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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1605, 1650 and 1651

Correction of Administrative Errors; Required Minimum Distributions

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Direct final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is amending its regulations to make a non-substantive change to the constructed share price formula for a retired Lifecycle (L) Fund. The FRTIB uses a constructed share price to make error corrections involving a retired L Fund. In addition, due to a recent change in the Internal Revenue Code (Code), the FRTIB is amending its regulations to change the age by which TSP participants must begin receiving distributions from their TSP accounts from 70½ to 72.

DATES: Effective July 7, 2020. The change to the constructed share price formula is applicable June 30, 2020, without further action, unless adverse comment is received by August 6, 2020. If adverse comment is received, FRTIB will publish a timely withdrawal of the rule in the **Federal Register**. As required by the Code, the change to the age by which TSP participants must begin receiving distributions from their accounts is effective for distributions required to be made after December 31, 2019, with respect to individuals who will reach age 70½ after that date.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Megan G. Grumbine, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

Since March 23, 2020, the FRTIB has been operating under a mandatory telework status due to the coronavirus pandemic which has severely limited the ability to timely monitor mail and facsimiles. Therefore, we strongly encourage using the Federal Rulemaking Portal to submit comments.

FOR FURTHER INFORMATION CONTACT: Austen Townsend, (202) 864–8647.

SUPPLEMENTARY INFORMATION: The FRTIB administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Lifecycle Funds

In addition to its five core funds (the G, F, C, S, and I Funds) the TSP offers multiple L Funds, each of which is made up entirely of the five core funds in different, professionally determined, proportions based on a particular time horizon, or target retirement date. Each L fund is ''retired'' when it reaches its target date.

Currently, the TSP offers L Funds based on a 10-year asset allocation. A 10-year L Fund must, by design, be retired on December 31st of year in which it reaches its target date. For example, the L 2010 reached its target date in 2010 and was retired on December 31, 2010.

Beginning July 1, 2020, the TSP will instead offer L Funds based on a 5-year asset allocation to give TSP participants a more targeted window of time to match their intended retirement date with their asset allocation. As a result of the shift from 10-year to 5-year L Funds, L Funds beginning with the L 2020 fund will be retired on June 30th of the year in which they reach their respective retirement dates.

Correcting Errors Involving Retired L Funds

Once an L Fund is retired, TSP participants are no longer able to make contributions to that fund. However, the FRTIB is sometimes required to calculate lost earnings (*i.e.,* breakage) on errors involving these retired L Funds. Breakage is the loss incurred (negative earnings) or the gain realized (positive earnings) on late and makeup contributions. Similarly, the FRTIB must sometimes process the removal of erroneous contributions (*i.e.,* a negative adjustment) previously made to a now-retired L Fund. The value of a negative adjustment equals the amount of the erroneous contributions plus earnings (positive or negative) on that amount.

Generally, the FRTIB uses the current share price of the applicable investment fund when calculating breakage or the value of a negative adjustment. Because a retired L Fund no longer exists, the FRTIB instead uses a constructed share price in order to calculate breakage or the value of negative adjustments on errors involving these funds.

The constructed share price for a retired L Fund is calculated using the final posted share price of that L Fund (*i.e.,* the share price posted on the date the L Fund was retired). When the constructed share price formula was created, all L Funds were based on a 10-year asset allocation. Therefore, rather than referring to the L Fund's final posted share price, the FRTIB's existing regulations provide that the constructed share price for a retired Lifecycle fund is calculated using the share price of the L Fund on December 31 of its retirement year.

To account for the fact that L Funds will no longer be retired on December 31st as a result of the shift from 10-year to 5-year L Funds, the FRTIB is updating its regulations to remove the references to December 31st in the constructed share price formula. Instead, consistent with the FRTIB's original intent, the regulations will simply refer to the final posted share price. The substance of the formula remains unchanged.

Required Minimum Distributions

On December 20, 2019, the President signed into law the Setting Every Community Up for Retirement Enhancement (SECURE) Act (Division O pg. H.R. 1865–604), as part of the Further Consolidated Appropriations Act of 2020 (Pub. L. 116–94). The SECURE Act amended the Code to change the age by which TSP participants must begin receiving distributions (referred to as required

minimum distributions (RMDs)) from their accounts from 70½ to 72.

The RMD rules under the Code, which apply to both separated TSP participants and TSP beneficiary participants,[1] set forth the date by which participants must receive RMDs (*i.e.,* the required beginning date). Prior to the passage of the SECURE Act, the Code required separated TSP participants to receive RMDs beginning on April 1 of the year following the year in which the participant reached age 70½ and annually thereafter. TSP beneficiary participants were required to receive RMDs beginning on the later of the end of the year following the year in which the participant died, or the end of the year in which the participant would have reached age 70½. TSP participants who turned 70½ on or before December 31, 2019 remain subject to these pre-SECURE Act required beginning date rules.

Participants who had not reached age 70½ before January 1, 2020 are subject to the new required beginning date rules. Specifically, the Code, as amended by the SECURE Act, requires a separated TSP participant to receive RMDs beginning on April 1 of the year following the year in which he or she reaches age 72 and is separated from service and annually thereafter. TSP beneficiary participants must receive RMDs beginning on the later of the end of the year following the year in which the participant died, or the end of the year in which the participant would have reached age 72.

The FRTIB is updating its regulations by removing the references to age 70½ in the definition of ''required beginning date.'' The updated regulations will instead define this term by incorporating by reference the Code's definition of required beginning date. This ensures that FRTIB regulations regarding RMDs will always be consistent with the Code's requirements so that future amendments on short notice may be avoided.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that this regulation does not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB amends 5 CFR chapter VI as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 1. The authority citation for Part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, 8432d, 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and section 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

■ 2. Amend § 1605.2 by revising paragraph (b)(1)(iii) to read as follows:

§ 1605.2 Calculating, posting, and charging breakage on late contributions and loan payments.

* * * * *

(b) * * *

(1) * * *

(iii) Determine the dollar value on the posting date of the number of shares the participant would have received had the contributions or loan payments been made on time. If the contributions or loan payments would have been invested in a Lifecycle fund that is retired on the posting date, the constructed share price shall equal the final posted share price of the retired Lifecycle fund, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on the same date that the retired Lifecycle fund posted its final share price. The dollar value shall be the number of shares the participant would have received had the contributions or loan payments been made on time multiplied by the constructed share price.

* * * * *

■ 3. Amend § 1605.12 by revising paragraph (c)(2)(ii) to read as follows:

§ 1605.12 Removal of erroneous contributions.

* * * * *

(c) * * *

(2) * * *

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section. If the contribution was erroneously contributed to a Lifecycle fund that is retired on the date the adjustment is posted, the price per share shall equal the final posted share price of the retired Lifecycle fund, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on the same date that the retired Lifecycle fund posted its final share price.

* * * * *

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 4. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8434, 8435, 8474(b)(5) and 8474(c)(1).

■ 5. Amend § 1650.1(b) by revising the definition for ''Required beginning date'' to read as follows:

[1] A beneficiary participant is a spouse beneficiary of a deceased TSP participant who has a TSP beneficiary participant account established in his or her name. In the case of a beneficiary participant, the age of the deceased participant is used when determining the date by which RMDs must commence.

§ 1650.1 Definitions.

* * * * *

(b) * * *

Required beginning date means the required beginning date as defined in Internal Revenue Code section 401(a)(9) and the regulations and guidance promulgated thereunder.

* * * * *

PART 1651—DEATH BENEFITS

■ 6. The authority citation for Part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 7. Amend § 1651.1(b) by revising the definition for ''Required beginning date'' to read as follows:

§ 1651.1 Definitions.

* * * * *

(b) * * *

Required beginning date means the required beginning date as defined in Internal Revenue Code section 401(a)(9) and the regulations and guidance promulgated thereunder.

* * * * *

[FR Doc. 2020–13683 Filed 7–2–20; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 201 and 202

[Doc. No. AMS–ST–19–0039]

RIN 0581–AD91

Revisions to the Federal Seed Act Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations that implement the Federal Seed Act (FSA). Revisions are made to seed labeling, testing, and certification requirements. The revisions add certain seed species to the lists of covered kinds of seed and update the lists to reflect current scientific nomenclature; update regulations related to seed quality, germination and purity standards, and acceptable seed testing methods; and update seed certification and recertification requirements, including new eligibility standards and the recognition of current breeding techniques. This rule aligns FSA regulations with current industry practices, harmonizes FSA testing methods with industry standards, and clarifies confusing or contradictory language in the existing regulations. The revisions are expected to reduce trade burden associated with interstate seed commerce and encourage compliance with State and Federal laws.

DATES: Effective August 6, 2020.

FOR FURTHER INFORMATION CONTACT: Ernest Allen, Director, Seed Regulatory and Testing Division, Science and Technology Program, AMS, USDA; 801 Summit Crossing Place, Suite C, Gastonia, NC 28054, USA; telephone: 704–810–8884; email *Ernest.Allen@usda.gov.*

SUPPLEMENTARY INFORMATION: The FSA (7 U.S.C. 1551–1611) regulates interstate commerce of planting seeds for agricultural and gardening purposes. The FSA requires seeds to meet certain germination rate, purity, and certification standards. Under the FSA, seeds must be truthfully labeled with specific quality information. As well, the FSA requires all persons shipping agricultural seed in interstate commerce to maintain records of seed variety, origin, treatment, germination, and purity. Regulations established under the FSA (7 CFR part 201) (regulations) implement the requirements of the FSA and are administered by the Agricultural Marketing Service (AMS).

From time to time, AMS finds it necessary to update the regulations to reflect current industry standards and practices and to remove obsolete references. AMS last updated the regulations in 2011 (76 FR 31790). AMS met with representatives of major seed industry stakeholder organizations in February 2019 to discuss possible revisions to make the regulations more reflective of current industry practices and updated testing methods. Based on stakeholder input, the Seed Regulatory and Testing Division of AMS's Science and Technology Program initiated this action to update the regulations.

AMS published a proposed rule in the **Federal Register** on January 27, 2020 (85 FR 4603), describing proposed revisions and updates to the regulations. The proposed rule provided a 60-day public comment period ending March 27, 2020. Seven comments were submitted. After considering the comments, AMS revised some of the proposals based on those comments. The comments and AMS's responses are discussed in detail in the Comments section later in this document.

This final rule updates the lists of seed kinds which are covered by the regulations and revises the names of several agricultural and vegetable seeds to provide updated scientific nomenclature. This rule further adds or revises the definitions of other terms used in the regulations to provide greater clarity for regulated entities. Other revisions in this rule update the seed labeling, testing, and certification requirements to reflect revised terminology, as well as the evolution of industry practices. Finally, this rule makes several revisions of an administrative nature to correct misspellings and other errors in the regulations. Specific revisions are described below.

Revisions

Nomenclature

The regulations specify the kinds of agricultural and vegetable seed that are subject to regulation. This rule revises the list of agricultural seed covered by the regulation in § 201.2(h) by adding *camelina, radish,* and *teff* to the list. The revisions add *radish* to the list of seed kinds for which the variety is required on the label in § 201.10(a); add *camelina, radish,* and *teff* to the list of seed kinds for which sample weights are specified in Table 1 to § 201.46(d)(2)(iii); add *camelina, radish,* and *teff* to the list of seed kinds for which germination requirements are specified in Table 2 to § 201.58(c)(3); add *teff* to the list of seed kinds for which purity percentage tolerances are increased in § 201.60(a)(1); and add *camelina, chickpea, hemp, radish,* and *sunn hemp* to the list of seed kinds for which standards related to certification are specified in Table 5 to § 201.76.

To assure clear market communication about seeds, the regulations use the Latin scientific names assigned to plants in the *International Code of Nomenclature for Cultivated Plants* [1] and recognized throughout the world. Occasionally, the International Union of Biological Science's International Commission for the Nomenclature of Cultivated Plants revises those scientific names. This rule further revises § 201.2(h) by updating the scientific names for 15 agricultural seed kinds already on the list (*big bluestem, mountain brome, buffalograss, crambe, galletagrass, guineagrass, forage kochia, browntop millet, pearl millet, napiergrass, green needlegrass, green panicgrass, bird rape, turnip rape,* and *smilo*), and by adding another common name for *sunn crotalaria,* one of the kinds already on the list. The rule also updates the scientific name for *tomato,* which is on

[1] The International Code of Nomenclature for Cultivated Plants (ICNCP or Cultivated Plant Code), published by the International Society for Horticultural Science. The ICNCP was most recently updated in 2016.

the list of vegetable seed kinds in § 201.2(i). Such changes align regulatory language with current terminology and nomenclature recognized in the industry.

Other sections of the regulations reference scientific names, as well. This final rule updates those references by revising the scientific names for *quackgrass* in § 201.17(a); *buffalograss, sunflower, small-seeded legumes, carrot,* and *mint* in § 201.47a; *legumes* and *crucifers* in 201.48(a); *sunflower, carrot,* and *mint* in 201.48(f); *buffalograss* in 201.48(g)(1); *legumes* in 201.51(a)(1); *quackgrass* in 201.51(b)(2)(iv) and (v); *sunflower* in 201.51(b)(4), and *carrot* in 201.56(d).

Other Terminology

Section 201.2 defines other terms used in the regulations. This rule updates some terms to reflect changes in industry and AMS needs and processes. This rule revises the term for ''person'' in § 201.2(b) to include *individuals* and *agents* to clarify that such entities are also subject to the regulations. A revision to § 201.2(l)(1) clarifies that each person must keep required records regarding seed treatment, including, but not limited to, records about seed coating, film coating, encrusting, or pelleting. This rule makes corresponding revisions to references to ''treatment'' in § 201.4(b). Revisions to § 201.2(p) clarify that seed mixtures consist of more than one kind or variety of seed, each present in excess of 5 percent by weight of the whole, and that combinations of more than one variety of a single kind of seed may be referred to as ''blends.'' A revision to the definition of ''coated seed'' in § 201.2(q) clarifies that coated seed is any seed covered with a coating material, while new § 201.2(nn) defines ''coating material'' to mean any substance that changes the size, shape, or weight of the original seed, and clarifies that ingredients such as rhizobia, dyes, polymers, biologicals, and pesticides are not considered coating materials. A revision to the term ''purity'' in § 201.2(w) removes the reference to ''crop seed.'' A revision to § 201.2(x) revises the definition of ''inoculant'' to mean a product consisting of microorganisms applied to the seed for the purpose of enhancing the availability or uptake of plant nutrients through the root system. Such a change aligns FSA regulations with the current Environmental Protection Agency definition of a plant inoculant,[2] which is recognized and used by the industry.

Finally, this rule adds a new paragraph (oo) to § 201.2 to define the term ''brand,'' which means a name, term, sign, symbol, or design, or a combination of them that identifies seed as the product of a seller or group of sellers and distinguishes that seed from the seed of other sellers. The term's definition will clarify its use in § 201.36b(e).

Records

The FSA regulations require seed shippers to maintain records and samples for each lot of agricultural and vegetable seed shipped in interstate commerce. Sections 201.4 through 201.7a specify the recordkeeping requirements related to seed origin, germination testing, purity testing, and treatment. This rule revises § 201.4 to clarify that complete records about seed treatments include records about treatments such as coating, film coating, encrusting, and pelleting treatments.

Labeling

The FSA requires each container of agricultural and vegetable seed shipped in interstate commerce to be labeled with specific information. For agricultural seed, the label must include, among other things, the name of each kind of seed comprising more than 5 percent of the contents, and for certain kinds of seed, the labels must show the variety(ies). Prior to this rule, § 201.12a of the regulations required mixtures of lawn and turf seed to be labeled as mixtures and required the name and percentage of each seed component to be listed on the label in the order of predominance. This rule revises § 201.12a by removing the reference to turf and lawn seed mixtures, requiring all mixtures of agricultural seed for seeding or planting purposes to be designated mixtures on the label, and requiring the label to list each seed component on the label in order of predominance. This rule adds a similar requirement for labeling vegetable seed mixtures by adding a new § 201.26a—Vegetable Seed Mixtures, which requires labels for mixtures of vegetable seeds to list each seed component in order of predominance. This change reflects the current market practice of packaging vegetable seed mixtures, which has not previously been addressed in the regulations.

The regulations prohibit the interstate shipment of agricultural seeds containing seeds or bulblets of certain noxious weeds identified in § 201.16(b). This rule revises the list of prohibited noxious weed seed in § 201.16(b) by updating the scientific names of several species to reflect the current names recognized in the market. Where the shipment of noxious-weed seed is not prohibited under § 201.16(b), the rate of occurrence in agricultural seed cannot exceed the rate permitted by each State into which the seed is shipped or reshipped, and the label must include the rate of occurrence according to each State's requirements. *See* 7 CFR 201.16(a). This rule adds a new § 201.30c that provides similar restrictions for shipments of noxious-weed seed in vegetable seed in containers weighing more than one pound. This addition supports State laws regarding noxious-weed seed in vegetable seed.

Prior to this rule, § 201.18 specified that when agricultural seeds other than the predominant kind, variety, or type named on the label are included, they could be collectively identified as ''crop seeds'' or ''other crop seeds'' by percentage. A change to § 201.18 removes the reference to ''crop seeds'' to reduce confusion about what is in the seed. Another labeling change removes the reference to coating material in § 201.19—Inert matter, since coating material is excluded by definition in another provision.

Under § 201.21, seed labels are required to show the percentage of hard seed—seed with an impermeable seed coat that doesn't absorb water and germinate—apart from the agricultural seed germination percentage. A change to § 201.21 requires labels to also show the percentage of dormant seed—seed other than hard seed that fails to germinate under specified conditions—apart from the germination percentage. This change is necessary to reflect the emerging industry practice of labeling dormant seed as such and providing the percentage of dormant seed on the label.

A change to the heading and introductory paragraph of § 201.31 clarifies that the germination standards for vegetable seeds in interstate commerce are minimum standards.

Prior to this rule, the regulations required seed labels to include the full name and address of the shipper or consignee, or to show a code that identifies the shipper. Revisions to §§ 201.23, 201.24, 201.27, and 201.28 require the labels of both agricultural and vegetable seed to show the full name and address of the interstate shipper or show both a code identifying the interstate shipper and the full name and address of the consignee. Sections 201.23 and 201.27 are further revised to define the terms ''shipper'' and ''consignee'' as they pertain to labeling. AMS intends these changes to reduce

[2] See 40 CFR 152.6(g)(2)—EPA's definition of plant inoculant.

industry confusion about the labeling requirements.

Section 201.31a requires seed labels to include the name or description of any treatment applied to the seed. Paragraph (b) of that section specifies the names that can be used to identify substances used in seed treatments. This rule revises § 201.31a(b) to clarify that active ingredient substances used in seed treatments must be included in the label, and that biological active ingredients should be identified by their brand names or genus and species names.

Seed Testing

The regulations specify testing requirements for seed shipped in interstate commerce. Seed testing methodology continues to evolve as new equipment and processes are developed. In addition to the revisions described earlier in this document, this rule makes the following revisions to the testing regulations in 7 CFR part 201 to ensure the requirements reflect methods and procedures that have been adopted in the industry and by AMS.

The rule revises the introductory text of § 201.48 to clarify that pure seed includes all seeds of each kind that are present in excess of 5 percent by weight of the whole. Revisions to § 201.48(g)(3) remove references to *chewings fescue, red fescue,* and *orchardgrass* from the list of species for which special purity testing procedures are provided in § 201.51a(b). Corresponding revisions to the Table of Factors to Apply to Multiple Units in § 201.51a(b)(2)(ii) reflect the revisions to § 201.48(g)(3). A revision to § 201.51a(a) adds more precise instructions relating to the Uniform Blowing Procedure used to separate pure seed and inert matter for seed testing, and the revision better aligns the regulation with AOSA standards. A revision to § 201.58(a) clarifies that if the date for a final count for germination testing falls on a weekend or public holiday, the count can be taken on the following workday. A revision to § 201.60(b)(2) corrects a reference to tolerance determinations for ''crop seeds'' to refer to tolerance determinations for ''other crop seeds.'' A revision to § 201.61 revises the title of the table in that section to be ''Fluorescence Tolerance, Based on Test Fluorescence (TFL)'' to clarify that the ryegrass fluorescence tolerances shown for 400-seed fluorescence tests are based on the test fluorescence level (TFL) calculated under § 201.58a.

This rule clarifies § 201.64—Pure live seed by clarifying that dormant seed is considered in the calculation and by adding a mathematical formula to show how the tolerance for pure live seed is calculated.

Certification

The regulations require seed certifying agencies to meet specified qualification standards and comply with procedures outlined in the regulations. One such procedure provided in § 201.68 requires certifying agencies to obtain specific information from certification applicants. This rule revises the introductory text of § 201.68 to clarify that point, as the regulations have been confusing, making it unclear that certifying agencies must request the specified information. A further revision to § 201.68(b) requires entities applying for certification to supply information about the breeding or reproductive stabilization procedures used to develop the variety. This change is necessary to recognize that breeders use different processes to develop new plant varieties.

A revision to § 201.70(a) permits recertification of seed beyond the standard two generations past the Foundation seed generation only when neither Foundation nor Registered class seed are being maintained. Previously, the regulations allowed recertification of Certified class seed when no Foundation seed is being maintained, even if Registered seed was being maintained. This revision prohibits recertification of Certified class seeds when Registered class seed is being maintained. Adding this restriction precludes recertification of Certified class seed when seed of a higher certification class is available. AMS intends such a restriction to prevent recertification of the class of seed most likely to have changed over time when more stable alternatives are available. Revisions to §§ 201.74 and 201.75 remove the caveat that certified seed labeling requires the variety name only if the seed has been certified as to variety. This change removes contradictory or confusing language from the regulations, since all certification is varietal.

Section 201.76 of the regulations establishes production standards for Foundation, Registered, and Certified classes of various crop seeds. As well as adding the five new crop kinds mentioned earlier in the *Terminology* section, this rule adds four explanatory footnotes to the chart of production standards in § 201.76. New footnote 60 explains that land on which certain seed is grown for certification must not have been planted in cruciferous crops during the previous five years, or for the previous three years if the previous crop was of the same variety and of the same or higher certification class. New footnote 61 explains that fields producing any class of certified seed must be at least 50 feet from any other variety or from fields of the same variety that do not meet the varietal purity requirements for certification. New footnote 62 pertains to the production of sunn hemp and explains that no other varieties of *Crotolaria* species are allowed in Foundation, Registered, and/or Certified seed production fields. New footnote 63 explains that producers of certified seed of any class for that crop should refer to the requirements established by certifying agencies in the production States for applicable production standards. AMS added these footnotes to explain specific standards for the new crops that were added to the Table in § 201.76 (*camelina, chickpea, hemp, radish,* and *sunn hemp*), but most are generic in nature and could apply to other crops in the future, as well.

