2) does not prohibit the card issuer from providing in the terms of the account that the variable rate will not increase above a certain amount (such as 20%).

iii. The variable rate can be calculated based on any index value during a period of time (such as the 90 days preceding the last day of a billing cycle). A card issuer is permitted, however, to provide in the terms of the account that the variable rate will be calculated based on the average index value during a specified period. In the alternative, the card issuer is permitted to provide in the terms of the account that the variable rate will be calculated based on the index value on a specific day (such as the last day of a billing cycle). For example, assume that the terms of an account provide that a variable rate will be adjusted at the beginning of each quarter by adding a margin of 7 percentage points to a publicly-available index. At account opening at the beginning of the first quarter, the variable rate is 17% (based on an index value of 10%). During the first quarter, the index varies between 9.8% and 10.5% with an average value of 10.1%. On the last day of the first quarter, the index value is 10.2%. At the beginning of the second quarter, § 1026.55(b)(2) does not permit the card issuer to increase the variable rate to 17.5% based on the first quarter's maximum index value of 10.5%. However, if the terms of the account provide that the variable rate will be calculated based on the average index value during the prior quarter, § 1026.55(b)(2) permits the card issuer to increase the variable rate to 17.1% (based on the average index value of 10.1% during the first quarter). In the alternative, if the terms of the account provide that the variable rate will be calculated based on the index value on the last day of the prior quarter, § 1026.55(b)(2) permits the card issuer to increase the variable rate to 17.2% (based on the index value of 10.2% on the last day of the first quarter).

3. *Publicly available.* The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the account.

4. *Changing a non-variable rate to a variable rate.* Section 1026.55 generally prohibits a card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable rate to the extent permitted by one of the exceptions in § 1026.55(b). For example, § 1026.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, § 1026.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in § 1026.9(b), (c) or (g)).

5. *Changing a variable rate to a non-variable rate.* Nothing in § 1026.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 1026.9(c). For example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to § 1026.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

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55(b)(7) Index Replacement and Margin Change Exception

1. *Replacing LIBOR.* A card issuer may use either the provision in § 1026.55(b)(7)(i) or (b)(7)(ii) to replace a LIBOR index used under the plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the card issuer from noncompliance with contractual provisions. The following examples illustrate when a card issuer may use the provisions in § 1026.55(b)(7)(i) or (b)(7)(ii) to replace a LIBOR index on the plan.

i. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. The card issuer may use § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if, among other conditions, the replacement index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. In this case, however, the card issuer would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using § 1026.55(b)(7)(i) or (b)(7)(ii) to replace the LIBOR index used under the plan if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after March 15, 2021, and assume a contract provides that a card issuer may change the terms of the contract (including the index) as permitted by law. In this case, if the card issuer replaces the LIBOR index used under the plan on or after March 15, 2021, but does not wait until the LIBOR index becomes unavailable to do so, the card issuer may only use § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In that case, the card issuer may not use § 1026.55(b)(7)(i). If the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace LIBOR, the card issuer has the option of using § 1026.55(b)(7)(i) or (b)(7)(ii) to replace the LIBOR index if the conditions of the applicable provisions are met.

Paragraph 55(b)(7)(i)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the prime rate and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. See also comment 55(b)(7)(i)–2.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. See also comment 55(b)(7)(i)–2.

2. *Substantially similar rate when LIBOR becomes unavailable.* Under § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect at the time the LIBOR index used under the plan became unavailable. For this comparison of the rates, a card issuer must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under the plan becomes unavailable on December 31, 2021, and on that day the LIBOR value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2021. The card issuer would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on December 31, 2021.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on January 2, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on February 17, 2022, the card issuer satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after December 31, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on February 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2021.

Paragraph 55(b)(7)(ii)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the prime rate index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the prime rate is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the prime rate must be substantially similar to the rate based on the LIBOR index. See also comments 55(b)(7)(ii)–2 and –3.

ii. The Bureau has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index value in effect on December 31, 2020, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If either the LIBOR index or the SOFR-based spread-adjusted index is not published on December 31, 2020, the card issuer must use the next calendar day that both indices are published as the date on which the annual percentage rate based on the SOFR-based spread-adjusted index must be substantially similar to the rate based on the LIBOR index. See also comments 55(b)(7)(ii)–2 and –3.