Section 201.78 provides additional certification requirements related to pollen control for hybrids of certain crops. Paragraph (e) in § 201.78 specifies the determination of the pollen production index (PPI) for hybrid alfalfa. Paragraph (e) in § 201.78 provides maximum PPI for various hybrids of Foundation and Certified class seed. This rule revises § 201.78(e) to provide greater specificity about maximum PPI allowances for hybrid alfalfa that would depend on the production method, parentage, and generation of hybrid seed being analyzed. The industry requested this revision in response to a change in production practices for hybrid alfalfa seed. AMS expects this revision to recognize the breadth of hybridization methods currently used by different plant breeders.

Administrative Changes

AMS made several revisions of an administrative nature to the regulations to correct typographical errors and update addresses and other references to reflect current business practices or provide clarity. A revision to § 201.2(a) replaces the reference to ''the FSA'' with the words ''the Federal Seed Act'' to clarify the meaning of the term ''Act'' used throughout the regulations. References to the ''Act'' replace references to the ''act'' throughout the regulations, and minor misspellings have been corrected in several sections. A revision to § 201.51a(a)(3) updates the address for obtaining calibration samples and instructions from the Seed Regulatory and Testing Division to its current address in Gastonia, North Carolina. A revision to the entries for ''*Oat*'' and ''*Brussels Sprouts*'' in Table

2 to paragraph (c)(3) in § 201.58 moves the additional germination directions for fresh and dormant seed into the correct table column. Finally, AMS revised the headings for Parts 201 and 202 to remove an undesignated center heading in Part 201 that is no longer needed. These changes replace references to the terms ''Rules'' or ''Regulations'' with terms that comply with Code of Federal Regulations nomenclature conventions.

Comments

AMS received seven comments on the proposed rule. One comment from an individual supports the proposed updates to scientific nomenclature and to the standards relating to seed quality. The commenter wrote that the proposed changes are likely to help buyers obtain quality seed. Four comments from individuals expressed neither support nor opposition to the proposed rule, but addressed topics unrelated to this rulemaking. For example, comments advocated the production and use of home-grown and patient-grown *Aloe vera* products in veterans' hospitals and the reduction of tariffs and restrictions on seed trade so people everywhere could have access to vital seeds. Accordingly, AMS is making no changes to the rule as proposed based on these comments.

Two comments were submitted by seed trade industry associations. Both comments support the proposals generally. One commenter expressed support for the proposed changes in sections not directly dealing with seed certification, saying that the sections dealing with shipping, labeling, and seed testing are closely related and important to seed certification activities. Both commenters suggested revisions to certain proposals. One commenter noted generally that AMS's proposals seemed intended to align the requirements for vegetable seed more closely with those for agricultural seed and that in some cases, that wouldn't be appropriate. Both commenters' specific concerns are summarized and addressed below.

Comment: Section 201.2(q) of the regulations defines *coated seed* as seed coated with any substance that changes the seed's size, shape, or weight, excluding certain specified coating material ingredients. AMS proposed to add polymers and biologicals to the list of excluded coating materials ingredients. One comment agreed with the addition of polymers and biologicals to the list, but suggested further revising the proposed language by specifying that coated seed is any seed coated with coating material and adding a second definition for *coating material.* The commenter suggested that *coating material* be defined as any substance intended to change the seed's size, shape, or weight, excluding certain specified ingredients, including polymers and biologicals, thus retaining the proposed language, but including it in a separate definition. The commenter pointed out that coating material is referenced in several other provisions of the regulations. Thus, defining the term would help clarify those provisions.

AMS response: AMS agrees that because *coating material* is referenced elsewhere in the regulation and is not currently defined, it makes sense to split the proposed definition of *coated seed* into two definitions for greater clarity. Accordingly, AMS is revising the proposed language for § 201.2(q)—Coated Seed and adding a new § 201.2(nn)—Coating Material, based on the comment. AMS does not agree with the commenter's proposal that material only be considered coating material if it is intended to change a seed's size, shape, or weight. Regardless of intent, if a substance changes the size, shape, or weight of the original seed and is not one of the excluded materials, it is considered coating material.

Comment: Section 201.2(w) of the regulations requires the inclusion of the names and percentages of other materials in the seed, such as crop seed and inert matter, when describing the purity of seed. AMS proposed revising § 201.2(w) by removing the reference to crop seed and by specifying that inert matter includes coating material, if any is present. A commenter agreed with removing the reference to crop seed, as it is redundant to agricultural seed, which is specified in the regulation. The commenter opposed adding the specification that inert matter includes coating material, if any is present, because inert matter is already defined as including coating material if any is present in § 201.51(c)(3).

AMS further proposed to revise the current definition of inert matter in § 201.19 to specify that inert matter includes coating material, if any is present. The commenter also opposed this proposed revision, again citing § 201.51(c)(3), and saying that the addition of this language would create unintended negative consequences for the industry, but not explaining what those would be.

AMS response: AMS agrees that it is not necessary to include the phrase ''and coating material, if any is present,'' which was proposed as a clarification to the definitions of *purity* and *inert matter.* As described in § 201.51(c)(3), coating material that has been washed from seed but is still present is considered inert material. Any coating material adhering to the seed after it is washed during the testing process is considered part of the seed. Accordingly, AMS is revising the proposed language for § 201.2(w) by removing the reference to ''coating material, if any is present'' when determining the percentage of inert matter, and by making no changes to the current language of § 201.19, based on comments.

Comment: AMS proposed to add the term *acceptable* to §§ 201.6—Germination and 201.7—Purity to clarify for regulated entities the kinds of tests related to seed germination and purity for which records must be kept. AMS proposed also to add a new definition—*Acceptable test*—to the regulations to mean testing according to methods provided in the FSA regulations or according to the rules of the Association of Official Seed Analysts (AOSA). Finally, AMS proposed to replace the reference to ''analyses, tests, and examinations'' with a reference to ''acceptable tests'' in § 201.2(l)(1), which defines the term *Complete record.* One comment opposed adding the definition for *Acceptable test,* as well as adding the term *acceptable* to recordkeeping requirements in §§ 201.6 and 201.7, saying that AOSA rules don't allow the use of tetrazolium (TZ) testing, which is important to the reclamation seed business. According to the commenter, the U.S. Bureau of Land Management (BLM) is the industry's largest single purchaser of native seed, and BLM uses TZ tests to verify purchases of native seed before the seed is distributed for reclamation projects.

AMS response: The current regulations do not specify which testing rules can be followed to determine seed germination and purity. AMS's proposal was intended to standardize testing by naming two conventions that would be considered acceptable, but realizes the proposal would not provide adequate flexibility to the industry. Accordingly, based on the comments, AMS is not adding a new definition for *Acceptable test,* as proposed, and is not adding the term *acceptable test* to the language in §§ 201.6 and 201.7, based on the comment. To conform with these revisions to the proposed language, AMS removed the proposed reference to *acceptable test* in § 201.2(l)(1), even though the commenter did not address that reference in the comment.

Comment: The term *brand* appears in various provisions of the regulations, but it is not defined. AMS proposed to define *brand* to mean word(s), name, symbol, number, mark, design, unique

design, or any combination of those which distinguishes the seed of one entity from the seed of another. One commenter supported addition of the new definition, but opposed the phrase ''distinguishes the seed of one entity from the seed of another.'' The commenter wrote that incorporating the word ''entity'' in the definition might be too confusing. The commenter recommended rewording the proposed definition of *brand* to mean word(s), name, symbol, number, mark, design, unique design, or any combination of those which identifies the product.

AMS response: AMS agrees that a brand should identify a seed product, but also believes a brand should distinguish between sellers. To address the commenter's concern about use of the word ''entity,'' AMS referenced the definition of *brand* used by the American Marketing Association (AMA). AMA's definition is similar to what was originally proposed by AMS and provides for both identification of seed as requested by the commenter and differentiation of seed of different sellers. Accordingly, in response to the comment, AMS revised the proposed definition of *brand* to mean a name, term, sign, symbol, design, or any combination of them intended to identify the seed of one seller or group of sellers and to differentiate that seed from the seed of other sellers.

Comment: AMS proposed to add radish to the list of agricultural seeds that must be labeled as to variety under § 201.10(a). One commenter supported the proposal and recommended that chicory, collards, and kale also be added because they, too, are included in seed mixtures used as cover crops.

AMS response: AMS understands that chicory, collards, and kale may be included in cover crop seed mixtures. However, revising the proposed regulations to add those crops would require further notice and opportunity to comment. AMS may make such a proposal in the future. At this time, AMS is making no changes to the proposed rule based on the comment.

Comment: Section 201.8 of the regulations specify, among other things, that the required information on the seed label can be in any form that is clearly legible and may be on a tag securely attached to the container or printed in a conspicuous manner on the side or top of the container. The label may also contain information in addition to that required by the Act, provided such information is not misleading. One commenter suggested that § 201.8 be revised to provide that label information could be conveyed through a machine-readable optical label (Quick Response or QR code) affixed to the container. The commenter asserted that the technology is widely used in other industries and readily available.

AMS response: AMS acknowledges that many products now include QR codes on labels to provide consumers with additional product information. However, we do not believe the technology is widely enough available to trust that all consumers will have access to the required label information. As provided in the regulation, seed labelers may include QR codes to convey additional product information, but the required label information must still be printed and attached to the seed container as specified in the regulation. Accordingly, AMS made no changes to the regulation based on the comment.

Comment: Currently, the regulations require seed labels to include the full name and address of either the shipper or the consignee (the entity buying or receiving the shipment). If the shipper's full name and address are not provided, the label must show an AMS-approved code that identifies the shipper, and the consignee's full name and address must also appear on the label. AMS proposed to revise §§ 201.23, 201.24, 201.27, and 201.28 to clarify the labeling requirements for both agricultural and vegetable seed. AMS proposed to clarify that labeling requirements pertain to interstate shipments and that if the shipper is identified only by a code, the consignee's full information must appear on the label. The proposals were intended to reduce industry confusion about the labeling requirements. One commenter requested that AMS revise the proposed language by replacing the word ''shipper'' with ''consignor,'' and by clarifying that label requirements are for the seed package. The commenter further requested that consignee information not be required because it would be impossible to know the final destination of every seed package.

AMS response: AMS agrees that revisions to §§ 201.23, 201.24, 201.27, and 201.28 should alleviate confusion about the label requirements. AMS agrees also that the regulations should specify that labeling requirements pertain to consumer packages or containers of seed. AMS believes the commenter is confused about the use of the term consignee in the regulation. Accordingly, AMS revised the proposed language to better clarify labeling requirements for agricultural and vegetable seed, based on the comment. The revisions clarify that labels for containers or packages of seed must contain the shipper's full name and address or an AMS designated code to identify the shipper. Further, if a code—rather than the full name and address—is used to identify the shipper, the label must include the consignee's full name and address. Finally, the revised provisions include definitions of the terms *shipper* and *consignee* as used in those sections to clarify their meaning.

Comment: AMS proposed to revise § 201.29 to clarify that the germination of vegetable seed in containers of one pound or less should be expressed as a percentage on the label. AMS further proposed to revise §§ 201.29, 201.29a, 201.30, and 201.63 to provide that seed labels should show the amounts of dormant seed in containers of seed as separate from the germination percentage. AMS also proposed a revision to § 201.31 that would clarify that minimum germination standards for vegetable seeds in interstate commerce would be construed to include hard seed and dormant seed. Currently, only the amount of hard seed is shown on labels, and the germination standards for vegetable seed in interstate commerce are construed to include hard seed. One comment agreed with the clarification about expressing germination by percentage, but opposed the requirement to account for dormant seed. According to the commenter, vegetable seeds are sold by count rather than weight, which should be considered when determining container percentages. The commenter explained further that AOSA rules do not include testing procedures for dormant seed, making compliance with the requirement burdensome for the industry.

AMS response: Label information about the germination and amount of hard seed is expressed as percentages on the label, regardless of the way seed is sold. Accordingly, AMS is making no change to the proposed addition of the word ''percentage'' to the language in § 201.29 based on the comment. Further, AMS recognizes that compliance with the proposed requirement to account for dormant seed could be burdensome for some segments of the seed industry, because not all testing conventions require testing for dormant seed. Accordingly, AMS changed the language as proposed by removing the requirement to show the amount of dormant seed on labels in §§ 201.29, 201.29a, and 201.30, and by removing the proposed reference to dormant seed in § 201.63, based on the comment. Finally, AMS removed the proposed reference to dormant seed in the revised language for § 201.31 to conform with other revisions, even though the commenter did not address that section in the comment.

Comment: AMS proposed to revise § 201.31a(b) to clarify that the name of any active ingredient substance used to treat seed must be included on the label. AMS further proposed to include examples of genus and species names for brand-named biologicals that might be used to identify active ingredient substances on labels. One commenter agreed with the clarification that the names of active ingredient substances must be included on labels, but opposed listing specific examples because products constantly evolve, and the proposed examples would be out of date in a short time.

AMS response: AMS agrees that the listed examples are likely to be obsolete in a short time. Accordingly, we revised the proposed language for § 201.31a(b) by removing the genus and species name examples.

Comment: AMS proposed to revise § 201.68 to clarify that when the developer or owner of a variety requests certification of that variety, the certifying agency must request certain information, including a statement concerning the variety's origin and the breeding technique or reproductive stabilization procedures used in its development. Two commenters supported the proposal in general, but opposed requiring the developer to state what breeding technique was used. One of those commenters explained that when the industry met with AMS in early 2019 as described earlier in this document, the subject was discussed in light of situations where new varieties were selected from among natural mutations rather than intentionally developed. Both commenters agreed that requiring variety developers to reveal breeding techniques would negatively impact plant breeding innovations. One commenter asserted further that removing the word ''technique'' from the proposed language would not have a negative impact on the review process.

AMS response: AMS agrees that requiring developers to reveal breeding techniques could negatively impact plant breeding and innovation. Accordingly, we removed the word ''technique'' from the proposed language for § 201.68, based on the comment.

Comment: AMS proposed a revision to § 201.70(a) that would permit recertification of seed beyond the standard two generations past the Foundation seed generation only when neither Foundation nor Registered class seed is being maintained. One commenter wrote that this section of the regulations is especially important in cases where supplies of parent seed are insufficient to meet demand. The commenter added that the proposed changes add clarity and expressed support for the proposal.

AMS response: AMS agrees that this proposal gives the industry added ability to produce desired seed varieties in case of higher demand or emergency. Accordingly, AMS made no changes to the proposal based on the comment.

Comment: Section 201.76 of the regulations establishes production standards for Foundation, Registered, and Certified classes of various crop seeds. As well as adding the five new crop kinds mentioned earlier in the *Terminology* section, AMS proposed to add four explanatory footnotes to the chart of production standards in § 201.76. One comment supported the addition of the footnotes.

AMS response: Each of the newly added crops requires unique growing conditions. The footnotes provide specific standards for the production, protection, and quality maintenance for certified classes of crop seed. Accordingly, AMS made no changes to the proposal based on the comment.

Comment: AMS proposed to revise § 201.78(e) to provide greater specificity about maximum pollen production index (PPI) allowances for hybrid alfalfa that would depend on the production method, parentage, and generation of hybrid seed being analyzed. One comment supported the proposed revision.

AMS response: AMS's proposal reflects evolving trends in hybrid alfalfa production for certification. Accordingly, AMS made no changes to the proposal based on the comment.

Rulemaking Analyses

Executive Orders 12866, 13563, and 13771

AMS is issuing this final rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are 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, reducing costs, harmonizing rules, and promoting flexibility.

In the development of this rule, AMS considered alternatives, including updating only the list of regulated seed varieties or making no changes at all. Ultimately, AMS rejected those alternatives because many references and processes in the regulations were obsolete and did not reflect modern business and industry practices. AMS believes making these revisions best serve the industry by aligning seed species references with internationally recognized scientific names, clarifying processes to simplify regulatory compliance, and improving AMS's customer service. AMS does not expect this rule to provide any environmental, public health, or safety benefits.

This rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those Orders. Because this rule does not meet the criteria of a significant regulatory action, it does not trigger the requirements in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

AMS does not expect the revisions to impact compliance costs for the private sector because the industry has already adopted the practices reflected by the regulatory changes in order to comply with State laws. AMS expects seed industry stakeholders to benefit from the references to updated scientific nomenclature, which provides a common language for marketing seed. Likewise, AMS expects updating the labeling, testing, and certification requirements to simplify compliance and facilitate the interstate marketing of seed. AMS also expects stakeholders to benefit from streamlined AMS business practices.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small business entities. The affected industry falls under the North American Industry Classification System (NAICS) as code 54171—Research and development in the physical, engineering, and life sciences. This classification includes firms that are not plant breeders/plant research; however, no detailed industry data was available for the analysis.

Table 1 shows the most recent descriptive data for the industry, obtained from the County Business Pattern 2016 survey. This data set provides information on the number of establishments, number of employees and total annual payroll.

TABLE 1—NUMBER OF ESTABLISHMENTS, REVENUE AND PAYROLL BY EMPLOYEE COUNT, NAICS CODE 54171, 2016 COUNTY BUSINESS PATTERNS [3]

	Number of establishments	Number of paid employees	Annual payroll ($1,000)
All establishments	17,292	695,810	$82,865,611

The SmallBusiness Administration (SBA) determines firm size for this industry by number of employees, but on a per firm basis, with small firms defined as having fewer than 1,000 employees and 1,000 or more employees per firm classified as large. Because firms may own more than one establishment, and the County Business Patterns data are compiled on an establishment rather than a firm basis, we must use the Economic Census data to determine the number of small and large firms for the industry.

Table 2 shows the most recent data available on the breakdown between small (<1,000 employees) and large (1,000 or more employees) firms in this industry, according to SBA's guidance.[4] The data are from the 2002 Economic Census, with monetary values converted to 2016 dollars. More recent Economic Census data is not available at this level of detail for this industry.

TABLE 2—NUMBER OF FIRMS AND ESTABLISHMENTS, REVENUE AND PAYROLL BY EMPLOYEE COUNT, NAICS CODE 54171, 2002 ECONOMIC CENSUS [5]

Size of firm by number of employees	Number of firms	Number of establishments	Number of paid employees	Revenue * ($1,000)	Annual payroll * ($1,000)
Small—Firms with fewer than 1,000 employees	10,200	11,753	273,601	$49,702,793	$24,780,487
Large—Firms with 1,000 employees or more	79	1,380	283,816	30,095,258	27,776,903
All firms	10,279	13,133	557,417	79,798,051	52,557,389

* Adjusted to 2016 values.

The 2002 EconomicCensus reported that fewer than one percent of firms were considered large (79 of 10,279 firms, or 0.54 percent). The 10,279 firms at that time owned a total of 13,133 establishments, with 1,380 (nearly 11 percent) of these facilities owned by the 79 large firms.

The tables show the extent of growth in the industry over time. The number of establishments has grown from 13,133 in 2002 to 17,292 in 2016 (32 percent, or 2.3 percent per year). Total employment increased from 557,417 workers to 695,810 (25 percent, or 1.8 percent per year), and total annual payroll from $52,557,389 to $82,865,611 (58 percent or 4 percent per year). These figures indicate that the industry has seen small to moderate growth, with a more highly paid work force over time. There do not appear to be significant changes in the structure of the industry between 2002 and 2016. AMS expects that the size distribution of the firms affected by these revisions is consistent with data reported in the 2002 Economic Census. Therefore, affected firms would mostly be considered small business entities under the criteria established by SBA (13 CFR 121.201).

As a result of meeting with representatives of major seed industry stakeholder organizations in February 2019, AMS is updating regulations to reflect current industry standards and practices and to remove obsolete references. The revisions to the existing FSA regulations do the following:

1. Update the lists of seed kinds which are covered by the regulations and revise the names of several agricultural and vegetable seeds to provide updated scientific nomenclature;
2. Revise the definitions of other terms used in the regulations to provide greater clarity for regulated entities;
3. Update the seed labeling, testing, and certification requirements to reflect revised terminology and industry practices; and
4. Correct misspellings and other errors in the regulations.

Most of the revisions listed above (1, 2, and 4) are changes in the regulations that would not impact costs to the private sector. The third revision listed above is expected to lower the costs of seed testing for three grass species. The revisions will eliminate the requirement to segregate certain components of seed in purity testing for those three species. This will reduce the number of component separations for those species from five to four. Cost savings are difficult to estimate. Information on the exact costs of the tests was difficult to obtain because of the variability in seed testing fees by third-party labs. Costs for these tests are generally based on hourly laboratory charges and can range between $10 and $50 per test. Without data on the breakdown of cost for each of the separations performed in the test, it is assumed testing costs for the three affected crops could fall by 20 percent as a result of the proposed revisions.

The revisions ease the requirement to follow test procedures according to the Federal Seed Act before engaging in interstate commerce by allowing the use of seed testing methods from Association of Official Seed Analysts Rules used by most seed testing laboratories in the U.S. These revisions also expand the time requirement of the current regulation by allowing testing to be completed only on laboratory workdays, which effectively acknowledges the existence of weekends and holidays, eliminating the need for staff to work or reschedule completion dates.

[3] Geography Area Series: County Business Patterns by Employment Size Class, 2016 Business Patterns, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=BP_2016_00A3&prodType=table.*

[4] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'', Small Business Administration, effective January 1, 2017, *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[5] Professional, Scientific, and Technical Services: Subject Series—Establishment and Firm Size: Employment Size of Firms for the United States: 2002 Economic Census of the United States, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2002_US_54SSSZ5&prodType=table.*

The burden of labeling radishes is also expected to fall, as it was not previously considered agricultural seed under the Federal Seed Act. Radishes were previously considered only as a vegetable crop and had to be labeled by variety. Inclusion of radishes as agricultural seed under the Act will allow the industry to exclude varieties in labeling agricultural radish seed.

This rule reduces the trade burden associated with interstate seed commerce and encourages compliance with State and Federal laws. AMS has determined that this action would not have a significant negative economic impact on a substantial number of these small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information requirements under the regulations have been approved previously by OMB and assigned OMB No. 0581–0026. No changes are necessary in those requirements as a result of this action. Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Should any changes become necessary, they would be submitted to OMB for approval.

Congressional Review Act

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

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct impacts on Tribal governments or significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to judicial challenge to the provisions of this final rule.

List of Subjects

7 CFR Part 201

Certified seed, Definitions, Inspections, Labeling, Purity analysis, Sampling.

7 CFR Part 202

Administrative practice and procedure, Agricultural commodities, Imports, Labeling, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR parts 201 and 202 are amended as follows:

PART 201—FEDERAL SEED ACT REQUIREMENTS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 1592.

■ 2. In part 201, revise the heading to read as set forth above.

■ 3. Remove the undesignated center heading ''RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE''.

§ 201.2 [Amended]

■ 4. Amend § 201.2 by:

■ a. In paragraph (a), removing the word ''FSA'' and adding in its place the words ''Federal Seed Act'';

■ b. In paragraph (b), removing the words ''a partnership'' and adding in their place the words ''an individual partnership'' and removing the words ''or trustee'' and adding in their place the words ''trustee, or agent'';

■ c. In paragraph (h):

■ i. Removing the terms ''Bluestem, big—*Andropogon gerardii* Vitman'', ''Brome, mountain—*Bromus marginatus* Steud.'', ''Buffalograss—*Buchloe dactyloides* (Nutt.) Engelm.'', ''Crambe—*Crambe abyssinica* R.E. Fr.'', ''Crotalaria, sunn—*Crotalaria juncea* L.'', ''Galletagrass—*Hilaria jamesii* (Torr.) Benth.'', ''Guineagrass—*Panicum maximum* Jacq. var. *maximum*'', ''Kochia, forage—*Kochia prostrata* (L.) Schrad.'', ''Millet, browntop—*Brachiaria ramosa* (L.) Stapf'', ''Millet, pearl—*Pennisetum glaucum* (L.) R. Br.'', ''Napiergrass—*Pennisetum purpureum* Schumach.'', ''Needlegrass, green—*Stipa viridula* Trin.'', ''Panicgrass, green—*Panicum maximum* Jacq.'', ''Rape, bird—*Brassica rapa* L. subsp. *campestris* (L.) A.R. Clapham'', ''Rape, turnip—*Brassica rapa* L. subsp. campestris (L.)'', and ''Smilo—*Piptatherum miliaceum* (L.) Coss'';

■ ii. Adding in alphabetical order the terms ''Bluestem, big—*Andropogon gerardi* Vitman'', ''Brome, mountain—*Bromus carinatus* var. *marginatus* (Steud.) Barworth & Anderton'', ''Buffalograss—*Bouteloua dactyloides* (Nutt.) Columbus'', ''Camelina—*Camelina sativa* (L.) Crantz subsp. sativa'', ''Crambe—*Crambe hispanica* L. subsp. *abyssinica*'', ''Crotalaria, sunn or sunn hemp—*Crotalaria juncea* L.'', ''Galletagrass—*Pleuraphis jamesii* Torr.'', ''Guineagrass—*Megathyrsus maximus* (Jacq.) B.K. Simon & S.W.L. Jacobs'', ''Kochia, forage—*Bassia prostrata* (L.) A.J. Scott'', ''Millet, browntop—*Urochloa ramose* (L.) T.Q. Nguyen'', ''Millet, pearl—*Cenchrus americanus* (L.) Morrone'', ''Napiergrass—*Cenchrus purpureus* (Schumach,) Morrone'', ''Needlegrass, green—Nassella viridula (Trin.) Barkworth'', ''Panicgrass, green—*Megathyrsus maximus* (Jacq.) B.K. Simon & S.W.L. Jacobs'', ''Radish—*Raphanus sativus* L.'', ''Rape, bird—*Brassica rapa* L. subsp. *oleifera*'', ''Rape, turnip—*Brassica rapa* L. Subsp. *oleifera*'', ''Smilo—Oloptum miliaceum (L.) Röser & Hamasha'', and ''Teff—*Eragrostis tef* (Zuccangi) Trotter'';

■ d. In paragraph (i), removing the term ''Tomato—*Lycopersicon esculentum* Mill.'' and adding in its place the term ''Tomato—*Solanum lycopersicum* L.'';

■ e. In paragraph (j), removing the word ''act'' and replacing it with the word ''Act'';

■ f. In paragraph (l)(1) in the first sentence after each use of the word ''treatment'' adding the words ''(including but not limited to coating, film coating, encrusting, or pelleting)'';

■ g. In the second sentence of paragraph (l)(1), removing the word ''treatment'' and adding in its place the words ''chemical or biological treatment''.

■ h. Revising paragraphs (p) and (q);

■ i. In paragraph (w), removing the words ''or crop seed'';

■ j. In paragraph (x), removing the words ''commercial preparation containing nitrogen fixing bacteria applied to seed'' and adding in their place the words ''product consisting of microorganisms applied to the seed for the purpose of enhancing the availability or uptake of plant nutrients through the root system'';

■ k. In paragraph (z), removing the word ''act'' and adding in its place the word ''Act'';

■ l. In paragraph (mm), removing the word ''detasselling'' and adding in its place the word ''detasseling''; and

■ m. Adding paragraphs (nn) and (oo).

The revision and additions read as follows:

* * * * *

(h) * * *:

Bluestem, big—*Andropogon gerardi* Vitman

* * * * *

Brome, mountain—*Bromus carinatus* var. *marginatus* (Steud.) Barworth & Anderton

* * * * *

Buffalograss—*Bouteloua dactyloides* (Nutt.) Columbus

* * * * *

Camelina—*Camelina sativa* (L.) Crantz subsp. *sativa*

* * * * *

Crambe—*Crambe hispanica L. subsp. Abyssinica*

* * * * *

Crotalaria, sunn or sunn hemp—*Crotalaria juncea* L.

* * * * *

Galletagrass—*Pleuraphis jamesii* Torr.

* * * * *

Guineagrass—*Megathyrsus maximus* (Jacq.) B. K. Simon & S. W. L. Jacobs

* * * * *

Kochia, forage—*Bassia prostrata* (L.) A. J. Scott

* * * * *

Millet, browntop—*Urochloa ramosa* (L.) T. Q. Nguyen

* * * * *

Millet, pearl—*Cenchrus americanus* (L.) Morrone

* * * * *

Napiergrass—*Cenchrus purpureus* (Schumach.) Morrone

Needlegrass, green—*Nassella viridula* (Trin.) Barkworth

* * * * *

Panicgrass, green—*Megathyrsus maximus* (Jacq.) B. K. Simon & W. L. Jacobs

* * * * *

Radish—*Raphanus sativus* L.

* * * * *

Rape, bird—*Brassica rapa* L. subsp. *oleifera*

Rape, turnip—*Brassica rapa* L. subsp. *oleifera*

* * * * *

Smilo—*Oloptum miliaceum* (L.) Röser & Hamasha

* * * * *

Teff—*Eragrostis tef* (Zuccagni) Trotter

* * * * *

(p) *Mixture.* The term ''mixture'' means seeds consisting of more than one kind or variety, each present in excess of 5 percent by weight of the whole. A mixture of varieties of a single kind may be labeled as a blend.

(q) *Coated seed.* The term ''coated seed'' means any seed unit covered with a coating material.

* * * * *

(nn) *Coating material.* The term ''coating material'' means any substance that changes the size, shape, or weight of the original seed. Ingredients such as rhizobia, dyes, polymers, biologicals, and pesticides are not coating material for purposes of this part.

(oo) *Brand.* The term ''brand'' means a name, term, sign, symbol, or design, or a combination of them that identifies the seed of one seller or group of sellers and differentiates that seed from the seed of other sellers.

■ 5. Revise § 201.3 to read as follows:

§ 201.3 Administrator.

The Administrator of the Agricultural Marketing Service may perform such duties as the Secretary requires in enforcing the provisions of the Act and of the regulations in this part.

§ 201.4 [Amended]

■ 6. Amend § 201.4 by:

■ a. In paragraph (a), removing the word ''act'' and adding in its place the word ''Act''; and

■ b. In paragraph (b) after the word ''treatment'' wherever it appears adding the words ''(including, but not limited to, coating, film coating, encrusting, or pelleting)'' and removing the word ''act'' and adding in its place the word ''Act''.

§ 201.7 [Amended]

■ 7. Amend § 201.7 by removing in the first sentence the words ''analyses, tests, and examinations'' and adding in their place the word ''tests,''.

§ 201.8 [Amended]

■ 8. Amend § 201.8 by removing in the last sentence the word ''act'' and adding in its place the word ''Act''.

§ 201.10 [Amended]

■ 9. In § 201.10 amend paragraph (a) by adding the word ''Radish;'' after the word ''Peanut;''.

■ 10. Revise § 201.12a to read as follows:

§ 201.12a Seed mixtures.

Seed mixtures intended for seeding/planting purposes shall be designated as a mixture on the label and each seed component shall be listed on the label in the order of predominance.

■ 11. Amend § 201.16 by:

■ a. In paragraph (a) in the first sentence removing the word ''state'' and adding in its place the word ''State'';

■ b. In paragraph (b):

■ i. Removing the terms ''*Emex australis* Steinh.'', ''*Emex spinosa* (L.) Campd.'', ''*Leptochola chinensis* (L.) Nees'', ''*Pennisetum clandestinum* Chiov.'', ''*Pennisetum macrourum* Trin.'', ''*Pennisetum pedicellatum* Trin.'', ''*Pennisetum polystachion* (L.) Schult.'', and ''*Rubus fruticosus* L. (complex)''; and

■ ii. Adding in alphabetical order the terms ''*Cenchrus caudatus* (Schrad.) Kuntze'', ''*Cenchrus clandestinus* Morrone'', ''*Cenchrus pedicellatus* (Trin.) Morrone'', ''*Cenchrus polystachios* (L.) Morrone'', ''*Dinebra chinensis* (L.)P. M. Peterson & N. Snow'', ''*Rubus plicatus* Weihe & Nees'', ''*Rumex hypogaeus* T.M. Schust & Reveal'', and ''*Rumex spinosus* L.''.

The additions read as follows:

§ 201.16 Noxious-weeds seeds

* * * * *

(b) * * *

Cenchrus caudatus (Schrad.) Kuntze
Cenchrus clandestinus Morrone
Cenchrus pedicellatus (Trin.) Morrone
Cenchrus polystachios (L.) Morrone

* * * * *

Dinebra chinensis (L.) P. M. Peterson & N. Snow

* * * * *

Rubus plicatus Weihe & Nees
Rumex hypogaeus T.M. Schust & Reveal
Rumex spinosus L.

* * * * *

§ 201.17 [Amended]

■ 12. Amend § 201.17 by removing the words ''Quackgrass (*Elytrigia repens*)'' and adding in their place the words ''Quackgrass (*Elymus repens*)''.

■ 13. Revise § 201.18 to read as follows:

§ 201.18 Other agricultural seeds.

Agricultural seeds other than those included in the percentage or percentages of kind, variety, or type may be expressed as ''other crop seeds,'' but the percentage shall include collectively all kinds, varieties, or types not named upon the label.

■ 14. Revise § 201.20 to read as follows:

§ 201.20 Germination

The label shall show the percentage of germination for each kind, kind and variety, kind and type, or kind and hybrid of agricultural seed comprising more than 5 percent of the whole. The label shall show the percentage of germination for each kind, kind and variety, kind and type, or kind and hybrid of agricultural seed comprising 5 percent of the whole or less if the seed is identified individually on the label.

■ 15. Revise § 201.21 to read as follows:

§ 201.21 Hard seed or dormant seed.

The label shall show the percentage of hard seed or dormant seed, as defined in § 201.57 or § 201.57a, if any is present. The percentages of hard seed and dormant seed shall not be included as part of the germination percentage.

■ 16. Revise § 201.23 to read as follows:

§ 201.23 Seller and buyer information.

Consumer packages or containers of agricultural seed for interstate shipment must be labeled as follows:

(a) The full name and address of the interstate shipper or a code designation identifying the interstate shipper, pursuant to § 201.24, must be printed on the label.

(b) If pursuant to paragraph (a) only a code is used to identify the interstate shipper, the full name and address of the consignee must appear on the label.

(c) For purposes of this section and § 201.24, the term *shipper* means the seller or consignor who puts the seed into interstate commerce, and the term *consignee* means the buyer or recipient of the seed shipment.

■ 17. Revise § 201.24 to read as follows:

§ 201.24 Code designation.

The code designation used in lieu of the full name and address of the interstate shipper pursuant to § 201.23(a) shall be approved by the Administrator of the Agricultural Marketing Service (AMS) or such other person designated by the Administrator for the purpose. When used, the AMS code designation shall appear on the label in a clear and legible manner, along with the full name and address of the consignee.

§ 201.25 [Amended]

■ 18. Amend § 201.25 by removing in the third sentence the word ''act'' and adding in its place the word ''Act''.

■ 19. Add § 201.26a to read as follows:

§ 201.26a Vegetable seed mixtures.

Vegetable seed mixtures for seeding/planting purposes shall be designated as a mixture on the label, and each seed component shall be listed on the label in the order of predominance.

■ 20. Revise § 201.27 to read as follows:

§ 201.27 Seller and buyer information.

Consumer packages or containers of vegetable seed for interstate shipment must be labeled as follows:

(a) The full name and address of the interstate shipper or a code designation identifying the interstate shipper, pursuant to § 201.28, must be printed on the label.

(b) If pursuant to paragraph (a) only a code is used to identify the interstate shipper, the full name and address of the consignee must appear on the label.

(c) For purposes of this section and § 201.28, the term *shipper* means the seller or consignor who puts the seed into interstate commerce, and the term *consignee* means the buyer or recipient of the seed shipment.

■ 21. Revise § 201.28 to read as follows:

§ 201.28 Code designation.

The code designation used in lieu of the full name and address of the interstate shipper pursuant to § 201.27(a) shall be approved by the Administrator of the Agricultural Marketing Service (AMS) or such other person designated by the Administrator for the purpose. When used, the AMS code designation shall appear on the label in a clear and legible manner, along with the full name and address of the consignee.

■ 22. Revise § 201.29 to read as follows:

§ 201.29 Germination of vegetable seed in containers of 1 pound or less.

Vegetable seeds in containers of 1 pound or less which have a germination percentage equal to or better than the standard set forth in § 201.31 need not be labeled to show the percentage of germination and date of test. Each variety of vegetable seed which has a germination percentage less than the standard set forth in § 201.31 shall have the words ''Below Standard'' clearly shown in a conspicuous place on the label or on the face of the container in type no smaller than 8 points. Each variety which germinates less than the standard shall also be labeled to show the percentage of germination and the percentage of hard seed (if any).

■ 23. Add § 201.30c to read as follows:

§ 201.30c Noxious-weed seeds of vegetable seed in containers of more than 1 pound.

Except for those kinds of noxious-weed seeds shown in § 201.16(b), the names of kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate shall not exceed the rate permitted by, the law and regulations of the State into which the seed is offered for transportation or is transported. If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to noxious-weed seed content, if necessary, to conform to the laws and regulations of the State into which the seed is diverted.

■ 24. Amend § 201.31 by revising the heading and the introductory paragraph to read as follows:

§ 201.31 Minimum germination standards for vegetable seeds in interstate commerce.

The following minimum germination standards for vegetable seeds in interstate commerce, which shall be construed to include hard seed, are determined and established under section 403(c) of the Act:

* * * * *

■ 25. Amend § 201.31a by revising paragraph (b) to read as follows:

§ 201.31a Labeling treated seed.

* * * * *

(b) *Name of substance or active ingredient.* The name of any active ingredient substance as required by paragraph (a) of this section shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. The label shall include either the name of the genus and species or the brand name as identified on biological product labels. Commonly accepted coined names are free for general use by the public, are not private trademarks, and are commonly recognized as names of particular substances, such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene, and ethyl mercury acetate. The terms ''mercury'' or ''mercurial'' may be used in labeling all types of mercurials. Examples of commonly accepted abbreviated chemical names are BHC (1,2,3,4,5,6-Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).

* * * * *

§ 201.33 [Amended]

■ 26. In § 201.33 amend paragraphs (a) and (b) by removing wherever it appears the word ''act'' and adding in its place the word ''Act''.

§ 201.36b [Amended]

■ 27. In § 201.36b, amend paragraph (a) by removing wherever it appears the word ''act'' and adding in its place the word ''Act''.

§ 201.37 [Amended]

■ 28. Amend § 201.37 by removing wherever it appears the word ''act'' and adding in its place the word ''Act''.

§ 201.38 [Removed and Reserved]

■ 29. Remove and reserve § 201.38.

§ 201.39 [Amended]

■ 30. In § 201.39, amend paragraph (c) by removing the word ''proble'' in and adding in its place the word ''probe''.

■ 31. Amend § 201.46 by:

■ a. Revising paragraph (b); and

■ b. Adding in Table 1 to paragraph (d)(2)(iii) entries for ''Camelina'', ''Radish'', and ''Teff'' in the ''Agricultural Seed'' section in alphabetical order.

The revisions and additions read as follows:

§ 201.46 Weight of working sample.

* * * * *

(b) Mixtures consisting of one predominant kind of seed or groups of kinds of similar size. The weights of the purity and noxious-weed seed working samples in this category shall be determined by the kind or group of kinds which comprise more than 50 percent of the sample.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

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

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seed per gram
Agricultural Seed:			
* * * * *		*	*
Camelina	4	40	880
* * * * *		*	*
Radish	30	300	75
* * * * *		*	*
Teff	1	10	3,288
* * * * *		*	*

§ 201.47a [Amended]

■ 32. Amend § 201.47a by:

■ a. in paragraph (b)(6) removing the words ''*Buchloe dactyloides*'' and adding in their place the words ''*Bouteloua dactyloides*'';

■ b. In paragraph (c) removing the word ''Compositae'' and adding in its place the word ''Asteraceae'';

■ c. In paragraph (d) removing the word ''Legumionsae'' and adding in its place the word ''Fabaceae'';

■ d. In paragraph (e) removing the word ''Umbelliferae'' and adding in its place the word ''Apiaceae''; and

■ e. In paragraph (f) removing the word ''Labiatae'' and adding in its place the word ''Lamiaceae''.

■ 33. Amend § 201.48 by revising the first sentence of the introductory text and paragraphs (a), (f), and (g)(1) and (3) to read as follows:

§ 201.48 Kind or variety considered pure seed.

The pure seed shall include all seeds of each kind or each kind and variety under consideration present in excess of 5 percent by weight of the whole. * * *

(a) Immature or shriveled seeds and seeds that are cracked or injured. For seeds of legumes (Fabaceae) and crucifers (Brassicaceae) with the seed coats entirely removed refer to § 201.51(a)(1);

* * * * *

(f) Intact fruits, whether or not they contain seed, of species belonging to the following families: Sunflower (Asteraceae), buckwheat (Polygonaceae), carrot (Apiaceae), valerian (Valerianaceae), mint (Laminaceae) and other families in which the seed unit may be a dry, indehiscent one-seeded fruit. For visibly empty fruits, refer to inert matter, § 201.51(a)(6);

(g) * * *

(1) Intact burs of buffalograss (*Bouteloua dactyloides*) shall be considered pure seed whether or not a caryopsis is present. Refer to § 201.51(a)(6) for burs which are visibly empty.

* * * * *

(3) Special purity procedures for smooth brome, fairway crested wheatgrass, standard crested wheatgrass, intermediate wheatgrass, pubescent wheatgrass, tall wheatgrass, and western wheatgrass are listed in § 201.51a(b).

* * * * *

§ 201.51 [Amended]

■ 34. Amend § 201.51 by:

■ a. In paragraph (a)(1) removing the words ''Leguminosae'', ''crucifers'', and ''Cruciferae'', and adding in their places the words ''Fabaceae'', ''brassica'', and Brassicaceae'', respectively;

■ b. In paragraph (b)(2)(iv) removing the word ''Agropyron'' and adding in its place the word ''*Elymus*'';

■ c. In paragraph (b)(2)(v) removing the words ''A. repens'' and adding in their place the words ''E. repens''; and

■ d. In paragraph (b)(4) removing the word ''Compositae'' and adding in its place the word ''Asteraceae''.

■ 35. Amend § 201.51a by revising paragraph (a) and the table in paragraph (b)(2)(ii) to read as follows:

§ 201.51a Special procedures for purity analysis.

(a) The laboratory analyst shall use the Uniform Blowing Procedure described in this paragraph to separate pure seed and inert matter in the following: Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, orchardgrass, blue grama, and side-oats grama.

(1) *Separation of mixtures.* Separate seed kinds listed in this section from other kinds in mixtures before using the Uniform Blowing Procedure.

(2) *Calibration samples.* Obtain calibration samples and instructions, which are available on loan through the Seed Regulatory and Testing Division, S&T, AMS, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054.

(3) *Blowing point.* Use the calibration samples to establish a blowing point prior to proceeding with the separation of pure seed and inert matter for these kinds.

(i) Refer to the specifications on the calibration samples for Kentucky bluegrass, orchardgrass, and Pensacola variety of bahiagrass to determine their appropriate blowing points for the Uniform Blowing Procedure.

(ii) Use the calibration sample for Kentucky bluegrass to determine the blowing points for Canada bluegrass, rough bluegrass, blue grama, and side-oats grama.

(A) The blowing point for Canada bluegrass shall be the same as the blowing point determined for Kentucky bluegrass.

(B) The blowing point for rough bluegrass shall be a factor of 0.82 (82 percent) of the blowing point determined for Kentucky bluegrass. The 0.82 factor is restricted to the General-type seed blower.

(C) The blowing point for blue grama shall be a factor of 1.157 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each blown separately. The 1.157 factor is restricted to the General-type seed blower.

(D) The blowing point for side-oats grama shall be a factor of 1.480 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each part blown separately. The 1.480 factor is restricted to the General-type seed blower.

(4) *Blower calibration.* Calibrate and test the blower according to the instructions that accompany the calibration samples before using the blower to analyze the seed sample. Use the anemometer to set the blower gate opening according to the calibration sample specifications.

(i) Determine the blowing point using a calibrated anemometer.

(ii) Position the anemometer fan precisely over the blower opening, set it at *meters per second* (m/s), run the blower at the calibrated gate setting, and wait 30 seconds before reading the anemometer.

(iii) Use this anemometer reading to determine the blower gate setting whenever the Uniform Blowing Procedure is required.

(5) *Pure seed and inert matter.* Use the calibrated blower to separate the seed sample into light and heavy portions. After completing the initial separation, remove and separate all weed and other crop seeds from the light portion. The remainder of the light portion shall be considered inert matter. Remove all weed and other crop seeds and other inert matter (stems, leaves, dirt) from the heavy portion and add them to the weed seed, other crop seed, or inert matter separations, as appropriate. The remainder of the heavy portion shall be considered pure seed.

(b) * * *

(2) * * *

(ii) * * *

TABLE OF FACTORS TO APPLY TO MULTIPLE UNITS [a]

Percent of single units of each kind	Crested wheat-grass [b]	Pubescent wheat-grass	Intermediate wheat-grass	Tall wheat-grass [c]	Western wheat-grass [c]	Smooth brome
50 or below	70	66	72	.....	.....	72
50.01–55.00	72	67	74	.....	.....	74
55.01–60.00	73	67	75	.....	.....	75
60.01–65.00	74	67	76	.....	.....	76
65.01–70.00	75	68	77	.....	60	78
70.01–75.00	76	68	78	.....	66	79
75.01–80.00	77	69	79	50	67	81
80.01–85.00	78	69	80	55	68	82
85.01–90.00	79	69	81	65	70	83
90.01–100.00	79	70	82	70	74	85

[a] The factors represent the percentages of the multiple unit weights which are considered pure seed. The remaining percentage is regarded as inert matter.
[b] Includes both standard crested wheatgrass and fairway crested wheatgrass.
[c] Dashes in table indicate that no factors are available at the levels shown.

§ 201.56 [Amended]

■ 36. In § 201.56, amend paragraph (d) by removing the word ''Umbelliferae'' and adding in its place the word ''Apiaceae.''