2. *Using index values on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.55(b)(7)(ii), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The following examples illustrate how to determine the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

i. Assume a variable rate used under the plan that is based on a LIBOR index, and assume that LIBOR becomes unavailable after March 15, 2021. On December 31, 2020, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2020, pursuant to § 1026.55(b)(3), a card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing a new margin of 12% for the variable rate that will apply to new transactions after November 30, 2020, and this change in the margin becomes effective on January 1, 2021. The margin for the variable rate applicable to the transactions that occurred on or prior to November 30, 2020, remains at 10%. Assume that there are no more changes in the margin used on the variable rate that applied to transactions that occurred after November 30, 2020, or to the margin used on the variable rate that applied to transactions that occurred on or prior to November 30, 2020, prior to when the card issuer provides a change-in-terms notice on January 28, 2021, disclosing the replacement index and replacement margins for both variable rates that will be effective on March 15, 2021. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred on or prior to November 30, 2020, is 10%. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2020, is 12%. Assume that the card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A replacement margin of 7% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred on or prior to November 30, 2020, because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 12%, which is substantially similar to the 12% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for that balance (which is 10%). A replacement margin of 9% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred after November 30, 2020, because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2020, (which is 12%).

ii. Assume a variable rate used under the plan that is based on a LIBOR index, and assume that LIBOR becomes unavailable after March 15, 2021. On December 31, 2020, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2020, pursuant to § 1026.55(b)(4), a card issuer provides a penalty rate notice under § 1026.9(g) increasing the margin for the variable rate to 20% that will apply to both outstanding balances and new transactions effective January 1, 2021, because the consumer was more than 60 days late in making a minimum payment. Assume that there are no more changes in the margin used on the variable rate for either the outstanding balance or new transactions prior to January 28, 2021, the date on which the card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index and replacement margin for the variable rate that will be effective on March 15, 2021. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions is 12%. Assume that the card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A replacement margin of 17% is permissible under § 1026.55(b)(7)(ii) for the outstanding balance and new transactions because that replacement margin combined with the prime index value of 5% on December 31, 2020, will produce an annual percentage rate of 22%, which is substantially similar to the 22% annual percentage rate calculated using the LIBOR index value in effect on December 31, 2020, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions (which is 20%).

3. *Substantially similar rate using index values on December 31, 2020.* Under § 1026.55(b)(7)(ii), if both the replacement index and the LIBOR index used under the plan are published on December 31, 2020, the replacement index value in effect on December 31, 2020, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. A card issuer is not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. The following example illustrates this comment.

i. Assume that the LIBOR index used under the plan has a value of 2% on December 31, 2020, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the card issuer has selected a prime index as the replacement index, and the value of the prime index is 5% on December 31, 2020. A card issuer would satisfy the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on January 28, 2021, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on March 15, 2021, the card issuer satisfies the requirement to use a replacement index value in effect on December 31, 2020, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on December 31, 2020, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR value change after December 31, 2020, and the annual percentage rate calculated using the prime index value and 7% margin on March 15, 2021, is not substantially similar to the rate calculated using the LIBOR index value on December 31, 2020, or substantially similar to the rate calculated using the LIBOR index value on March 15, 2021.

* * * * *

Section 1026.59—Reevaluation of Rate Increases

* * * * *

59(d) Factors

1. *Change in factors.* A creditor that complies with § 1026.59(a) by reviewing the factors it currently considers in determining

the annual percentage rates applicable to similar new credit card accounts may change those factors from time to time. When a creditor changes the factors it considers in determining the annual percentage rates applicable to similar new credit card accounts from time to time, it may comply with § 1026.59(a) by reviewing the set of factors it considered immediately prior to the change in factors for a brief transition period, or may consider the new factors. For example, a creditor changes the factors it uses to determine the rates applicable to similar new credit card accounts on January 1, 2012. The creditor reviews the rates applicable to its existing accounts that have been subject to a rate increase pursuant to § 1026.59(a) on January 25, 2012. The creditor complies with § 1026.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2011 when determining the rates applicable to similar new credit card accounts or the factors that it considers as of January 25, 2012. For purposes of compliance with § 1026.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period.

2. *Comparison of existing account to factors used for similar new accounts.* Under § 1026.59(a), if a card issuer evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a card issuer imposes on similar new accounts. For example, a card issuer may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of a SOFR index. The account that the card issuer is required to review pursuant to § 1026.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a published prime index. In performing the review required by § 1026.59(a), the card issuer may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the card issuer need not base the variable rate for the existing account on the SOFR index but may continue to use the published prime index. Section 1026.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime index and margin, be comparable to the rate, as determined by adding the margin and the SOFR index, charged on a new account for which the factors are comparable.

3. *Similar new credit card accounts.* A card issuer complying with § 1026.59(d)(1)(ii) is required to consider the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan. For example, a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. In addition, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. However, § 1026.59(d)(1)(ii) requires a card issuer to review the factors it considers when determining the rates for new credit card accounts with similar features that are offered for similar purposes.