■ 37. Amend § 201.58 by:

■ a. Revising paragraphs (a)(1) and (b)(13);

■ b. Adding in Table 2 to paragraph (c)(3) entries for '' Camelina'', ''Radish'', and ''Teff'' in the ''Agricultural Seed'' section in alphabetical order;

■ c. Revising in Table 2 to paragraph (c)(3) the entry for ''Oat'' in the ''Agricultural Seed'' section; and

■ d. Revising in Table 2 to paragraph (c)(3) the entry for ''Brussels Sprouts'' in the ''Vegetable Seed'' section.

The revisions and additions read as follows:

§ 201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.

* * * * *

(a) *Definitions and explanations applicable to table 2*—(1) *Duration of tests.* The following deviations are permitted from the specified duration of tests: Any test may be terminated prior to the number of days listed under ''Final count'' if the maximum germination of the sample has then been determined. The number of days stated for the first count is approximate and a deviation of 1 to 3 days is permitted. If at the time of the prescribed test period the seedlings are not sufficiently developed for positive evaluation, it is possible to extend the time of the test period two additional days. If the prescribed test period or the allowed extension falls on a weekend or public holiday, the test may be extended to the next working day. (Also, see paragraph (a)(5) of this section and § 201.57.)

* * * * *

(b) * * *

(13) *Fourwing Saltbush (Atriplex canscens); preparation of seed for test.* De-wing seeds and soak for 2 hours in 3 liters of water, after which rinse with approximately 3 liters of distilled water. Remove excess water, air dry for 7 days at room temperature, then test for germination as indicated in Table 2.

(c) * * *

(3) * * *

TABLE 2 TO PARAGRAPH (C)(3)

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Agricultural Seed:						
*	*	*	*	*	*	*
Camelina	TB	20	4	7		
*	*	*	*	*	*	*
Oat	B, T, S	20; 15	5	10	Prechill at 5 or 10 °C for 5 days and test for 7 days or predry and test for 10 days.	
*	*	*	*	*	*	*
Radish	B, T	20	4	6		
*	*	*	*	*	*	*
Teff	TB	20—30	4	7	KNO_3.	
*	*	*	*	*	*	*
Vegetable Seed:						
Brussels Sprouts	B, P, T	20—30	3	10	Prechill 5 days at 5 or 10 °C for 3 days; KNO_3 and Light.	
*	*	*	*	*	*	*

* * * * *

§ 201.59 [Amended]

■ 38. Amend § 209.59 by removing wherever it appears the word ''act'' and adding in its place the word ''Act''.

§ 201.60 [Amended]

■ 39. Amend § 201.60 by:

■ a. In paragraph (a)(1) adding in the second sentence the word ''teff,'' after the words ''sweet vernalgrass,'';

■ b. In paragraph (a)(2) removing in the first sentence the word ''act'' and adding in its place the word ''Act''; and

■ c. In paragraph (b)(2) adding in the first sentence the word ''other'' before the words ''crop seeds''.

■ 40. Amend § 201.61 by revising the table heading to read as follows:

§ 201.61 Fluorescence percentages in ryegrasses.

* * *

Fluorescence Tolerance, Based on Test Fluorescence (TFL)

* * * * *

■ 41. Revise § 201.64 to read as follows:

§ 201.64 Pure live seed.

The tolerance for pure live seed shall be determined by applying the respective tolerances to the germination plus the hard seed and dormant seed, and the pure seed.

$$PLS = \frac{[\text{Germination \%} + \text{Hard Seed \%} + \text{Dormant Seed \%}]\text{x Pure Seed \%}}{100}$$

■ 42. Amend § 201.68 by revising the introductory text and paragraph (b) to read as follows:

§ 201.68 Eligibility requirements for certification of varieties.

When a seed originator, developer, owner of the variety, or agent thereof requests eligibility for certification, the certification agency shall require the person to provide the following information upon request:

* * * * *

(b) A statement concerning the variety's origin and the breeding or reproductive stabilization procedures used in its development.

* * * * *

■ 43. Amend § 201.70 by revising paragraph (a) to read as follows:

§ 201.70 Limitations of generations for certified seed.

* * * * *

(a) Recertification of the Certified class may be permitted when no Foundation or Registered seed is being maintained; or

* * * * *

§ 201.74 [Amended]

■ 44. Amend § 201.74 by removing in paragraphs (a), (b), and (c) the words ''(if certified as to variety)''.

§ 201.75 [Amended]

■ 45. Amend § 201.75 by removing in paragraphs (b)(1) and (c) wherever it appears the words ''(if certified as to variety)''.

■ 46. In § 201.76 amend Table 5 by adding in alphabetical order entries for ''Camelina'', ''Chickpea'', ''Hemp'', ''Radish'', ''Sunn hemp'' and footnotes ''60'' through ''63'' to read as follows:

§ 201.76 Minimum Land, Isolation, Field, and Seed Standards.

* * * * *

TABLE 5 TO § 201.76

Crop	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
*		*	*			*	*			*	*	
Camelina	[8] 1	[61] 50 ([59] 15.24m)	5,000	0.1	[8] 1	[61] 50 ([59] 15.24m)	2,000	0.2	[8] 1	[61] 50 ([59] 15.24m)	1,000	0.3
Chickpea	[7] 1	[23] 0	10,000	0.1	[7] 1	[23] 0	2,000	0.2	[7] 1	[23] 0	1,000	0.2
*		*	*			*	*			*	*	
Hemp	[63]	[63]	[63]	[63]	[63]	[63]	[63]	[63]	[63]	[63]	[63]	[63]
*		*	*			*	*			*	*	
Radish	[60] 5	1,320 ([59] 402.34m)	0	0.05	[60] 5	1,320 ([59] 402.34m)	1,000	0.1	[60] 5	660 ([59] 201.17m)	500	0.25
*		*	*			*	*			*	*	
Sunn hemp	[7] 1	1,320 ([59] 402.34m)	[62] 5,000	0.1	[7] 1	660 ([59] 201.17m)	[62] 1,000	0.25	[7] 1	330 ([59] 100.58m)	[62] 500	0.5
*		*	*			*	*			*	*	

[60] Land must not have grown or been seeded to any cruciferous crops during the previous 5 years. This interval may be reduced to 3 years, if following the same variety and the same or higher certification class.
[61] Field producing any class of certified seed must be at least 50 feet from any other variety or fields of the same variety that do not meet the varietal purity requirement for certification.
[62] No other Crotalaria species allowed in Foundation, Registered and/or Certified production fields.
[63] Refer to the certifying agency in the production State(s) for certification standards.

■ 47. Amend § 201.78 by revising paragraph (e) to read as follows:

§ 201.78 Pollen control for hybrids.

* * * * *

(e) *Hybrid alfalfa.* When at least 75 percent of the plants are in bloom and there is no more than 15 percent seed set, 200 plants shall be examined to determine the pollen production index (PPI). Each plant is rated as 1, 2, 3 or 4 with ''1'' representing no pollen, ''2'' representing a trace of pollen, ''3'' representing substantially less than normal pollen, and ''4'' representing normal pollen. The rating is weighted as 0, 0.1, 0.6 or 1.0, respectively. The total number of plants of each rating is multiplied by the weighted rating and the values are totaled. The total is divided by the number of plants rated and multiplied by 100 to determine the PPI. For hybrid production using separate male and female rows, the maximum PPI allowed for 95 percent hybrid seed is 14 for the Foundation class, and 6 for the F1 hybrid. For hybrid production using comingled parent lines, the maximum PPI allowed for 75 percent hybrid Certified class seed is 25, with an allowance for blending to reach a PPI of 25 for fields with a PPI above 25, but no greater than 30.

PART 202—FEDERAL SEED ACT ADMINISTRATIVE PROCEDURES

■ 48. The authority citation for part 202 continues to read as follows:

Authority: 302, 305, 402, 408, 409, 413, 414, 53 Stat. 1275, as amended; 7 U.S.C. 1582, 1585, 1592, 1598, 1599, 1603, and 1604.

■ 49. In part 202, the heading is revised to read as set forth above.

Subpart C—Provisions Applicable to Other Proceedings

■ 50. In subpart C, revise the heading to read as set forth above.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–12920 Filed 7–6–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0171; Product Identifier 2018–SW–028–AD; Amendment 39–21155; AD 2020–14–01]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Bell Textron Inc. (Bell) Model 214ST helicopters. This AD was prompted by the discovery of bolts with nonconforming external thread root radii. This AD requires removing the affected bolts from service and prohibits installing an affected bolt on any helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 11, 2020.

ADDRESSES: For service information identified in this final rule, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone 817–280–3391; fax 817–280–6466; or at *https://www.bellcustomer.com.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

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–2020–0171; 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, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M

30, West Building Ground Floor, Room W12 140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Haytham Alaidy, Aviation Safety Engineer, DSCO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5224; fax: 817–222–4960; email *haytham.alaidy@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Bell Model 214ST helicopters with certain serial-numbered spindle to yoke bolts (bolts) part number (P/N) 214–010–262–103 installed. The NPRM published in the **Federal Register** on February 26, 2020 (85 FR 11003). The NPRM was prompted by the discovery of bolts with nonconforming external thread root radii. The NPRM proposed to require removing the affected bolts from service and would prohibit installing an affected bolt on any helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

Since the FAA issued the NPRM, Bell Helicopter Textron Inc., changed its name to Bell Textron Inc. This AD reflects that change and updates the contact information.

Comments

After the NPRM was published, the FAA received comments from the European Union Aviation Safety Agency (EASA). The following presents the comments received on the NPRM and the FAA's response to the comments.

Request for the FAA To Change the Applicability

Request: EASA requested that the FAA revise the applicability of the AD to include all helicopters for which the affected P/N and S/N bolts are eligible for installation. EASA stated this revision should be made in order to fully prohibit (re)installation of the affected bolt on any (other) helicopter. EASA further stated that the NPRM's applicability paragraph ''excludes all helicopters that have another P/N [bolt] installed, or the same P/N but another S/N installed, but for which installation of that P/N (and any S/N thereof) is likely eligible. Since the AD does not apply to those helicopters, none of the requirements of the AD would apply either.'' According to EASA, the prohibition in paragraph (g)(2) of the NPRM, which prohibits the installation on any helicopter of a bolt with a P/N and S/N listed in the applicability of the AD, could be legally disregarded by operators of helicopters that are outside the scope of the applicability of the AD.

FAA Response: The FAA disagrees. Upon installation of a bolt with a P/N and S/N listed in the applicability, the AD applies to that helicopter, and the required actions of the AD must be complied with prior to approving the helicopter for return to service. These required actions include the installation prohibition in paragraph (e)(2) of the AD. Thus, the AD prohibits the installation of an affected bolt on any Bell Model 214ST helicopters after the effective date of the AD.

FAA's Determination

The FAA has reviewed the relevant information, considered the comments received, and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design and that air safety and the public interest require adopting the AD requirements as proposed with the changes described previously. These changes are consistent with the intent proposed in the NPRM for correcting the unsafe condition and will neither increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information

The FAA reviewed Bell Helicopter Textron Alert Service Bulletin 214ST–18–93 Revision A, dated April 17, 2019, for Model 214ST helicopters. This service information specifies inspecting the historical records and spare parts to determine the S/N of each bolt. If the S/N of the bolt indicates it is a non-conforming bolt, the service information specifies torque checking the bolt every 25 hours until the bolt reaches its life limit.

Differences Between This AD and the Service Information

The service information specifies torque checking the bolt every 25 hours until it is replaced upon reaching its life limit, while this AD requires removing each bolt from service within 25 hours time-in-service.

Costs of Compliance

The FAA estimates that this AD affects 16 helicopters of U.S. registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Replacing 1 bolt takes about 8 work-hours and parts cost about $7,073 for an estimated replacement cost of $7,753 per helicopter.

The FAA has no way of determining the number of bolts that might need to be replaced.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this AD would not have federalism implications under Executive Order 13132. This 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 that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–14–01 Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.): Amendment 39–21155; Docket No. FAA–2020–0171; Product Identifier 2018–SW–028–AD.

(a) Applicability

This AD applies to Bell Textron Inc. (Bell) Model 214ST helicopters, certificated in any category, with a spindle to yoke bolt (bolt) part number (P/N) 214–010–262–103 and serial number (S/N) BH179163, BH179164, BH179169, BH179170, BH179171, BH179175, BH179176, BH179178, BH224783, BH224751, BH224756, BH224764, BH224765, BH383851, BH383853, BH383855, BH383856, BH383857, BH383858, BH383860, BH383861, BH383862, BH383864, BH383865, BH383868, BH383872, BH383873, BH383878, or BH383879 installed.

(b) Unsafe Condition

This AD was prompted by the discovery that bolts have nonconforming external thread root radii. The unsafe condition, if not addressed, could result in the spindle separating from the yoke and subsequent loss of control of the helicopter.

(c) Effective Date

This AD is effective August 11, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 25 hours time-in-service, remove from service each bolt listed in paragraph (a) of this AD.

(2) After the effective date of this AD, do not install on any helicopter a bolt with a P/N and S/N listed in paragraph (a) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, FAA, may approve AMOCs for this AD. Send your proposal to Haytham Alaidy, Aviation Safety Engineer, DSCO Branch, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; phone: 817–222–5224; fax: 817–222–4960; email: *haytham.alaidy@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Related Information

Bell Helicopter Textron Alert Service Bulletin 214ST–18–93 Revision A, dated April 17, 2019, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Textron Inc., P.O. Box 482, Fort Worth, TX 76101; telephone 817–280–3391; fax 817–280–6466; or at *https://www.bellcustomer.com.* You may view a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor.

Issued on June 23, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–14210 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0800; Project Identifier 2005–NE–24–AD; Amendment 39–21153; AD 2020–13–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2005–23–09 for all General Electric Company (GE) CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B model turbofan engines. AD 2005–23–09 required initial and repetitive fluorescent-penetrant inspections (FPI) of certain areas of high-pressure compressor (HPC) cases, part number (P/N) 1509M97G07 and P/N 2083M69G03. This AD requires an update of the Airworthiness Limitations Section (ALS) of GE Engine Manual GEK99376 and the operator's existing continuous airworthiness maintenance program (CAMP). This AD was prompted by GE performed an updated lifing analysis on the HPC case. As a result, GE found additional locations on the cases requiring FPI, revised the inspection interval for performing FPI of the existing location, and added an additional P/N HPC case that requires inspection. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 11, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 11, 2020.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH, 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0800.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0800; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Stevenson, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: (781) 238–7132; fax: (781) 238–7199; email: *Scott.M.Stevenson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–23–09, Amendment 39–14367 (70 FR 67901, November 9, 2005), (''AD 2005–23–09''). AD 2005–23–09 applied to all GE CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B model turbofan engines. The NPRM published in the **Federal Register** on January 21, 2020 (85 FR 3284). The NPRM was prompted by GE performing an updated lifing analysis on the HPC case. As a result, GE found additional locations on the cases

requiring FPI, revised the inspection interval for performing FPI of the existing location, and added an additional P/N HPC case that requires inspection. The NPRM proposed to require an update of the ALS of GE Engine Manual GEK99376 and the operator's existing CAMP. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

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

Request for Clarification on Task Referenced in AD

EASA and Delta Airlines (Delta) requested clarification on whether TASK 05–21–02–200–001, dated September 15, 2015, referenced in the AD and in the docket, should be from Revision 47 or from Revision 48 of GE CF6–80E1 Engine Manual GEK99376, dated September 15, 2019 (''GE Engine Manual''). Delta further questioned whether the task should have the same date as the GE Engine Manual.

The FAA agrees that TASK 05–21–02–200–001, dated September 15, 2015, in Revision 48 of the GE Engine Manual is referenced correctly in this AD. The FAA notes that the task has a different date than the GE Engine Manual and the task is dated correctly in the NPRM. This task from Revision 48 of the GE Engine Manual will be uploaded to the docket upon publication of the final rule.

Request To Include Reference to Later Revisions of Engine Manual

Delta requested that the FAA include a reference to ''and later approved revisions'' when referencing the GE Engine Manual in paragraph (g) of this AD.

The FAA disagrees because later revisions of the GE Engine Manual cannot be referenced in an AD.

Support for the AD

The Air Line Pilots Association, International, expressed support for the AD as written.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information Under 1 CFR Part 51

The FAA reviewed TASK 05–21–02–200–001, dated September 15, 2015, from ESM 05–21–02, Life Limits 001 High Pressure Compressor HPC—Scheduled Maintenance Checks, of the GE CF6–80E1 Engine Manual GEK99376, Revision 48, dated September 15, 2019. The service information describes procedures for performing FPIs of the HPC case. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 20 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update ALS of Engine Manual	2 work-hours × $85 per hour = $170	$0	$170	$3,400

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

■ a. Removing Airworthiness Directive (AD) 2005–23–09, Amendment 39–14367 (70 FR 67901, November 9, 2005); and

■ b. Adding the following new AD:

2020–13–08 General Electric Company: Amendment 39–21153; Docket No. FAA–2019–0800; Project Identifier 2005–NE–24–AD.

(a) Effective Date

This AD is effective August 11, 2020.

(b) Affected ADs

This AD replaces AD 2005–23–09, Amendment 39–14367 (70 FR 67901, November 9, 2005).

(c) Applicability

This AD applies to General Electric Company (GE) CF6–80E1A1, –80E1A2,

–80E1A3, –80E1A4, and –80E1A4/B model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by GE performing an updated lifing analysis on the high-pressure compressor (HPC) case. Based on this analysis, GE found new locations on the case that require fluorescent penetrant inspection (FPI), identified a new inspection interval for the existing FPI location, and added another part-numbered HPC case that requires inspection. The FAA is issuing this AD to prevent failure of the HPC case. The unsafe condition, if not addressed, could result in uncontained release of the HPC case, engine fire, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 180 days after the effective date of this AD, replace TASK 05–21–02–200–001 in GE CF6–80E1 Engine Manual GEK99376 and the operator's existing continuous airworthiness maintenance program with TASK 05–21–02–200–001, dated September 15, 2015, from ESM 05–21–02, Life Limits 001 High Pressure Compressor HPC—Scheduled Maintenance Checks, of the GE CF6–80E1 Engine Manual GEK99376, Revision 48, dated September 15, 2019.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Scott Stevenson, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7132; fax: 781–238–7199; email: *scott.m.stevenson@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) TASK 05–21–02–200–001, dated September 15, 2015, from ESM 05–21–02, Life Limits 001 High Pressure Compressor HPC—Scheduled Maintenance Checks, of the GE CF6–80E1 Engine Manual GEK99376, Revision 48, dated September 15, 2019.

(ii) [Reserved]

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued on June 17, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–14458 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0298; Airspace Docket No. 19–ANM–97]

RIN 2120–AA66

Establishment of Class E Airspace; Quinter, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface of the earth at Gove County Airport, Quinter, KS, to accommodate new area navigation (RNAV) procedures at the airport. This action will ensure the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 23495; April 28, 2020) for Docket No. FAA–2020–0298 to establish Class E airspace at Gove County Airport, Quinter, KS, in support of IFR operations at the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface of the earth at Gove County Airport, Quinter, KS. The Class E airspace will be established to within 5.5 miles of the Gove County Airport. This area would provide airspace for new Area Navigation Procedures at Gove County Airport, Quinter, KS.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WA E5 Quinter, KS

Gove County Airport, KS
(Lat. 39°02′19″ N, long. 100°14′02″ W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Gove County airport, Quinter, KS.

Issued in Seattle, Washington, on June 29, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–14469 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2509 and 2510

RIN 1210–AB96

Conflict of Interest Rule—Retirement Investment Advice: Notice of Court Vacatur

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Final rule; technical amendment.

SUMMARY: This document implements the vacatur of the Department's 2016 final rule defining who is a ''fiduciary'' under the Employee Retirement Income Security Act of 1974. This document also reflects the removal of two prohibited transaction exemptions (PTEs 2016–01 and 2016–02) published with the 2016 final rule and the return of the amended prohibited transaction exemptions (PTEs 75–1, 77–4, 80–83, 83–1, 84–24, and 86–128) to their pre-amendment form. In addition, this document reinstates Interpretive Bulletin 96–1.

DATES: Effective July 7, 2020.

FOR FURTHER INFORMATION CONTACT: Luisa Grillo-Chope, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA) (202) 693–8825; Susan Wilker, Office of Exemption Determinations, EBSA (202) 693–8557.

SUPPLEMENTARY INFORMATION: On April 8, 2016, the Department of Labor published a final regulation titled ''Conflict of Interest Rule—Retirement Investment Advice'' (Fiduciary Rule) defining who is a ''fiduciary'' of an employee benefit plan under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA) as a result of giving investment advice to a plan or its participants or beneficiaries for a fee or other compensation. The Fiduciary Rule also applied to the definition of a ''fiduciary'' of a plan (including an individual retirement account (IRA)) under section 4975(e)(3)(B) of the Internal Revenue Code of 1986 (Code). On the same date, the Department published two new administrative class exemptions from the prohibited transaction provisions of ERISA and the Code: The Best Interest Contract Exemption (PTE 2016–01) and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02), as well as amendments to the following previously granted exemptions: PTEs 75–1; 77–4; 80–83; 83–1; 84–24; and 86–128 (collectively, the PTEs).

On June 21, 2018, the United States Court of Appeals for the Fifth Circuit issued a judgment and mandate vacating the Fiduciary Rule, the new PTEs, and the amendments to the previously granted PTEs *in toto. Chamber of Commerce,* 885 F.3d 360 (5th Cir. 2018); Mandate at 2, *Chamber,* 885 F.3d 360 (No. 17–10238) (ECF No. 00514522178). The vacatur had the effect of reinstating the prior regulatory text, *i.e.,* the 1975 regulation [1] (1975 Regulation), reinstating Interpretive Bulletin 96–1, which had been removed and largely incorporated into the text of the

[1] *See* 40 FR 50842–44 (Oct. 31, 1975).

Fiduciary Rule, revoking PTEs 2016–01 and 2016–02, and returning the previously granted PTEs to their pre-2016 rulemaking form. This document takes the administrative steps necessary to conform the regulatory text in the CFR and the text of the previously granted PTEs to the Fifth Circuit's vacatur mandate. This technical amendment is a ministerial action to reflect the court's decision which affects no legal rights or obligations and imposes no costs.

This final rule reflects the Fifth Circuit's vacatur of the Fiduciary Rule under section 3(21)(A)(ii) of ERISA and section 4975(e)(3)(B) of the Code. Consistent with **Federal Register** requirements, this final rule removes language from the CFR that the Fiduciary Rule added and reinstates the 1975 Regulation and Interpretive Bulletin 96–1. This amendment also corrects a typographical error in the original text of the 1975 Regulation, at 29 CFR 2510–3.21(e)(1)(ii).

This document also reflects the Fifth Circuit's vacatur of PTEs 2016–01 and 2016–02, the two new class exemptions granted in connection with the Fiduciary Rule, as well as the vacatur of the amendments to the previously granted exemptions, PTEs 75–1, 77–4, 80–83, 83–1, 84–24 and 86–128.[2] The Department also withdraws the Proposed Best Interest Contract Exemption for Insurance Intermediaries, a related class exemption proposal that was not finalized.[3] EBSA's website will reflect all of these changes.[4]

Procedural and Other Matters

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The Department has determined that there is good cause for dispensing with public comments, inasmuch as this rule merely conforms the text in the CFR to reflect the mandate of the Fifth Circuit's decision, which vacated the Department's 2016 rulemaking *in toto.* Additionally, the Department finds that to provide notice and an opportunity to comment would be unnecessary because the Department is simply conducting the ministerial task of implementing the mandate issued by the Fifth Circuit.

In addition, the Department finds that it has good cause to make the revisions immediately effective under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Section 553(d) provides that final rules shall not become effective until 30 days after publication in the **Federal Register**, ''except . . . as otherwise provided by the agency for good cause,'' among other exceptions. The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996). The Department has determined that there is good cause for making this final rule effective immediately because it merely implements the court order that already vacated certain regulatory provisions, and reinstates the prior versions, with one minor typographical correction. Accordingly, this final rule is effective immediately upon publication.

This final rule has been determined to be not significant for purposes of Executive Orders 12866 and 13563. Additionally, no analysis is required under the Regulatory Flexibility Act[5] or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999,[6] because, for the reasons discussed above, the Department is not required to engage in notice and comment under the Administrative Procedure Act. This final rule does not have significant Federalism implications under Executive Order 13132. This final rule is not a significant regulatory action under Executive Order 12866, and is therefore not subject to Executive Order 13771, entitled Reducing Regulations and Controlling Regulatory Costs. The final rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. This final action is administrative and only implements the Fifth Circuit vacatur. Accordingly, the Department has determined that good cause exists, and that this technical amendment is not subject to the timing requirements of the Congressional Review Act.

Statutory Authority

This regulation is issued pursuant to the authority in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 237, and under Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012).

List of Subjects in 29 CFR Parts 2509 and 2510

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department is amending parts 2509 and 2510 of subchapters A and B of chapter XXV of title 29 of the Code of Federal Regulations as follows:

Subchapter A—General

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

■ 1. The authority citation for part 2509 continues to read as follows:

Authority: 29 U.S.C. 1135. Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Sec. 2509.75–5 also issued under 29 U.S.C. 1002. Sec. 2509.95–1 also issued under sec. 625, Pub. L. 109–280, 120 Stat. 780.

■ 2. Add § 2509.96–1 to read as follows:

§ 2509.96–1 Interpretive Bulletin Relating to Participant Investment Education.

(a) *Scope.* This interpretive bulletin sets forth the Department of Labor's interpretation of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2510.3–21(c) as applied to the provision of investment-related educational information to participants and beneficiaries in participant-directed individual account pension plans (*i.e.,* pension plans that permit participants and beneficiaries to direct the investment of assets in their individual accounts, including plans that meet the requirements of the Department's regulations at 29 CFR 2550.404c–1).

[2] The **Federal Register** citations for the applicable versions of the previously granted PTEs are as follows: PTE 75–1, 40 FR 50845 (Oct. 31, 1975), as amended at 71 FR 5883 (Feb. 3, 2006); PTE 77–4, 42 FR 18732 (Apr. 8, 1977); PTE 80–83, 45 FR 73189 (Nov. 4, 1980), as amended at 67 FR 9483 (March 1, 2002); PTE 83–1, 48 FR 895 (Jan. 7, 1983), as amended at 67 FR 9483 (March 1, 2002); PTE 84–24, 49 FR 13208 (Apr. 3, 1984), as corrected, 49 FR 24819 (June 15, 1984), as amended, 71 FR 5887 (Feb. 3, 2006); and PTE 86–128, 51 FR 41686 (November 18, 1986), as amended, 67 FR 64137 (October 17, 2002).

[3] *See* 82 FR 7336 (January 19, 2017).

[4] Available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/exemptions/class.*

[5] *See* 5 U.S.C. 601(2) (limiting ''rules'' under the Regulatory Flexibility Act, to rules for which a general notice of proposed rulemaking is published).

[6] Public Law 104–4.

(b) *General.* Fiduciaries of an employee benefit plan are charged with carrying out their duties prudently and solely in the interest of participants and beneficiaries of the plan, and are subject to personal liability to, among other things, make good any losses to the plan resulting from a breach of their fiduciary duties. ERISA sections 403, 404 and 409, 29 U.S.C. 1103, 1104, and 1109. Section 404(c) of ERISA provides a limited exception to these rules for a pension plan that permits a participant or beneficiary to exercise control over the assets in his or her individual account. The Department of Labor's regulation, at 29 CFR 2550.404c–1, describes the kinds of plans to which section 404(c) applies, the circumstances under which a participant or beneficiary will be considered to have exercised independent control over the assets in his or her account, and the consequences of a participant's or beneficiary's exercise of such control.[1]

With both an increase in the number of participant-directed individual account plans and the number of investment options available to participants and beneficiaries under such plans, there has been an increasing recognition of the importance of providing participants and beneficiaries whose investment decisions will directly affect their income at retirement, with information designed to assist them in making investment and retirement-related decisions appropriate to their particular situations. Concerns have been raised, however, that the provision of such information may in some situations be viewed as rendering ''investment advice for a fee or other compensation,'' within the meaning of ERISA section 3(21)(A)(ii), thereby giving rise to fiduciary status and potential liability under ERISA for investment decisions of plan participants and beneficiaries.

In response to these concerns, the Department of Labor is clarifying herein the applicability of ERISA section 3(21)(A)(ii) and 29 CFR 2510.3–21(c) to the provision of investment-related educational information to participants and beneficiaries in participant directed individual account plans.[2] In providing this clarification, the Department does not address the ''fee or other compensation, direct or indirect,'' which is a necessary element of fiduciary status under ERISA section 3(21)(A)(ii).[3]

(c) *Investment Advice.* Under ERISA section 3(21)(A)(ii), a person is considered a fiduciary with respect to an employee benefit plan to the extent that person ''renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority to do so . . . .'' The Department issued a regulation, at 29 CFR 2510.3–21(c), describing the circumstances under which a person will be considered to be rendering ''investment advice'' within the meaning of section 3(21)(A)(ii). Because section 3(21)(A)(ii) applies to advice with respect to ''any moneys or other property'' of a plan and 29 CFR 2510.3–21(c) is intended to clarify the application of that section, it is the view of the Department of Labor that the criteria set forth in the regulation apply to determine whether a person renders ''investment advice'' to a pension plan participant or beneficiary who is permitted to direct the investment of assets in his or her individual account.

Applying 29 CFR 2510.3–21(c) in the context of providing investment-related information to participants and beneficiaries of participant-directed individual account pension plans, a person will be considered to be rendering ''investment advice,'' within the meaning of ERISA section 3(21)(A)(ii), to a participant or beneficiary only if:

(i) The person renders advice to the participant or beneficiary as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property (2510.3–21(c)(1)(i); and

(ii) the person, either directly or indirectly,

(A) has discretionary authority or control with respect to purchasing or selling securities or other property for the participant or beneficiary (2510.3–21(c)(1)(ii)(A)), or (B) renders the advice on a regular basis to the participant or beneficiary, pursuant to a mutual agreement, arrangement or understanding (written or otherwise) with the participant or beneficiary that the advice will serve as a primary basis for the participant's or beneficiary's investment decisions with respect to plan assets and that such person will render individualized advice based on the particular needs of the participant or beneficiary (2510.3–21(c)(1)(ii)(B)).[4]

Whether the provision of particular investment-related information or materials to a participant or beneficiary constitutes the rendering of ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c)(1), generally can be determined only by reference to the facts and circumstances of the particular case with respect to the individual plan participant or beneficiary. To facilitate such determinations, however, the Department of Labor has identified, in paragraph (d), below, examples of investment-related information and materials which if provided to plan participants and beneficiaries would not, in the view of the Department, result in the rendering of ''investment advice'' under ERISA section 3(21)(A)(ii) and 29 CFR 2510.3–21(c).

(d) *Investment Education.* For purposes of ERISA section 3(21)(A)(ii) and 29 CFR 2510.3–21(c), the Department of Labor has determined that the furnishing of the following categories of information and materials to a participant or beneficiary in a participant-directed individual account pension plan will not constitute the rendering of ''investment advice,'' irrespective of who provides the information (*e.g.,* plan sponsor, fiduciary or service provider), the frequency with which the information is shared, the form in which the information and materials are provided (*e.g.,* on an individual or group basis, in writing or orally, or via video or computer software), or whether an identified category of information and materials is furnished alone or in combination with other identified categories of information and materials.

[1] The section 404(c) regulation conditions relief from fiduciary liability on, among other things, the participant or beneficiary being provided or having the opportunity to obtain sufficient investment information regarding the investment alternatives available under the plan in order to make informed investment decisions. Compliance with this condition, however, does not require that participants and beneficiaries be offered or provided either investment advice or investment education, *e.g.* regarding general investment principles and strategies, to assist them in making investment decisions. 29 CFR 2550.404c–1(c)(4).

[2] Issues relating to the circumstances under which information provided to participants and beneficiaries may affect a participant's or beneficiary's ability to exercise independent control over the assets in his or her account for purposes of relief from fiduciary liability under ERISA section 404(c) are beyond the scope of this interpretive bulletin. Accordingly, no inferences should be drawn regarding such issues. See 29 CFR 2550.404c–1(c)(2). It is the view of the Department, however, that the provision of investment-related information and material to participants and beneficiaries in accordance with paragraph (d) of this interpretive bulletin will not, in and of itself, affect the availability of relief under section 404(c).

[3] The Department has expressed the view that, for purposes of section 3(21)(A)(ii), such fees or other compensation need not come from the plan and should be deemed to include all fees or other compensation incident to the transaction in which the investment advise has been or will be rendered. See A.O. 83–60A (Nov. 21, 1983); *Reich* v. *McManus*, 883 F. Supp. 1144 (N.D. Ill. 1995).

[4] This IB does not address the application of 29 CFR 2510.3–21(c) to communications with fiduciaries of participant-directed individual account pension plan plans.

(1) *Plan Information.* (i) Information and materials that inform a participant or beneficiary about the benefits of plan participation, the benefits of increasing plan contributions, the impact of preretirement withdrawals on retirement income, the terms of the plan, or the operation of the plan; or

(ii) information such as that described in 29 CFR 2550.404c–1(b)(2)(i) on investment alternatives under the plan (*e.g.,* descriptions of investment objectives and philosophies, risk and return characteristics, historical return information, or related prospectuses).[5]

The information and materials described above relate to the plan and plan participation, without reference to the appropriateness of any individual investment option for a particular participant or beneficiary under the plan. The information, therefore, does not contain either ''advice'' or ''recommendations'' within the meaning of 29 CFR 2510.3–21(c)(1)(i). Accordingly, the furnishing of such information would not constitute the rendering of ''investment advice'' for purposes of section 3(21)(A)(ii) of ERISA.

(2) *General Financial and Investment Information.* Information and materials that inform a participant or beneficiary about: (i) General financial and investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment; (ii) historic differences in rates of return between different asset classes (*e.g.,* equities, bonds, or cash) based on standard market indices; (iii) effects of inflation; (iv) estimating future retirement income needs; (v) determining investment time horizons; and (vi) assessing risk tolerance.

The information and materials described above are general financial and investment information that have no direct relationship to investment alternatives available to participants and beneficiaries under a plan or to individual participants or beneficiaries. The furnishing of such information, therefore, would not constitute rendering ''advice'' or making ''recommendations'' to a participant or beneficiary within the meaning of 29 CFR 2510.3–21(c)(1)(i). Accordingly, the furnishing of such information would not constitute the rendering of ''investment advice'' for purposes of section 3(21)(A)(ii) of ERISA.

(3) *Asset Allocation Models.* Information and materials (*e.g.,* pie charts, graphs, or case studies) that provide a participant or beneficiary with models, available to all plan participants and beneficiaries, of asset allocation portfolios of hypothetical individuals with different time horizons and risk profiles, where: (i) Such models are based on generally accepted investments theories that take into account the historic returns of different asset classes (*e.g.,* equities, bonds, or cash) over define periods of time; (ii) all material facts and assumptions on which such models are based (*e.g.,* retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, and rates of return) accompany the models; (iii) to the extent that an asset allocation model identifies any specific investment alternative available under the plan, the model is accompanied by a statement indicating that other investment alternatives having similar risk and return characteristics may be available under the plan and identifying where information on those investment alternatives may be obtained; and (iv) the asset allocation models are accompanied by a statement indicating that, in applying particular asset allocation models to their individual situations, participants or beneficiaries should consider their other assets, income, and investments (*e.g.,* equity in a home, IRA investments, savings accounts, and interests in other qualified and non-qualified plans) in addition to their interests in the plan.

Because the information and materials described above would enable a participant or beneficiary to assess the relevance of an asset allocation model to his or her individual situation, the furnishing of such information would not constitute a ''recommendation'' within the meaning of 29 CFR 2510.3–21(c)(1)(i) and, accordingly, would not constitute ''investment advice'' for purposes of section 3(21)(A)(ii) of ERISA. This result would not, in the view of the Department, be affected by the fact that a plan offers only one investment alternative in a particular asset class identified in an asset allocation model.

(4) *Interactive Investment Materials.* Questionnaires, worksheets, software, and similar materials which provide a participant or beneficiary the means to estimate future retirement income needs and assess the impact of different asset allocations on retirement income, where: (i) Such materials are based on generally accepted investment theories that take into account the historic returns of different asset classes (*e.g.,* equities, bonds, or cash) over defined periods of time; (ii) there is an objective correlation between the asset allocations generated by the materials and the information and data supplied by the participant or beneficiary; (iii) all material facts and assumptions (*e.g.,* retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, and rates of return) which may affect a participant's or beneficiary's assessment of the different asset allocations accompany the materials or are specified by the participant or beneficiary; (iv) to the extent that an asset allocation generated by the materials identifies any specific investment alternative available under the plan, the asset allocation is accompanied by a statement indicating that other investment alternatives having similar risk and return characteristics may be available under the plan and identifying where information on those investment alternatives may be obtained; and (v) the materials either take into account or are accompanied by a statement indicating that, in applying particular asset allocations to their individual situations, participants or beneficiaries should consider their other assets, income, and investments (*e.g.,* equity in a home, IRA investments, savings accounts, and interests in other qualified and non-qualified plans) in addition to their interests in the plan.

The information provided through the use of the above-described materials enables participants and beneficiaries independently to design and assess multiple asset allocation models, but otherwise these materials do not differ from asset allocation models based on hypothetical assumptions. Such information would not constitute a ''recommendation'' within the meaning of 29 CFR 2510.3–21(c)(1)(i) and, accordingly, would not constitute ''investment advice'' for purposes of section 3(21)(A)(ii) of ERISA.

The Department notes that the information and materials described in subparagraphs (1)–(4) above merely represent examples of the type of information and materials which may be furnished to participants and beneficiaries without such information and materials constituting ''investment advice.'' In this regard, the Department recognizes that there may be many other examples of information, materials, and educational services which, if furnished to participants and beneficiaries, would not constitute ''investment advice.'' Accordingly, no inferences should be drawn from subparagraphs (1)–(4),

[5] Descriptions of investment alternatives under the plan may include information relating to the generic asset class (*e,g.,* equities, bonds, or cash) of the investment alternatives. 29 CFR 2550.404c–1(b)(2)(i)(B)(*1)(ii*).

above, with respect to whether the furnishing of any information, materials or educational services not described therein may constitute ''investment advice.'' Determinations as to whether the provision of any information, materials or educational services not described herein constitutes the rendering of ''investment advice'' must be made by reference to the criteria set forth in 29 CFR 2510. 3–21(c)(1).

(e) *Selection and Monitoring of Educators and Advisors.* As with any designation of a service provider to a plan, the designation of a person(s) to provide investment educational services or investment advice to plan participants and beneficiaries is an exercise of discretionary authority or control with respect to management of the plan; therefore, persons making the designation must act prudently and solely in the interest of the plan participants and beneficiaries, both in making the designation(s) and in continuing such designation(s). See ERISA sections 3(21)(A)(i) and 404(a), 29 U.S.C. 1002 (21)(A)(i) and 1104(a). In addition, the designation of an investment advisor to serve as a fiduciary may give rise to co-fiduciary liability if the person making and continuing such designation in doing so fails to act prudently and solely in the interest of plan participants and beneficiaries; or knowingly participates in, conceals or fails to make reasonable efforts to correct a known breach by the investment advisor. See ERISA section 405(a), 29 U.S.C. 1105(a). The Department notes, however, that, in the context of an ERISA section 404(c) plan, neither the designation of a person to provide education nor the designation of a fiduciary to provide investment advice to participants and beneficiaries would, in itself, give rise to fiduciary liability for loss, or with respect to any breach of part 4 of title I of ERISA, that is the direct and necessary result of a participant's or beneficiary's exercise of independent control. 29 CFR 2550.404c–1(d). The Department also notes that a plan sponsor or fiduciary would have no fiduciary responsibility or liability with respect to the actions of a third party selected by a participant or beneficiary to provide education or investment advice where the plan sponsor or fiduciary neither selects nor endorses the educator or advisor, nor otherwise makes arrangements with the educator or advisor to provide such services.

Subchapter B—Definitions and Coverage under the Employee Retirement Income Security Act of 1974

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

■ 1. The authority citation for part 2510 continues to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2019); Secs. 2510.3–21, 2510.3–101 and 2510.3–102 also issued under Sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 237 (2012). E.O. 12108, 22 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Section 2510.3–38 is also issued under Pub. L. 105–72, Sec. 1(b), 111 Stat. 1457 (1997).

■ 2. Revise § 2510.3–21 to read as follows:

§ 2510.3–21

(a)–(b) [Reserved]

(c) *Investment advice.* (1) A person shall be deemed to be rendering ''investment advice'' to an employee benefit plan, within the meaning of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (the Act) and this paragraph, only if:

(i) Such person renders advice to the plan as to the value of securities or other property, or makes recommendation as to the advisability of investing in, purchasing, or selling securities or other property; and

(ii) Such person either directly or indirectly (*e.g.,* through or together with any affiliate)—

(A) Has discretionary authority or control, whether or not pursuant to agreement, arrangement or understanding, with respect to purchasing or selling securities or other property for the plan; or

(B) Renders any advice described in paragraph (c)(1)(i) of this section on a regular basis to the plan pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments.

(2) A person who is a fiduciary with respect to a plan by reason of rendering investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or having any authority or responsibility to do so, shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such person does not have any discretionary authority, discretionary control or discretionary responsibility, does not exercise any authority or control, does not render investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, and does not have any authority or responsibility to render such investment advice, provided that nothing in this paragraph shall be deemed to:

(i) Exempt such person from the provisions of section 405(a) of the Act concerning liability for fiduciary breaches by other fiduciaries with respect to any assets of the plan; or

(ii) Exclude such person from the definition of the term ''party in interest'' (as set forth in section 3(14)(B) of the Act) with respect to any assets of the plan.

(d) *Execution of securities transactions.* (1) A person who is a broker or dealer registered under the Securities Exchange Act of 1934, a reporting dealer who makes primary markets in securities of the United States Government or of an agency of the United States Government and reports daily to the Federal Reserve Bank of New York its positions with respect to such securities and borrowings thereon, or a bank supervised by the United States or a State, shall not be deemed to be a fiduciary, within the meaning of section 3(21)(A) of the Act, with respect to an employee benefit plan solely because such person executes transactions for the purchase or sale of securities on behalf of such plan in the ordinary course of its business as a broker, dealer, or bank, pursuant to instructions of a fiduciary with respect to such plan, if:

(i) Neither the fiduciary nor any affiliate of such fiduciary is such broker, dealer, or bank; and

(ii) The instructions specify (A) the security to be purchased or sold, (B) a price range within which such security is to be purchased or sold, or, if such security is issued by an open-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), a price which is determined in accordance with Rule 22c–1 under the Investment Company Act of 1940 (17 CFR 270.22c–1), (C) a time span during which such security may be purchased or sold (not to exceed five business days), and (D) the minimum or maximum quantity of such security which may be purchased or sold within such price range, or, in the

case of a security issued by an open-end investment company registered under the Investment Company Act of 1940, the minimum or maximum quantity of such security which may be purchased or sold, or the value of such security in dollar amount which may be purchased or sold, at the price referred to in paragraph (d)(1)(ii)(B) of this section.

(2) A person who is a broker-dealer, reporting dealer, or bank which is a fiduciary with respect to an employee benefit plan solely by reason of the possession or exercise of discretionary authority or discretionary control in the management of the plan or the management or disposition of plan assets in connection with the execution of a transaction or transactions for the purchase or sale of securities on behalf of such plan which fails to comply with the provisions of paragraph (d)(1) of this section, shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such broker-dealer, reporting dealer or bank does not have any discretionary authority, discretionary control or discretionary responsibility, does not exercise any authority or control, does not render investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, and does not have any authority or responsibility to render such investment advice, provided that nothing in this paragraph shall be deemed to:

(i) Exempt such broker-dealer, reporting dealer, or bank from the provisions of section 405(a) of the Act concerning liability for fiduciary breaches by other fiduciaries with respect to any assets of the plan; or

(ii) Exclude such broker-dealer, reporting dealer, or bank from the definition, of the term ''party in interest'' (as set forth in section 3(14)(B) of the Act) with respect to any assets of the plan.

(e) *Affiliate and control.* (1) For purposes of paragraphs (c) and (d) of this section, an ''affiliate'' of a person shall include:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such person; and

(iii) Any corporation or partnership of which such person is an officer, director or partner.

(2) For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2020–14260 Filed 7–2–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 260, 261, and 278

[EPA–HQ–OLEM–2018–0830; FRL–10006–71–OLEM]

RIN 2050–AG93

Modernizing Ignitable Liquids Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing updates to the regulations for the identification of ignitable hazardous waste under the Resource Conservation and Recovery Act (RCRA) and to modernize the RCRA test methods that currently require the use of mercury thermometers. These revisions provide greater clarity to hazardous waste identification, provide flexibility in testing requirements, improve environmental compliance, and, thereby, enhance protection of human health and the environment.

DATES: This final rule is effective on September 8, 2020. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 8, 2020.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OLEM–2018–0830, is available at *https://www.regulations.gov* or at the Office of Land & Emergency Management Docket (OLEM Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OLEM Docket is (202) 566–0270. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Fagnant, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number 703–308–0319; email address: *fagnant.daniel@epa.gov;* or Melissa Kaps, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number 703–308–6787; email address: *kaps.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General information

A. Does this action apply to me?

You may be potentially affected by this action if you conduct testing activities to determine the ignitability characteristics of certain wastes and/or use SW–846 air sampling and stack emissions Methods 0010, 0011, 0020, 0023A, or 0051. 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. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Potentially affected entities may include:

- Other Electric Power Generation (NAICS code 221118).
- Petroleum Refineries (NAICS code 324110).
- Engineering Services (NAICS code 541330).
- Testing Laboratories (NAICS code 541380).
- Environmental Consulting Services (NAICS code 541620).
- Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology) (NAICS code 541712).
- All Other Support Services (NAICS code 561990).
- Hazardous Waste Treatment and Disposal (NAICS code 562211).