4. *No similar new credit card accounts.* In some circumstances, a card issuer that complies with § 1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer may no longer offer a product to new consumers with similar characteristics, such as the availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, § 1026.59 requires that the card issuer nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with § 1026.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, § 1026.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

5. *Consideration of consumer's conduct on existing account.* A card issuer that complies with § 1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new applicants. For example, a consumer may have made a payment that is five days late on his or her account with the card issuer, but this information does not appear on the consumer report. The card issuer may consider this additional information in performing its review under § 1026.59(a), but only to the extent and in the manner that it considers such information if a current cardholder applies for a new account with the issuer.

6. *Multiple rate increases between January 1, 2009 and February 21, 2010.* i. *General.* Section 1026.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under § 1026.59, the card issuer may separately review: (i) Rate increases imposed based on factors not specific to the consumer, using the factors described in § 1026.59(d)(1)(ii) (as required by § 1026.59(d)(2)); and (ii) rate increases imposed based on consumer-specific factors, using the factors described in § 1026.59(d)(1)(i). If the review of factors described in § 1026.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty or other increased rate to the account as a result of the consumer's payment history or other factors specific to the consumer, § 1026.59 permits the card issuer to continue to impose the penalty or other increased rate, even if the review of the factors described in § 1026.59(d)(1)(ii) would otherwise require a rate decrease.

i. Example. Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 1026.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 1026.59(d)(1)(ii) (as required by § 1026.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 1026.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 1026.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 1026.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 1026.59 permits the rate on the account to remain at 25%.

* * * * *

59(f) Termination of Obligation To Review Factors

1. *Revocation of temporary rates.* i. *In general.* If an annual percentage rate is increased due to revocation of a temporary rate, § 1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 1026.9(c)(2)(v)(B), the review requirements in § 1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 1026.59(a) apply, § 1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. *Examples.* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012 and August 1, 2013 and discloses pursuant to § 1026.9(c)(2)(v)(B) that on August 1, 2013 the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under § 1026.59(a) at least once each six months during the period from September 1, 2012 to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013 even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013 indicates that a reduction to the original temporary rate of 10% is appropriate. Section 1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012 the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to § 1026.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 1026.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 1026.59(f), § 1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

3. *Transition from LIBOR.* i. *General.* Effective March 15, 2021, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, a card issuer may terminate the obligation to review if the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on December 31, 2020, plus replacement margin that is equal to the annual percentage rate of the LIBOR index value on December 31, 2020, plus the margin used to calculate the rate immediately prior to the increase (previous formula).

ii. *Examples.* A. Assume that on March 15, 2021, the previous formula is a LIBOR index plus a margin of 10% equal to a 12% annual percentage rate. In this case, the LIBOR index value is 2%. The card issuer selects a prime index as the replacement index. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at a replacement index plus replacement margin that equals 12%. If the prime index is 4% on December 31, 2020, the replacement margin must be 8% in the replacement formula. The replacement formula for purposes of determining when the card issuer can terminate the obligation to review factors is the prime index plus 8%.

B. Assume that on March 15, 2021, the account was not subject to § 1026.59 and the annual percentage rate was a LIBOR index plus a margin of 10% equal to 12%. On April 1, 2021, the card issuer raises the annual percentage rate to a LIBOR index plus a margin of 12% equal to 14%. On May 1, 2021, the card issuer transitions the account from a LIBOR index in accordance with § 1026.55(b)(7)(i) or (b)(7)(ii). The card issuer selects a prime index as the replacement index with a value on December 31, 2020, of 4%. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at the value of a replacement index on December 31, 2020, plus replacement margin that equals 12%. In this example, the replacement formula is the prime index plus 8%.

4. *Selecting a replacement index.* In selecting a replacement index for purposes of § 1026.59(f)(3), the card issuer must meet the conditions for selecting a replacement index that are described in § 1026.55(b)(7)(ii) and comment 55(b)(7)(ii)–1. For example, a card issuer may select a replacement index that is not newly established for purposes of § 1026.59(f)(3), so long as the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index used in the previous formula, considering the historical fluctuations up through December 31, 2020, or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier. The Bureau has determined that effective [applicable date] the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. The Bureau also has determined that effective [applicable date] the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee to replace the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, 6-month, and 1-year U.S. Dollar LIBOR indices respectively. See comment 55(b)(7)(ii)–1. Also, for purposes of § 1026.59(f)(3), a card issuer may select a replacement index that is newly established as described in § 1026.55(b)(7)(ii).

* * * * *

59(h) Exceptions

1. *Transition from LIBOR.* The exception to the requirements of this section does not apply to rate increases already subject to § 1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate where the change from the use of a LIBOR index to a different index occurred in accordance with § 1026.55(b)(7)(i) or (b)(7)(ii).

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Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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