B. What action is EPA taking?

First, EPA is updating the test methods required for measuring the flash point of a liquid waste when determining if that waste is an ignitable hazardous waste (*i.e.,* SW–846 Method 1010A (Pensky-Martens) or Method 1020B (Setaflash)) under 40 CFR 261.21. Second, EPA is codifying existing guidance regarding the definition of aqueous for purposes of 40 CFR 261.21(a)(1). Third, EPA is updating cross references to Department of Transportation (DOT) regulations and also making certain other conforming amendments and technical corrections. Finally, EPA is adding mercury thermometer alternatives in the air sampling and stack emissions test methods in *Test Methods for Evaluating Solid Waste: Physical/Chemical Methods* (SW–846); specifically, Methods 0010, 0011, 0020, 0023A, and 0051.

C. What is EPA's authority for taking this action?

The authority for this rule can be found in sections 1002, 1006, 2002, 3001–3009, 3013, and 3017 of the Solid Waste Disposal Act (SWDA) of 1970, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901, 6905, 6912, 6921–6929, 6934, and 6938; sections 101 *et seq.* of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

D. What are the incremental costs and benefits of this action?

EPA prepared an economic analysis of the potential costs and benefits associated with this action. The *Regulatory Impact Analysis of the Modernization of Ignitable Liquid Determinations Rule* is available in the docket. The final rule will modify SW–846 test methods while also retaining the current procedures to provide entities increased flexibility. For the purpose of the analysis, EPA assumes that every facility that currently conducts flash point testing: (1) Is compliant with the current test methods, (2) will use the updated test methods if cost effective, and (3) will continue to conduct flash point testing.

The universe of facilities affected by the updates to the ignitability test methods and SW–846 air sampling and stack emissions test methods includes: (1) Commercial laboratories, (2) EPA laboratories, and (3) state laboratories. EPA identified 217 unique commercial laboratories that conduct ignitability testing under either Method 1010A or 1020. EPA identified an additional 18 commercial laboratories accredited to conduct any of the air sampling and stack emissions test methods that would be updated under rule, for a total of 235 commercial labs affected by the rule. These 235 total laboratories are part of 177 unique firms, including several large commercial laboratories with multiple locations. EPA estimates that the total number of laboratories, including 20 state and nine federal laboratories, potentially affected by this rule is 264.

The economic analysis indicates that the rule is projected to result in annualized cost savings of about $78,500 to $477,000 (based on a discount rate of seven percent). The net present value of costs over 20 years is estimated to be a cost savings of $832,000 to $5 million (seven percent discount rate). EPA's analysis shows qualitative benefits to human health and the environment through the reduced use of mercury thermometers. EPA does not expect the other parts of this action to affect any entity because they do not create new requirements or change existing requirements.

II. Background

A. What is a hazardous waste?

Subtitle C of RCRA and its implementing regulations establish a cradle-to-grave regulatory management scheme for certain solid wastes that qualify as hazardous wastes. Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material is a ''solid waste'' under RCRA section 1004(27) (42 U.S.C. 6903(27)). EPA has further defined the term ''solid waste'' for purposes of its RCRA hazardous waste regulations (40 CFR 261.2). To be considered a hazardous waste, a material first must be classified as a solid waste. Generators of solid waste must determine whether their wastes are hazardous wastes (40 CFR 262.11). A solid waste is a hazardous waste if it exhibits characteristics of ignitability, corrosivity, reactivity, or toxicity (40 CFR 261.20 through 261.24), or is a listed waste (40 CFR 261.30 through 261.33). Listed wastes include wastes from non-specific sources, such as spent solvents; residuals such as by-products and sludges from specific industries; and discarded, unused commercial chemical products.

B. What is the hazardous waste characteristic of ignitability?

Under 40 CFR 261.21, the characteristic of ignitability identifies solid waste as hazardous based on the properties of the waste that give it the potential to cause harm to human health or the environment through direct or indirect fire hazard, including contributing to or causing landfill fires. Waste that is identified as hazardous pursuant to 40 CFR 261.21 has the EPA Hazardous Waste Number of D001. Ignitable hazardous waste (D001) is regulated to minimize its opportunity to cause or contribute to fires during routine waste management activities. Solid wastes that are regulated as ignitable hazardous waste include: (1) Certain liquids with flash points less than 60 °C (140 °F); (2) non-liquid substances that are capable, under standard temperature and pressure, of

causing fire through friction, absorption of moisture, or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that they create a hazard; (3) ignitable compressed gases; and (4) oxidizers.

C. What is the regulatory history of the ignitability characteristic?

The ignitability characteristic was originally proposed in 1978 (43 FR 58945, December 18, 1978) with an objective of identifying wastes that present a fire hazard due to being ignitable under routine waste disposal and storage conditions. The ignitability characteristic was finalized in 1980 when EPA promulgated the first phase of regulations under Subtitle C of RCRA to protect human health and the environment from the improper management of hazardous waste (45 FR 33066, May 19, 1980). These regulations included 40 CFR part 261, which defined hazardous waste including the ignitability characteristic and incorporated two ASTM International (''ASTM'') voluntary consensus standards by reference as the required flash point tests for ignitable liquid hazardous waste determinations: ASTM D93–79 (Pensky-Martens) and ASTM D3278–78 (Setaflash). In a 1981 revision, EPA revised SW–846 Method 1010 to allow the use of D93–79 or D93–80 (46 FR 35246, July 7, 1981).

ASTM standards D3278–78, D93–79, and D93–80 were the test methods available for flash point testing at the time of the 1980 and 1981 rulemakings. Since that time, ASTM has updated D93 and D3278 multiple times to improve the standards and incorporate new technology.[1] EPA previously proposed to update the flash point test methods for ignitability in the 2002 proposed Methods Innovation Rule by replacing ASTM standard D3278–78 with D3278–96 and ASTM standards D93–79 and D93–80 with D93–99c (67 FR 66252, October 30, 2002). In that proposed rule, EPA also requested comment on whether D93–00 should instead replace D93–79 and D93–80. The public commenters raised concerns that the sampling procedures of the proposed versions of D93 may lead to a loss of flammable volatile constituents from a sample due to greater headspace in the sampling container. The Agency made the decision to not revise flash point testing when the Methods Innovation Rule was finalized in 2005 (70 FR 34550, June 14, 2005), agreeing with public comments that EPA further study the changes in flash point testing standards.

EPA later issued a final rule to correct the ignitability characteristic at 40 CFR 261 by replacing obsolete references to DOT regulations related to definitions of ignitable compressed gases and oxidizers (71 FR 40254, July 14, 2006). That final rule amended the regulation by revising paragraphs (a)(3) and (a)(4) of § 261.21 and adding notes 1 through 4 to the end of that section. No change was made to § 261.21(a)(1).

D. Summary of the Proposed Rule

On April 2, 2019, EPA published a proposed rule to modernize standards for ignitable liquids determinations (84 FR 12539). EPA proposed to update the flash point test methods for the determination of characteristically ignitable hazardous waste along with other minor changes. EPA proposed to update required test methods that refer to outdated standards developed by ASTM and that require instrumentation that is no longer readily commercially available. For example, the standards require the use of mercury thermometers, which are becoming more difficult to acquire and calibrate due to their use and availability being phased out for environmental, health, and safety concerns. EPA also proposed to remove the requirements for mercury thermometers in the SW–846 air sampling and stack emissions test methods. In addition, EPA proposed to codify existing guidance regarding the regulatory exclusion in the ignitability characteristic for aqueous liquids containing alcohols and proposed to codify existing sampling guidance regarding waste mixtures having multiple phases when determining whether a waste exhibits the ignitability characteristic. Finally, EPA proposed to update cross references to DOT regulations, to remove obsolete information, and make certain technical corrections. The specific amendments and corrections proposed by EPA are summarized below.

1. Flash point test methods. EPA proposed to revise 40 CFR 261.21 to incorporate by reference ASTM standard D8175–18 as an alternative to ASTM standards D93–79 and D93–80 in Method 1010B (Pensky-Martens test method) (84 FR 12539, April 2, 2019). EPA similarly proposed to revise 40 CFR 261.21 to incorporate by reference the ASTM standard D8174–18 as an alternative to ASTM standard D3278–78 in Method 1020C (Setaflash test method). The Agency also proposed to retain the ASTM standards D93–79, D93–80, and D3278–78 within Methods 1010B and 1020C. The Agency proposed that the original ASTM standards and the new ASTM standards referenced in Methods 1010 and 1020 are all technically acceptable for determinations of flash point for ignitable liquids. Therefore, a generator or laboratory may choose to use any of the ASTM standards listed in Methods 1010B and 1020C, which are being finalized today. The Agency anticipates that domestic and international efforts to reduce mercury usage, the environmental benefits of removing mercury from the workplace, and the economic benefits from reduced testing costs will result in generators and laboratories adopting the new test methods over time. The Agency also solicited comments from the public on whether it would be more appropriate to remove the older ASTM standards from the test methods at this time due to their required use of mercury thermometers.

2. Air sampling and stack emissions requiring mercury thermometers. EPA proposed to update the SW–846 air sampling and stack emissions test methods that presently require the use of mercury thermometers. These test methods are Methods 0010, 0011, 0020, 0023A, and 0051. The proposed rule provided users of these test methods the flexibility to use alternative temperature-measuring devices, while still allowing the use of mercury thermometers. Many of these air sampling and stack emissions test methods are modifications of, or are similar to, EPA Method 5 of Appendix A–3 of 40 CFR 60, Determination of Particulate Matter Emissions from Stationary Sources. For Method 5, EPA issued the proposed rule ''Revisions to Test Methods and Testing Regulations at (77 FR 1130, January 9, 2012), and later finalized the rule at (79 FR 11228, February 27, 2014) for the use of alternative mercury-free thermometers if the thermometers are, at a minimum, equivalent in terms of performance or are suitably effective for the specific temperature measurement application. EPA proposed to add similar language, where appropriate, in SW–846 Methods 0010, 0011, 0020, 0023A, and 0051. The removal of the requirement to use mercury thermometers does not change the underlying technology of the test methods and is not expected to affect the precision or accuracy of the test methods. Therefore, in accordance with the SW–846 methods policy statement, the test method numbers and letters EPA uses to identify test methods,

[1] The Agency notes that while ASTM standards are subject to review and revision (a process that occurs every five years) because the regulation incorporates by reference the year-specific version of an ASTM standard, the version in the regulation remains in effect until changed by an EPA action. See 84 FR 12539 for more information about the use of method-defined parameters.

including subsequent versions, are not being revised due to these changes.[2]

3. Aqueous alcohol exclusion. EPA proposed to revise the aqueous alcohol exclusion in 40 CFR 261.21(a)(1) by codifying existing guidance into the regulatory text to clarify the exclusion's scope. As stated in the proposed rule, EPA proposed to change the text of the exclusion from ''other than an aqueous solution containing less than 24 percent alcohol by volume'' to ''other than a solution containing less than 24 percent of any alcohol or combination of alcohols (except if the alcohol has been used for its solvent properties and is one of the alcohols specified in EPA Hazardous Waste No. F003 or F005) by volume and at least 50 percent water by weight.'' Specifically, EPA proposed the following revisions to the exclusion: (1) Replace the undefined term ''aqueous'' with ''at least 50 percent water by weight'' and (2) clarify that ''alcohol'' meant ''any alcohol or combination of alcohols'' except for alcohol that had ''been used for its solvent properties and is one of the alcohols specified in EPA Hazardous Waste No. F003 or F005.'' These two proposed revisions to the current regulatory text for the aqueous alcohol exclusion are contained in existing EPA guidance published in the EPA Monthly Hotline Report, EPA530–R–92–014g (July 1992), pages 3–4. The Hotline Report states for the purpose of the ignitability characteristic in 40 CFR 261.21(a)(1), ''aqueous'' means a solution containing at least 50 percent water by weight. and that the term ''alcohol'' in 40 CFR 261.21(a)(1) refers to any alcohol or combination of alcohols. EPA also explained in the Hotline Report that, if the alcohol is one of those alcohols specified in EPA hazardous waste codes F001–F005 and has been used for its solvent properties, the waste must be evaluated to determine if it should be classified as an F-listed spent solvent waste.'' (55 FR 22543, June 1, 1990.)

In the proposed rule, EPA also asked for input on whether any additional revisions should be made to the aqueous alcohol exclusion in 40 CFR 261.21(a)(1) to limit the exclusion to its original intent. EPA suggested the following possible revisions to the exclusion: Explicitly identifying specific waste streams, narrowing the types of alcohol that would qualify, adding a minimum alcohol content, and raising the minimum water content for aqueous alcohol solutions. Also, EPA noted that any revisions made to the aqueous alcohol exclusion in 40 CFR 261.21(a)(1) would have no effect on the applicability of the discharge prohibitions presented in the Agency's Clean Water Act (CWA) national pretreatment standards for existing and new sources of pollution (40 CFR 403.5). Section 403.5(b)(1) of the discharge prohibitions addresses waste streams with a closed cup flash point of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21 and provides no exemption for aqueous alcohol solutions (55 FR 30082, July 24, 1990). The Agency's rationale for not exempting aqueous alcohol solutions under the CWA discharge prohibitions is explained in the final rule entitled ''EPA Administered Permit Programs; the National Pollutant Discharge Elimination System; General Pretreatment Regulations for Existing and New Sources; Regulations To Enhance Control of Toxic Pollutant and Hazardous Waste Discharges to Publicly Owned Treatment Works'' (55 FR 30082, July 24, 1990). Thus, EPA's proposed revisions to the aqueous alcohol exclusion in 40 CFR 261.21(a)(1) would not change its inapplicability to 40 CFR 403.5(b)(1).

4. Sampling multiple phase wastes. EPA proposed to codify its existing sampling guidance for multiphase wastes tested for ignitability in 40 CFR 261.21(a). EPA's proposed codification sought to put into regulatory text its existing policy on how to properly test multiphase wastes containing liquid(s) with or without solids for ignitability determinations. EPA's long-standing sampling guidance applies at initial generation and during the course of normal management of a waste. The Agency's existing guidance explains that a generator or laboratory (*i.e.,* those conducting the analysis) should separate multiphase waste samples into all of their different solid and/or liquid phases for individual evaluation, to the extent practicable. Each separated phase should be evaluated individually in accordance with 40 CFR 261.21(a) to determine whether that phase exhibits the characteristic of ignitability. The Agency's existing guidance further explains that the multiphase waste should be tested for flash point as a whole if the individual phases cannot be separated without an appreciable loss of volatiles such that the ignitability test results may be affected.

In the proposed rule, EPA also requested comment on whether language should be added to Chapter 7 of SW–846 as guidance regarding the use of the pressure filtration technique specified in Method 1311 for assessing the presence of an ignitable liquid for wastes that do not yield a free liquid phase using Method 9095 (*i.e.,* Paint Filter Liquids Test or PFLT).

5. Technical corrections.

a. Definition of ignitable compressed gas. The Agency also proposed corrections to the ignitable compressed gas definitions in 40 CFR 261.21(a)(3)(ii). EPA proposed to revise 40 CFR 261.21(a)(3)(ii)(A) to specify the ASTM standard E 681–85 as the approved test for determining whether any waste that is a compressed gas exhibits the RCRA ignitability characteristic, and to remove reference to the Bureau of Explosives as an approving agency for sampling and test methods. Consistent with the current DOT regulations (49 CFR 173.115), EPA also proposed to correct its own regulations that reference identifying the agency responsible for approving other tests as equivalent for this purpose, by adding the phrase ''approved by the Associate Administrator, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.'' to 40 CFR 261.21(a)(3)(ii).

EPA also proposed to revise 40 CFR 261.21(a)(3)(ii)(B)–(D) to align with the existing DOT regulations for flammable gases. The Agency proposed to update the definition of ignitable compressed gas within 40 CFR 261.21(a)(3)(ii)(B)–(D), by removing references to Bureau of Explosives test methods and mirroring the definition and testing that DOT now requires. This change would allow generators to determine if their waste meets the definition of an ignitable compressed gas by determining if it meets the definition of a Division 2.1 flammable gas or a flammable aerosol (see 49 CFR 173.115(a) and (l)).

b. Cross-reference to DOT explosives. EPA proposed revising 40 CFR 261.21(a)(4)(i)(A) to replace the currently referenced ''Class A explosive or a Class B explosive'' with ''Division 1.1, 1.2, or 1.3 explosive'' to be consistent with DOT's revised classification system for explosives (55 FR 52402, December 21, 1990). In 2010, EPA incorporated into the RCRA hazardous waste regulations DOT's changes to its classification system for explosives (75 FR 12989, March 18, 2010). However, that rulemaking overlooked the reference to Class A and Class B explosives in 40 CFR 261.21(a)(4)(i)(A). This proposed change corrects that inadvertent omission by updating 40 CFR 261.21(a)(4)(i)(A) with the correct references.

c. Deletion of notes. EPA also proposed to delete the four notes at the end of 40 CFR 261.21, which are

[2] See *https://www.epa.gov/hw-sw846/policy-statement-about-test-methods-evaluating-solid-waste-physicalchemical-methods.*

outdated or unnecessary to understanding the regulation. For example, the Bureau of Explosives will no longer be the source for the test methods identified in 40 CFR 261.21(a)(3)(ii)(B)–(D), which makes Note 1 outdated. Notes 2 and 3 provide unnecessary historical information explaining that the Office of Hazardous Materials Technology (OHMT) and the Research and Special Programs Administration (RSPA), respectively, ceased operations on February 20, 2005 due to a DOT reorganization, and their programs were moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT. Finally, Note 4, which provides the source of the definition of an oxidizer in 40 CFR 261.21(a)(4), may now be confusing because it references a DOT regulation as it existed in 1980 rather than its current form.

III. Discussion of the Final Rule and Public Comments

A. Flash Point Test Methods

1. Summary of the public comments. The majority of public comments supported the Agency's proposal to add ASTM standards D8174–18 and D8175–18 to 40 CFR 261.21 as new, additional test methods options for flash point testing of ignitable liquids. Several public commenters requested that the Agency also continue to allow use of the currently required ASTM standards in the test methods. Some public commenters also asked the Agency to clarify whether results from any of the required flash point tests giving a nonhazardous determination for flash point are conclusive if test results from another flash point test would determine the waste to be hazardous. Commenters presented concerns that if conflicting test results are possible for a waste, then the public would be required to use all five ASTM standards referenced in the test methods for a waste determination.

2. Provisions in the final rule. The Agency is finalizing the proposed language in 40 CFR 261.21 that updates Methods 1010A and 1020B to include ASTM standards D8175–18 and D8174–18, respectively. This regulation will retain the three previously required flash point ASTM standards as part of a hazardous waste determination for ignitable liquids. The regulated community can continue to use the existing test methods or begin using the new flash point ASTM standards referenced in Methods 1010B and 1020C. Updates to cross-referenced language in 40 CFR 260.11 and Appendix IX of 40 CFR part 261 are also being finalized in this action.

3. Response to comments on waste determinations with conflicting flash point test results. The Agency clarifies that generators are not required to use all of the ASTM standards specified in EPA Methods 1010B and 1020C when making a hazardous waste determination on a specific waste, and this remains unchanged under this rulemaking. The generator is responsible for making an accurate hazardous waste determination using testing or knowledge of the waste (40 CFR 262.11). If a generator does not have adequate knowledge to complete a hazardous waste identification and must test their waste, the generator should use the test method most appropriate for their waste based on knowledge of the waste. The ASTM standards referenced within EPA Methods 1010B and 1020C have similar precision and accuracy values. In many cases, use of any of the required test methods will be appropriate for a hazardous waste determination. The Agency expects that differences in test method results are more likely to occur due to uniquely challenging waste forms, differences in sampling or laboratory practices, or operator experience than with use of the different test methods. The Agency will revisit the required test methods if it is found that inconsistent results occur for specific wastes.

In some cases, the generator may be able to readily determine one test method is more appropriate. In the event that a generator of a waste does determine that multiple test methods would provide contrasting waste identifications, the generator should select and rely upon the test method that more accurately characterizes the hazards of the waste instead of selecting all of the test methods. If a generator suspects their waste presents unique challenges in identification through flash point testing, they may benefit from consulting with their authorized state program to avoid excessive testing.

B. Mercury Thermometer Requirements in Air Sampling and Stack Emissions Methods

1. Summary of the public comments. Public commenters supported the Agency's proposal to remove mercury thermometer requirements from the air sampling and stack emissions test methods. One commenter provided input that this change improves worker safety and reduces costs by avoiding potential mercury spills and cleanup. A second commenter indicated that replacement of mercury thermometers is already ongoing with similar test methods, such as Method 5. A third commenter supported leaving the flexibility to use either mercury or non-mercury thermometers so that the transition to non-mercury thermometers can occur over time with normal equipment replacement.

2. Provisions in the final rule. The Agency is finalizing the proposed changes to Methods 0010, 0011, 0020, 0023A and 0051 and the proposed language incorporating these test methods by reference in 40 CFR 260.11 and 40 CFR part 261 Appendix IX, Tables 1 and 2 as proposed and discussed above. The changes will allow the use of non-mercury thermometers or mercury thermometers in these particular test methods, providing flexibility.

C. Technical Corrections to 40 CFR 261.21

1. Summary of the public comments. The Agency received several comments of broad support for these regulatory changes and no comments opposing these changes.

2. Provisions in the final rule. The Agency is finalizing the proposed changes to 40 CFR 261.21(a)(3) and 40 CFR 261.21(a)(4) and deleting the four notes at the end of 40 CFR 261.21 as proposed.

D. Revised Definition of Aqueous and Comments on the Aqueous Alcohol Exclusion

1. Summary of the public comments. Public comments on the Agency's proposed revisions to the aqueous alcohol exclusion supported some revisions while opposing others. The majority of commenters agreed with and supported the Agency's proposal to define ''aqueous'' within 40 CFR 261.21(a)(1) as ''at least 50 percent weight by water.'' No commenters specifically addressed replacing the term alcohol in 40 CFR 261.21(a)(1) with the phrase ''any alcohol or combination of alcohols'' language; however, many commenters opposed the Agency's proposed revision to insert the statement, ''(except if the alcohol has been used for its solvent properties and is one of the alcohols specified in EPA Hazardous Waste No. F003 or F005).'' Public commenters expressed concerns that the proposed language created a new exception to the aqueous alcohol exclusion, describing several interpretations of the revised text that differ from the Agency's intended interpretation of the proposed regulatory language.[3] Commenters

[3] See comments from The American Fuel & Petrochemical Manufacturers, The Retail

suggested that one interpretation of the proposed regulation was as a new exception to the exclusion that would bring into regulation F003 spent solvents that are otherwise excluded from the ignitability characteristic as an aqueous alcohol.

Commenters also suggested a second interpretation could be a narrowing of the definition of ''alcohol'' within the aqueous alcohol exclusion to no longer include alcohols in the F003 and F005 listing descriptions. A related concern was whether an alcohol used for its solvent purposes is the same as a spent solvent and whether existing guidance on the scope of the spent solvent listings applied to both. An additional concern within this second interpretation involved cases where multiple alcohols were contained in the aqueous alcohol exclusion and whether the waste would be excluded if one alcohol met the F003 or F005 listing description while a second did not. Public commenters also stated that the Agency had provided little to no rationale for narrowing the aqueous alcohol exclusion in the proposed rule.

The public also commented on other potential changes to the aqueous alcohol exclusion.[4] One commenter suggested that the Agency should revisit excluded aqueous alcohols that contain a small concentration of ignitable alcohol and a large concentration of an ignitable non-alcohol component. The commenter referred to the original justification for the aqueous alcohol exclusion and suggested adding qualifiers to the regulation consistent with the intended scope of the regulation. It was suggested that the exclusion should not apply if the flash point of less than 60 °C (140 °F) is attributable solely to the non-alcohol component. A commenter also submitted data indicating ethanol and water mixtures will not flash below 4% ethanol. Commenters also suggested that EPA should implement a sustained combustion test to either exclude more waste from regulation or add the test as a condition to meet for exclusion as an aqueous alcohol. Another comment suggested that any liquid could be excluded if the liquid did not sustain combustion and met criteria similar to Department of Transportation (DOT) flammability requirements in 49 CFR 173.120(a)(3). Other commenters suggested EPA should propose more specific changes and allow for public comment before making any other changes to the aqueous alcohol exclusion other than the replacement of aqueous with ''at least 50 percent water by weight.''

2. Provisions in the final rule. The Agency is finalizing the revision to define aqueous as ''at least 50 percent water by weight'' but is not finalizing any other changes to the aqueous alcohol exclusion, including the other proposed changes to the exclusion. The regulatory change that is being finalized is specific to the term aqueous within 40 CFR 261.21. Other RCRA regulations that also use the term aqueous are unaffected by this final rule. EPA is not finalizing the proposed changes to the definition of alcohol in the alcohol exclusion because those changes did not provide clarification as EPA intended, as indicated by the comments.

3. Response to comments that EPA is narrowing the exclusion. In proposing to amend 40 CFR 261.21(a)(1) to include the language ''except if the alcohol has been used for its solvent properties and is one of the alcohols specified in EPA Hazardous Waste No. F003 or F005,'' the Agency had intended to clarify that generators are still responsible to consider relevant listing descriptions when making a hazardous waste determination on waste managed under the aqueous alcohol exclusion. In particular, the Agency considered it most likely that F003 or F005 wastes would most commonly share a waste code with ignitable aqueous alcohols. It is not EPA's intent to narrow the aqueous alcohol waste exclusion.

Even though EPA is not finalizing the language ''except if the alcohol has been used for its solvent properties and is one of the alcohols specified in EPA Hazardous Waste No. F003 or F005,'' the Agency notes that generators of aqueous alcohol-excluded waste are still responsible for verifying that their waste does not meet a listing description or exhibit other characteristics as part of the regulations for generators of hazardous waste (*e.g.,* requirements under 40 CFR 262.11). Some commenters suggested that the Agency's proposed language conflicted with application of 40 CFR 261.3(g). Specifically, a commenter raised concern that ignitable wastes meeting the F003 listing and meeting the exclusion for aqueous alcohols would have to be managed as F003 despite being a decharacterized waste at the point of generation.[5] The Agency's proposed language was not intended to revise the regulations in 40 CFR 261.3(g) to limit applicability of F003 or F005 wastes. The Agency clarified in the final rule implementing 40 CFR 261.3(g) that in the case of wastes listed solely for ignitability, corrosivity, and reactivity that do not exhibit a characteristic at the point of generation, these wastes are considered to never have been hazardous and are not subject to 40 CFR part 268. A waste that would otherwise be listed for F003 but is excluded at the point of generation due to being an aqueous alcohol would not be considered ignitable hazardous waste. Wastes that are characteristic at the point of generation and then are subsequently decharacterized are still subject to LDR requirements (66 FR 27266, May 16, 2001).

With this proposed language, EPA had intended to clarify the regulation. The public comments have instead suggested additional interpretations and raised additional questions regarding the definition of alcohol and the application of the mixture and derived from rule to the proposed language. As a result, the Agency is not finalizing this specific part of the proposed language.

4. Response to comments that other changes may be warranted. The Agency requested comments on whether additional changes to the aqueous alcohol exclusion may be warranted. One potential change suggested by commenters was for the Agency to consider a lower limit on alcohol concentrations eligible for exclusion. These comments are supported by the rationale and supporting data that aqueous alcohols in a low enough concentration will not flash below 60 °C due to the alcoholic component alone.[6] The Agency agrees with the commenter that at very low concentrations of alcohol, an aqueous alcohol will not flash due to the alcohol alone. Implementing a lower limit to the aqueous alcohol exclusion may work for simple wastes that only have two chemical components but presents a challenge when any number of combinations of alcohols and wastes are considered. Setting a lower limit for each and every alcohol and their combinations would require further study by the Agency.

Commenters also suggested implementation of a sustained combustion test for the aqueous alcohol exclusion. The Agency does not currently require this by regulation. However, the Agency notes that the public is already capable of utilizing

Association, The American Chemistry Council, and Stericylce, Inc. EPA–HQ–OLEM–830–0178, –0175, and –0176.

[4] See comments from the Retail Association, Maryland Department of the Environment, Setricycle. Inc., and The Environmental Technology Council. EPA–HQ–OLEM–2018–0830–0175, –0166, and –0170.

[5] See comments by the American Chemical Council. EPA–HQ–OLEM–0830–0166.

[6] See comments from the Maryland Department of the Environment. EPA–HQ–OLEM–2018–0830–0169.

existing tests for sustained combustion as part of their generator knowledge of the waste. A generator making a waste determination using knowledge should be confident that their determination would agree with testing requirements under 261.21(a) if tested. Generators can also manage their waste in a more stringent manner.

Additionally, commenters suggested that the aqueous alcohol exclusion should be modified to be more consistent with the original intent of the exclusion, which was beverage alcohols and latex paints that do not sustain combustion. The alcohol exclusion in 261.21(a)(1) was originally an incorporation of the aqueous alcohol exclusion already present in DOT regulations. Since 1980, the DOT has updated their regulations while EPA has issued guidance on its own exclusion. The DOT exclusion for aqueous alcohols does not apply if another hazardous material is present.[7] In some cases, the definition of an aqueous alcohol in the DOT regulations may be narrower than the definition of an aqueous alcohol in EPA's regulation that was intended to mirror the DOT definition. A waste managed under the EPA defined aqueous alcohol exclusion may bear other hazardous waste codes that would not be excluded from ignitability and must be appropriately managed when other hazardous materials are present. Alternatively, wastes that meet EPA's definition of an aqueous alcohol under 40 CFR 261.21 but have additional requirements for packaging and handling in order to be made ready for transportation may support more stringent management. The Agency also notes that authorized state programs may be more stringent or broader in scope on these determinations.

Other commenters suggested that if the Agency were to modify the aqueous alcohol exclusion beyond the specific language proposed in this rulemaking, then the Agency should first propose those changes and provide another opportunity for the public to further comment. The suggested changes by the public warrant further consideration due to their scientific and technical merits. The aqueous alcohol exclusion has applicability to a broad category of wastes and changes to the definition of alcohol, the concentration of alcohol, or implementation of testing requirements could result in unintended impacts to the scope of the exclusion.

The Agency needs to further consider the scope and impacts of the potential changes discussed in this section and is also interested in the experience of authorized state programs that may be implementing the exclusion in a different manner. Therefore, the Agency is not making any changes at this time as a result of these comments. The Agency agrees with the commenters that any other changes beyond EPA's specific proposed language would warrant further discussion and public input, and therefore is not finalizing any other changes based on comments at this time, including replacing ''alcohol'' with ''any alcohol or combination of alcohols'' in the regulatory text. Other than finalizing EPA's proposed language of ''at least 50 percent water by weight,'' the Agency intends to seek additional public input before finalizing any other changes to the alcohol exclusions suggested by the public in this rulemaking.

The Agency maintains that it is ultimately the responsibility of the waste generator to make an accurate hazardous waste determination. The flash point test method results of less than 60 °C (140 °F) are definitive results for a waste determination. A generator must determine whether their waste is eligible to be excluded from ignitability as an aqueous alcohol. When making a determination for eligibility as an aqueous alcohol, a generator should consider the regulatory language itself as well as guidance that the agency has provided in the past. The Agency has provided guidance in preamble to allow for a broad range of alcohols to be eligible for exemption as an aqueous alcohol (55 FR 22520, June 1, 1990). The Agency has also stated through guidance that a solution of seventy seven percent water, thirteen percent alcohol, and ten percent non-alcoholic liquid component is eligible for exemption.[8]

A generator must determine whether their waste is an aqueous alcohol for the purpose of the aqueous alcohol exclusion based on testing or knowledge of the waste and its properties (see 40 CFR 262.11). The Agency's existing guidances on waste analysis and sampling may be helpful to generators in their waste determinations.[9] The Agency believes a good indicator for a generator that their waste is eligible for exclusion as an aqueous alcohol is if their waste is similar in nature to a beverage alcohol or to an aqueous latex paint. The more a generator's waste diverges from being comparable to a beverage alcohol or latex paint, the more carefully a generator should consider whether the waste stream is eligible for exclusion. For example, in cases where the aqueous liquid waste contains almost no alcohol, EPA does not generally consider that waste to be an aqueous alcohol. If a generator is unsure whether their specific waste is eligible for exclusion as an aqueous alcohol, they should consult with their appropriate regulatory agency to discuss the specific nature of their waste. Additionally, state programs authorized to implement RCRA may be broader in scope or more stringent in implementation of ignitable liquids and aqueous alcohol wastes excluded from ignitability.

E. Sampling of Multiple Phase Wastes

1. Summary of the public comments. The Agency's proposal to codify existing guidance on sampling multiple phase wastes received mixed comments, with some commenters supporting and others opposing the proposal. One commenter stated support for separating phases before analyzing as laboratories already appear to be following this procedure. Another commenter stated that separating phases is appropriate and that doing otherwise would provide inconsistent results. However, that commenter stated that the Agency needs to provide sufficient guidance on how to determine if a waste contains multiple phases and is therefore subject to analysis of both phases. The commenter stated, ''It is not clear how much separation must occur in a waste for it to be considered ''multi-phase,'' and whether the waste must be capable of achieving such separation on its own, without additional processes. Wastes such as stable emulsions, or small amounts of liquids contained within a solid would not likely separate on their own through normal management practices and handling time.'' [10]

Other commenters opposed the proposal to require sampling of each phase of a multiple phase waste, insisting that EPA's proposed approach is too rigid and current guidance allows for more flexibility in sampling. The comments stated, ''For example, the Agency's guidance merely suggests these actions for particular types of mixtures, not all existing and possible mixtures. EPA's proposal presumes that since guidance has suggested both phases be separated and tested

[7] See Summary of DOT Exemption of Alcoholic Beverages and Aqueous Solutions of Alcohol. EPA–HQ–OLEM–2018–0830–0163.

[8] See July 1992 RCRA/Superfund/OUST/EPCRA Monthly Hotline Report. EPA–HQ–OLEM–2018–0830–0037.

[9] Waste Analysis at Facilities that Generate, Treat, Store and Dispose of Hazardous Wastes—Final, EPA 530–R–12–001, April 2015. RCRA Waste Sampling Draft Technical Guidance, EPA 530–D–02–002, August 2002.

[10] See comments from the American Petroleum Institute. EPA–HQ–OLEM–2018–0830–0168.

separately under some circumstances, that a requirement to do so for all mixtures would be more beneficial and would comport with all existing and future scientific standards.'' [11] A second commenter expressed similar concerns that the Agency proposal should not be interpreted as requiring all phases to be tested and provided examples of wastes that were identifiable by analysis of a single phase or through knowledge of the waste and identified practical limitations of testing certain wastes.[12] A third commenter suggested alternative regulatory language for multiple phase mixtures and asked the Agency to clarify in the preamble that all three sampling approaches listed in SW–846 Chapter 2 (Section 2.3.1.5) are allowed. The commenter expressed concern that the proposed regulatory language and the Agency preamble language were less flexible than existing Agency guidance.[13]

One commenter expressed concern that the proposal was not clear on whether a multiple phase waste is the same as mixtures of solid and hazardous waste under the hazardous waste ''mixture rule'' in 40 CFR 261.3(a)(2)(iv). The commenter also raised concern that the preamble indicated that 40 CFR 261.21 only applied to wastes that separate on their own and did not apply to wastes that *can be* separated by the generator, for example, by filtration. The comment also raised concerns that the proposal brought into regulation discarded manufactured articles (*e.g.,* a few drops of lubricating liquid in a small mechanical device) that are primarily non-ignitable solids containing small amounts of ignitable liquids. The commenter stated that these discarded manufactured articles do not meet the EPA definition of a liquid for ignitable liquids (*e.g.,* through analysis with the Paint Filter Liquids Test.[14])

An additional concern from the public questioned whether the alcohol exclusion as written in 40 CFR 261.21(a)(1) was included within the proposed regulatory language of 261.21(a)(5). That is, the regulatory language of 261.21(a)(5) referenced flash point requirements from 261.21(a)(1) but did not clarify whether the aqueous alcohol exclusion applied.[15]

2. Provisions in the final rule. After consideration of the public comments, EPA is not finalizing the proposed language for 40 CFR § 261.21(a)(5) as part of today's final action because it created more confusion, which was the opposite of the Agency's intent. The Agency agrees that some of the issues described by commenters may not be clearly addressed in the specific regulatory text proposed for multiple phase sampling. Therefore, the Agency is instead reiterating and clarifying in preamble the existing Agency guidance for hazardous waste determinations of ignitable liquids with multiple phases.

A generator of a waste should consider the individual liquid phases of a multiple phase waste under the criteria in 40 CFR § 261.21(a)(1) and non-liquid phases of a multiple phase waste under the criteria of 40 CFR § 261.21(a)(2) when those liquid or solid phases are representative samples of the waste as a whole. A ''representative sample'' is defined by regulation (40 CFR 260.10) as ''a sample of a universe or whole (*e.g.,* waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.''

When determining whether a waste contains multiple phases, the generator should consider the waste's physical properties during its likely management. For example, if a waste is generated as one phase but based on the generator's knowledge of the waste is likely to separate from one to two or more liquid phases during management (*e.g.,* while stored or during transport), the generator is ultimately responsible for identifying the characteristics of the waste at the point of generation and also through the normal management of the waste. Alternatively, some wastes would not normally separate into multiple phases during management. In these cases, a generator might not find it necessary to take measures to separate the waste even if the waste could separate under certain conditions (*e.g.,* changes in temperature, pressure, or composition) provided these conditions are unlikely to occur during normal management of the waste. Generators must consider testing and/or knowledge of individual phases of multiple phase wastes when any individual phase likely exhibits the ignitable characteristic and therefore may cause the entire waste to pose a risk of fire during treatment, storage, and/or disposal. This is consistent with the fundamental obligation for generators to accurately determine whether a waste is hazardous under RCRA (as required in 262.11).

The Agency's existing guidance on sampling and responses to questions and comments from the public are discussed below.

3. Response to comments on sampling and analysis.

The Agency agrees with the public commenters who indicated that current practices in analytical laboratories are to separate the phases of multiple phase wastes and analyze each phase separately. The Agency believes the measurement of the flash point of multiple phase mixtures within a flash point apparatus would present significant analytical challenges. In responding within this section to the more specific comments and concerns raised by public comment, the Agency is providing guidance on identification of hazardous waste exhibiting the ignitability characteristic. This guidance may need further consideration before application to other characteristic or listed waste streams.

Two concerns raised by the public were that the Agency needs to provide sufficient guidance on how to determine if a waste contains multiple phases and when separation of a multiple phase waste is necessary. When determining if a waste contains multiple phases, a generator has to consider the properties of the waste as generated and the properties of the waste under the conditions that it is likely to encounter during normal management (*e.g.,* during initial accumulation, storage, transport, treatment and disposal). A generator should also consider the Paint Filter Liquids Test to be the minimum requirement for determining whether a solid phase waste contains a liquid phase.[16] Therefore, a generator should consider their waste to be a multiple phase waste if at any time during the generation or likely management of the waste, a portion is determined by the generator to meet the definition of a liquid (*e.g.,* as determined visually, by the Paint Filter Liquids Test, or through generator knowledge) and also has another phase consisting of a solid or a liquid.[17] This includes instances when

[11] See comments from the American Chemistry Council. EPA–HQ–OLEM–2081–0839–0166.

[12] See comments from the Environmental Technology Council. EPA–HQ–OLEM–2018–0830–0170.

[13] See comments from the Coalition for Responsible Waste Incineration. EPA–HQ–OLEM–2018–0830–0172.

[14] See comments from the Retail Association. EPA–HQ–OLEM–2018–0830–0175.

[15] See comments from the Coalition for Responsible Waste Incineration. EPA–HQ–OLEM–2018–0830–0172.

[16] A generator may also determine through knowledge that their waste is a liquid or contains a liquid phase. The Agency would also encourage the use of other tests such as the Pressure Filtration Procedure within SW–846 Method 1311 if the generator determines the liquid resulting from pressure filtration more accurately represents their waste.

[17] The Agency considers it unlikely that a generator would be able to separate a non-liquid

Continued

waste may be generated in stratified layers, and multiple samples may need to be collected using test methods such as COLIWASA.[18]

The second concern from the commenter relates to when a waste must be separated once a generator has made a determination that their waste consists of multiple phases. The Agency notes that in the waste identification process, the generator of a waste can rely on testing or knowledge of a waste and does not have to test or separate their waste if knowledge of the waste results in an accurate waste determination. For example, a generator may determine one phase of a waste is hazardous and manage the entire waste as hazardous without additional testing of a second phase. A generator may also conduct no testing when there is sufficient knowledge of the properties of the waste to make a hazardous waste identification. A generator is not required to separate all wastes as a normal part of waste management. The Agency had intended separating in the proposed regulatory language to mean that the generator would be subsampling a multiple phase waste so that each phase was analyzed separately in a flash point apparatus. The testing of a waste requires a sample representative of the hazards of the waste. A ''representative sample'' is defined by regulation (40 CFR 260.10) as ''a sample of a universe or whole (*e.g.,* waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.'' For ignitable liquids, the hazard is exhibited by the vapor phase generated from the ignitable liquid. In the context of ignitable liquids, a sample of a waste that generates a vapor phase consistent with the vapor phase generated by the waste on average would be considered representative of the waste as a whole.

In determining when to separate (or subsample) wastes, a generator must consider what sampling strategy will result in a representative sample or will result in knowledge of the potential hazards exhibited by a representative sample. In some cases, the individual liquid phases of a multiple phase waste will be in equilibrium with each other and will resultingly have the same vapor phase. In this case a generator could sample either phase and obtain the same flash point value. This scenario is supported by public comments explaining that sampling and analysis of the organic phase is often sufficient for identification of a multiple phase waste containing organic and aqueous phases.[19]

In other cases, the multiple phases of a waste will not be at equilibrium during management of the waste. This presents an analytical challenge as multiple phase wastes cannot readily be analyzed in a flash point apparatus without separating the phases and analyzing each phase separately. A generator who has separated each phase for analysis must then determine whether that phase is representative of the waste as a whole. Attempting to average (or predict) the vapor phases generated by multiple phases of a chemically complex waste through analysis of individual phases may present a significant challenge in some instances. In situations where a generator has determined that a single phase of a multiple phase waste is not representative of the waste as a whole, the generator should use the results of testing a single phase as part of the knowledge of the waste even though testing of an individual phase alone is not necessarily conclusive for making their hazardous waste determination.

The Agency also agrees with the commenters that a subset of mixtures should not or do not always require separation for analysis of each phase. One example is mixtures with a low concentration of a highly volatile, ignitable constituent. The process of separating phases using the Paint Filter Liquids Test may allow the volatile constituents to evaporate and alter the flash point test result. The Agency considers wastes that lose a significant portion of volatile constituents during filtration with the Paint Filter Liquids Test to not be separable by this test method.

A commenter suggested that the guidance within Chapter 2 of SW–846 allows for broad discretion in choosing to sample one or multiple phases of a multiple phase sample and asked the Agency to better explain the applicability of this guidance to ignitable liquids.[20] Section 2.3.1.5 Multiphase Samples of Chapter 2 provides three approaches that are applicable to analyzing a sample for the total concentration of a constituent where the waste exists in multiple phases.

The first of three approaches in Section 2.3.1.5 states, ''With a sample in which some of the phases tend to separate rapidly, the percent weight or volume of each phase should be calculated, and each phase should be individually analyzed for the required analytes.'' The Agency considers that when a generator of a waste has multiple phases that separate rapidly, analysis of each phase may be appropriate (or, alternatively, may not be necessary if generator knowledge is sufficient to characterize the waste). The analysis of each phase provides an accurate analysis of the potential hazards of the vapor phase generated by that liquid phase. However, the guidance to measure the weight or volume of each phase has limited applicability to determining a flash point or identifying an ignitability hazard. A flash point measurement depends upon the concentration of ignitable constituents in the vapor phase above a waste. The concentration of constituents in the vapor phase is not necessarily linear with the concentration of ignitables in the multiple liquid or solid phases. Ultimately, the determination made by the generator must consider whether the sample is representative of a waste and what hazards are exhibited by the waste.

The second of three approaches in Section 2.3.1.5 states, ''An alternate approach is to obtain a homogeneous sample and attempt a single analysis on the combination of phases. This approach will give no information on the abundance of the analytes in the individual phases other than what can be implied by solubility.'' The Agency believes this may have some limited applicability with the use of Pensky-Martens testing of non-filterable suspended solids in liquids. If the waste has a more substantial second phase than nonfilterable solids, the Agency questions how a multiple phase sample can be homogenized and maintained as one phase inside the flash point apparatus unless the long term behavior of the waste were to be a one phase waste. The Agency is concerned this approach would yield highly inconsistent results due to the analytical challenges of measuring the flash point of a sample inside a flash point apparatus that would need to equilibrate multiple liquid or solid phases with the vapor phase at various temperatures. The Agency has also explained in the past that if a waste contains filterable solids, then the solids and liquids must be separated and then analyzed against the respective criteria for ignitable solids and ignitable liquids.[21]

waste from a second non-liquid waste but does not prohibit a generator from doing so if it is possible and appropriate for their waste management.

[18] See SW–846 Chapter 9. EPA–HQ–OLEM–2018–0830–0162.

[19] See comments from the Environmental Technology Council. EPA–HQ–OLEM–2018–0830–170.

[20] See comment from the Coalition for Responsible Waste Incineration. EPA–HQ–OLEM–2018–0830–0172.

[21] See Letter to Mr. Nebrich. EPA–HQ–OLEM–2018–0830–0011.

The third approach in Section 2.3.1.5 states, ''A third alternative is to select phases of interest and to analyze only those selected phases. This tactic must be consistent with the sampling/analysis objectives or it will yield insufficient information for the time and resources expended. The phases selected should be compared with Figure 21 and Table 241[in SW–846 Chapter 2] for further guidance.'' The Agency generally agrees with this approach when combined with generator knowledge of the waste. For example, a generator may make a determination through knowledge that an aqueous phase does not exhibit ignitability but rely on flash point testing to determine whether an organic phase of the same waste exhibits ignitability.

Therefore, EPA believes that the sampling approaches outlined in Section 2.3.1.5, while providing useful guidance in certain circumstances, have limitations, as described. Ultimately, the sampling approach should be designed to obtain a representative sample of a waste or to provide additional knowledge of the waste when an individual sample does not wholly represent the hazards of a waste.

The same commenter also raised concerns over what the Agency considered to be a separated waste and whether a separation must occur by the waste itself or whether a generator must attempt to force separation. This concern included the potential application of the ignitable liquids criteria to manufactured articles containing minute amounts of ignitable liquid. The commenter indicated that the waste would not yield a liquid when tested with the Paint Filter Liquids Test. The Agency does not consider the public comment to be sufficiently detailed to make a broad hazardous waste determination for all manufactured articles containing small amounts of liquid. In this scenario, if a generator has determined that their waste yields no liquid when subject to the Paint Filter Liquids Test, then that waste is likely not subject to the ignitable liquids regulation.

In some limited situations, a waste may present as a liquid in nature but not pass through a paint filter due to viscosity or due to oversized particulates preventing flow through pores. In these situations, the Agency recommends that the generator consider the possibility to decant, pipette, or use other physical means to collect a sample. Additionally, a generator would also be required to consider the identification of ignitable non-liquids under 261.21(a)(2) when materials are not determined to be a liquid via the Paint Filter Liquids Test. The Agency recommends that the generator also carefully consider the conditions under which their waste is likely to be managed and any other characteristics or listings that may apply.

Taking into account the confusion caused by the Agency's proposal to codify existing guidance for multiple phase mixtures into regulation, the Agency has decided not to finalize the proposed language for 40 CFR 261.21(a)(5) at this time. The discussion in this preamble clarifies the Agency's position regarding testing of multiple phases of a waste. Individual phases of a multiple phase waste that exhibit ignitability and are representative of the multiple phase waste are subject to evaluation under the criteria in 40 CFR 261.21(a)(1) or 40 CFR 261.21(a)(2). Generators of multiple phases wastes where either phase is identified as exhibiting the characteristic of ignitability would be required to manage the entire waste as hazardous waste. A sample from a multiple phase waste that is not representative of the waste as a whole is not always conclusive for a waste identification. The Agency notes that 40 CFR 261.21(a) identifies waste based on the properties of a representative sample and that generators of a waste remain able to complete a waste identification through testing or knowledge. Testing of a waste may or may not require analysis of all phases to complete a hazardous waste determination.

F. Pressure Filtration and Ignitable Liquids

In the proposed rule, EPA requested comment on whether the Agency should revisit adding language to Chapter 7 of SW–846 as guidance regarding the use of the Pressure Filtration Technique (PFT) specified in Method 1311 for assessing the presence of an ignitable liquid for wastes that do not yield a free liquid phase using Method 9095 (*i.e.,* Paint Filter Liquids Test or PFLT). Currently, generators may rely on the Paint Filter Liquids Test if they are separating a liquid from a solid for subsequent analysis. A generator may also be aware that a waste contains multiple phases through knowledge, testing, or visual observation. In these cases, a generator may sample individual phases without having to apply the Paint Filter Liquids Test. For example, a generator may be able to pipette, decant, pump, or use a COLIWASA apparatus to obtain a representative sample of the phase(s).

Several commenters raised concerns that the application of the Pressure Filtration Technique would be inconsistent with the Agency's rulemaking in 2013 that promulgated exclusions from solid and hazardous waste for solvent-contaminated wipes (see 78 FR 46448). Commenters also suggested that because the 2013 rulemaking provided guidance to use the Paint Filter Liquids Test for no free liquids, the 2013 rulemaking guidance would take precedence over any new guidance.

The Agency notes that the 2013 final rule for solvent-contaminated wipes provided guidance in preamble that generators should use the Paint Filter Test to determine no free liquids for solvent contaminated wipes under the finalized exclusions. The Agency considered whether a list of solvent extraction technologies might be more appropriate than a test to determine no free liquids and also considered the multiple tests state agencies were already using to verify compliance with the ''no free liquids'' conditions. The Agency was aware that the majority of the state agencies required the Paint Filter Liquids Tests and clarified that for the 2013 rulemaking, ''EPA is using the Paint Filter Liquids Test for determining whether solvent-contaminated wipes contain free liquids.'' The Agency also noted that authorized state programs are able to define ''no free liquids'' differently provided they are no less stringent. The Agency provided this guidance via rulemaking within the scope of solvent-contaminated wipes eligible for exclusion under 261.4(a)(26) or 261.4(b)(18).

The universe of ignitable liquids wastes is broader than the universe of solvent-contaminated wipes. The Agency expects some wastes are better represented by the pressure filtration procedure within EPA Method 1311 or by other analysis and requested comment regarding the use of Pressure Filtration Technique and Paint Filter Liquids Test since it was interested in learning from the experiences of the generators and regulators who have been identifying ignitable hazardous waste under the existing program. However, for most wastes that are not readily apparent to be a liquid through observation, the Agency believes the Paint Filter Liquids Test is an appropriate analysis. As noted by other commenters, the Agency clarified in 1995 that the Paint Filter Liquids Test is the minimum testing requirement to determine that a waste has no free liquids.[22] Commenters also noted that

[22] See Letter from David Brussard. EPA–HQ–OLEM–0830–0039.

some wastes may present difficulties in being pressure filtered, such as liquid wastes with fine particles that prevent filtering or other hard to manage wastes.[23] Wastes that readily flow and take the shape of their container may not readily filter but may still be identified as ignitable liquids. The Agency is taking no final action specific to the application of the Pressure Filtration Procedure in this rulemaking.

G. Additional Conforming Amendments

The Agency has become aware that several additional conforming amendments to the regulations in Parts 63, 260, and 278 are necessary. Consistent with the other conforming amendments that EPA had proposed and is finalizing today, EPA is also finalizing these additional conforming amendments.

1. 40 CFR 63. Part 63 incorporates Method 0023A by reference in 40 CFR 63.14 and 40 CFR 63.1208. As the Agency has updated Method 0023A to allow for alternatives to mercury thermometer usage in this rule, failing to update the reference in Part 63 would require the continued use of mercury thermometers when using Method 0023A to meet testing requirements in Part 63.

2. 40 CFR 260.11. EPA is making non-substantive amendments to the centralized incorporated by reference section in part 260 for conformity with 1 CFR 51. EPA is revising part 260 such that the test methods identified in 40 CFR 260.11 are listed alphabetically and numerically and the language explaining incorporation by reference in 40 CFR 260.11(a) is updated to meet current style and formatting requirements of the **Federal Register.**

3. 40 CFR 278. Additionally, the incorporation by reference of Method 1312 into the regulations at 40 CFR 278.3(b)(1) should now be located in 40 CFR 260.11 to meet style and formatting requirements of the **Federal Register.**

IV. Incorporation by Reference

The Methods Innovation Rule, which was finalized on June 14, 2005, revised 40 CFR 260.11 to remove the incorporation by reference of all SW–846 test methods except those SW–846 test methods that are also regulatory required method-defined parameters under the RCRA regulations and thus, can only be amended through a regulatory effort.[24]

The Agency is incorporating by reference SW–846 Method 1010B, SW–846 Method 1020C, ASTM D8174–18, ASTM D8175–18, and ASTM E681–85 into § 261.21 and as applicable into Appendix IX to part 261. SW–846 Method 1010B and SW–846 Method 1020C list the required methods to determine flashpoint for ignitable hazardous waste. SW–846 Method 1010B lists the Pensky-Martens flash point methods, which are ASTM Standards D93–79, D93–80, and D8175–18. SW–846 Method 1020C lists the Setaflash (small-scale) closed cup flash point methods, which are the ASTM Standards D3278–78 and D8174–18. ASTM D8174–18 is a test method to determine the flash point of liquid wastes using a small-scale (Setaflash) apparatus. ASTM D8175–18 is a test method used to determine the flash point of liquid wastes using a Pensky-Martens apparatus. ASTM E681–85 is a test method used to determine the upper and lower concentration limits of flammability for chemicals having sufficient vapor pressure to form flammable mixtures with air.

The Agency is also incorporating by reference SW–846 Test Methods 0010, 0011, 0020, 0023A, and 0051. SW–846 Method 0010 is a sampling method for collection of gaseous and particulate pollutants from an emission source. SW–846 Method 0011 is a method for collection of selected ketones and aldehydes from an emission source. SW–846 Method 0020 is a method to collect gaseous and particulate pollutants from an emission source and into a multicomponent sampling train. SW–846 Method 0023A is a method for collection of polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofuran from an emission source. SW–846 Method 0051 is a method for collection of hydrogen chloride and chlorine in stack gas emission samples from hazardous waste incinerators and combustors. The Agency is incorporating by reference Method 0010 into § 260.11(c)(3)(i), Appendix IX to part 261, and Appendix IX to part 266. The Agency is incorporating by reference Method 0011 into § 260.11(c)(3)(viii), Appendix IX to part 261, and Appendix IX to part 266. The Agency is incorporating by reference Method 0020 into § 260.11(c)(3)(ii) and Appendix IX to part 261. The Agency is incorporating by reference Method 0023A into § 260.11(c)(3)(ix), Appendix IX to part 261, and Appendix IX to part 266. The Agency is incorporating by reference Method 0051 into § 260.11(c)(3)(xiii), Appendix IX to part 261, § 266.107(f), and Appendix IX to part 266. The finalization of the proposed incorporation by reference of the above test methods is as described in the proposed rule and as discussed in Section III above.

The ASTM standards incorporated by reference are available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, *www.astm.org,* call 877–909–2786. The SW–846 Test Methods incorporated by reference are published in the test methods compendium known as ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Third Edition, which can be found at *https://www.epa.gov/hw-sw846.*

V. State Authorization

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271. Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When EPA promulgated new, more stringent federal requirements for these pre-HSWA regulations, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state, until the state adopted the federal requirements as state law. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same

[23] See comments by the Environmental Technology Council. EPA–HQ–OLEM–2018–0830–0170

[24] It is important to note that while a test method listed in § 260.11 is a method-defined parameter, that test method also may be used for non-mandatory purposes. For example, the Pensky-Martens method described in Method 1010A could also be used as part of quality control to test a product for purity, which is unrelated to § 261.21 and, otherwise, not required under RCRA. In this case, the test method would not be a method-defined parameter. In order to be a method-defined parameter, a test method must be part of a regulatory requirement under RCRA.

time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements.[25] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Today's notice finalizes regulations that would not be promulgated under the authority of HSWA. Thus, the standards would be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program.

The revisions to these test methods are considered to be neither more nor less stringent than the existing test methods. Thus, authorized states may, but are not required to, adopt these changes.

VI. Statutory and Executive Order (E.O.) Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is a deregulatory action as specified in Executive Order 13771 (82 FR 9339, February 3, 2017). Details on the estimated cost savings of the final rule can be found in EPA's *Regulatory Impact Analysis of the Modernization of Ignitable Liquid Determination Rule,* which is in the docket.

C. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, as applicable. This action does not impose any burden requiring additional OMB approval because it neither imposes new paperwork requirements nor amends existing paperwork requirements. Burden is defined in 5 CFR 1320.3(b). OMB previously approved the information collection activities contained in the existing regulations and assigned OMB control numbers 2050–0053 and 2050–0073.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. As documented in the *Regulatory Impact Analysis of the Modernization of Ignitable Liquid Determinations Rule* found in the docket for this final rule, EPA does not expect the rule to result in an adverse impact to a significant number of small entities. For commercial labs, the analysis presented in Chapter 3 indicates either no change in costs or a cost savings, due to the flexibility afforded by the rule. Therefore, out of the 128 firms defined as small under the Small Business Administration size standards, no firms have costs greater than one percent of annual revenues. EPA has therefore concluded that this action will either relieve regulatory burden or have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

As documented in the *Regulatory Impact Analysis of the Modernization of Ignitable Liquid Determinations Rule* found in the docket for the final rule, this action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have ''federalism implications'' as that term is defined in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The final rule is not expected to result in any adverse impacts on tribal entities. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

[25] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. EPA is adopting the use of ASTM D8175–18 and ASTM D8174–18. These test methods were adopted by ASTM in March 2018. These standards are available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. EPA worked with ASTM to specifically develop these consensus-based standards to better suit waste testing by modifying existing ASTM standards. EPA worked with a member of the ASTM D02.08 Subcommittee (who also represents Stanhope-Seta) to modify existing ASTM methods D93–16 and D3828–16a, which were developed by the ASTM D02.08 Subcommittee. These new draft test methods were then submitted to ASTM's review process and were approved by the ASTM D34 Committee to become new ASTM test methods.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The final rule modernizes testing and codifies guidance for the characterization of ignitable hazardous waste; it does not affect the disposal of such waste. Therefore, the final rule is not expected to result in any adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 63

Environmental protection, Incorporation by reference.

40 CFR Part 260

Environmental protection, Hazardous waste, Incorporation by reference.

40 CFR Part 261

Environmental protection, Hazardous waste, Incorporation by reference, Recycling.

40 CFR 278

Environmental protection, Incorporation by reference.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Amend § 63.14 by revising the paragraph (a) and paragraph (q)(2)(i) to read as follows:

§ 63.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, a document must be published in the **Federal Register** and the material must be available to the public. All approved materials are available for inspection at the Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. These approved materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* In addition, these materials are available from the following sources:

* * * * *

(q) * * *

(2) * * *

(i) Method 0023A, ''Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources,'' Revision 2, dated August 2018, IBR approved for § 63.1208(b).

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PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 4. Revise § 260.11 to read as follows:

§ 260.11 Incorporation by reference.

When used in parts 260 through 268 of this chapter, the following materials are incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved materials are available for inspection at the OLEM Docket in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OLEM Docket is (202) 566–0270. These approved materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* In addition, these materials are available from the following sources:

(a) *American Petroleum Institute (API).* 1220 L Street Northwest, Washington, DC 20005, (855) 999–9870, *www.api.org.*

(1) API Publication 2517, Third Edition, February 1989, ''Evaporative Loss from External Floating-Roof Tanks,'' IBR approved for § 265.1084.

(2) [Reserved]

(b) *ASTM International (ASTM).* 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, (877) 909–ASTM, *www.astm.org.*

(1) ASTM D93–79, ''Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester,'' IBR approved for § 261.21(a).

(2) ASTM D93–80, ''Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester,'' IBR approved for § 261.21(a).

(3) ASTM D1946–82, ''Standard Method for Analysis of Reformed Gas by Gas Chromatography,'' IBR approved for §§ 264.1033 and 265.1033.

(4) ASTM D2267–88, ''Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography,'' IBR approved for § 264.1063.

(5) ASTM D2382–83, ''Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method),'' IBR approved for §§ 264.1033 and 265.1033.

(6) ASTM D2879–92, ''Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,'' IBR approved for § 265.1084.

(7) ASTM D3278–78, ''Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester,'' IBR approved for § 261.21(a).

(8) ASTM D8174–18 ''Standard Test Method for Finite Flash Point Determination of Liquid Wastes by Small Scale Closed Cup Tester.'' Approved March 15, 2018, IBR approved for § 261.21(a).

(9) ASTM D8175–18 ''Standard Test Method for Finite Flash Point Determination of Liquid Wastes by Pensky-Martens Closed Cup Tester.'' Approved March 15, 2018, IBR approved for § 261.21(a).

(10) ASTM E168–88, ''Standard Practices for General Techniques of Infrared Quantitative Analysis,'' IBR approved for § 264.1063.

(11) ASTM E169–87, ''Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis,'' IBR approved for § 264.1063.

(12) ASTM E260–85, ''Standard Practice for Packed Column Gas Chromatography,'' IBR approved for § 264.1063.

(13) ASTM E681–85 ''Standard Test Method for Concentration Limits of Flammability of Chemicals (Vapors and gases),'' Approved November 14, 1985, IBR approved for § 261.21(a).

(c) *Environmental Protection Agency (EPA).* Material cited in paragraphs (d)(1) through (3) is available from: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; EPA's National Service Center for Environmental Publications at *https://www.epa.gov/nscep.* Material cited in paragraph (d)(4) of this section is available at *https://www.epa.gov/hw-sw846.*

(1) ''APTI Course 415: Control of Gaseous Emissions,'' EPA Publication EPA–450/2–81–005, December 1981, IBR approved for §§ 264.1035 and 265.1035.

(2) Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material SGT–HEM; Non-polar Material) by Extraction and Gravimetry:

(i) Revision A, EPA–821–R–98–002, February 1999, IBR approved for appendix IX to part 261.

(ii) Revision B, EPA–821–R–10–001, February 2010, IBR approved for appendix IX to part 261.

(3) ''Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised'', October 1992, EPA Publication No. EPA–450/R–92–019, IBR approved for appendix IX to part 266.

(4) The following methods as published in the test methods compendium known as ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Third Edition.

(i) Method 0010, Modified Method 5 Sampling Train, Revision 1, dated August 2018, IBR approved for appendix IX to part 261.

(ii) Method 0011, Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources, Revision 1, dated August 2018, IBR approved for appendix IX to part 261 and appendix IX to part 266

(iii) Method 0020, Source Assessment Sampling System (SASS), Revision 1, dated August 2018, IBR approved for appendix IX to part 261.

(iv) Method 0023A, Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources, Revision 2, dated August 2018, IBR approved for appendix IX to part 261, § 266.104(e), and appendix IX to part 266.

(v) Method 0030, Volatile Organic Sampling Train, dated September 1986 and in the Basic Manual, IBR approved for appendix IX to part 261.

(vi) Method 0031, Sampling Method for Volatile Organic Compounds (SMVOC), dated December 1996 and in Update III, IBR approved for appendix IX to part 261.

(vii) Method 0040, Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags, dated December 1996 and in Update III, IBR approved for appendix IX to part 261.

(viii) Method 0050, Isokinetic HCl/Cl_2 Emission Sampling Train, dated December 1996 and in Update III, IBR approved for appendix IX to part 261, § 266.107, and appendix IX to part 266.

(ix) Method 0051, Midget Impinger HCl/Cl2 Emission Sampling Train, Revision 1, dated August 2018, IBR approved for appendix IX to part 261, § 266.107, and appendix IX to part 266.

(x) Method 0060, Determination of Metals in Stack Emissions, dated December 1996 and in Update III, IBR approved for appendix IX to part 261, § 266.106, and appendix IX to part 266.

(xi) Method 0061, Determination of Hexavalent Chromium Emissions from Stationary Sources, dated December 1996 and in Update III, IBR approved for appendix IX to part 261 § 266.106, and appendix IX to part 266.

(xii) Method 1010B, Test Methods for Flash Point by Pensky-Martens Closed-Cup Tester, dated December 2018, IBR approved for § 261.21 and appendix IX to part 261.

(xiii) Method 1020C, Standard Test Methods for Flash Point by Setaflash (Small Scale) Closed-Cup Apparatus, dated December 2018, IBR approved for § 261.21 and appendix IX to part 261.

(xiv) Method 1110A, Corrosivity Toward Steel, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and appendix IX to part 261.

(xv) Method 1310B, Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test, dated November 2004 and in Update IIIB, IBR approved for appendix IX to part 261.

(xvi) Method 1311, Toxicity Characteristic Leaching Procedure, dated July 1992 and in Update I, IBR approved for appendix IX to part 261, and §§ 261.24, 268.7, 268.40.

(xvii) Method 1312, Synthetic Precipitation Leaching Procedure, dated September 1994 and in Update III, IBR approved for appendix IX to part 261.

(xviii) Method 1320, Multiple Extraction Procedure, dated September 1986 and in the Basic Manual, IBR approved for appendix IX to part 261.

(xix) Method 1330A, Extraction Procedure for Oily Wastes, dated July 1992 and in Update I, IBR approved for appendix IX to part 261.

(xx) Method 9010C, Total and Amenable Cyanide: Distillation, dated November 2004 and in Update IIIB, IBR approved for appendix IX to part 261 and §§ 268.40, 268.44, 268.48.

(xxi) Method 9012B, Total and Amenable Cyanide (Automated Colorimetric, with Off-Line Distillation), dated November 2004 and in Update IIIB, IBR approved for appendix IX to part 261 and §§ 268.40, 268.44, 268.48.

(xxii) Method 9040C, pH Electrometric Measurement, dated November 2004 and in Update IIIB, IBR

approved for appendix IX to part 261 and § 261.22.

(xxiii) Method 9045D, Soil and Waste pH, dated November 2004 and in Update IIIB, IBR approved for appendix IX to part 261.

(xxiv) Method 9060A, Total Organic Carbon, dated November 2004 and in Update IIIB, IBR approved for appendix IX to part 261, and §§ 264.1034, 264.1063, 265.1034, 265.1063.

(xxv) Method 9070A, n-Hexane Extractable material (HEM) for Aqueous Samples, dated November 2004 and in Update IIIB, IBR approved for appendix IX to part 261.

(xxvi) Method 9071B, n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples, dated April 1998 and in Update IIIA, IBR approved for appendix IX to part 261.

(xxvii) Method 9095B, Paint Filter Liquids Test, dated November 2004 and in Update IIIB, IBR approved, appendix IX to part 261, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

(d) *National Fire Protection Association (NFPA).* 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101, (800) 344–3555, *www.nfpa.org/.*

(1) NFPA 30, ''Flammable and Combustible Liquids Code,'' 1977 Edition, IBR approved for §§ 262.16(b), 264.198(b), 265.198(b), and 267.202(b).

(2) NFPA 30, ''Flammable and Combustible Liquids Code,'' 1981 Edition, IBR approved for §§ 262.16(b), 264.198(b), 265.198(b), and 267.202(b).

(e) *Organization for Economic Cooperation and Development (OECD).* Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France, o*www.oecd-ilibrary.org/.*

(1) Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for §§ 262.82(a), 262.83(b), (d), and (g), and 262.84(b) and (d).

(2) [Reserved]

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 6. Amend § 261.21 by:

■ a. Revising paragraphs (a)(1), (3)(ii), (4) introductory text, and (4)(i)(A), and (D); and

■ b. Removing Notes 1, 2, 3, and 4.

The revisions read as follows:

§ 261.21 Characteristic of ignitability.

(a) * * *

(1) It is a liquid, other than a solution containing less than 24 percent alcohol by volume and at least 50 percent water by weight, that has a flash point less than 60 °C (140 °F), as determined by using one of the following ASTM standards: ASTM D93–79, D93–80, D3278–78, D8174–18, or D8175–18 as specified in SW–846 Test Methods 1010B or 1020C (all incorporated by reference, see § 260.11 of this subchapter).

* * * * *

(3) * * *

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be the ASTM E 681–85 (incorporated by reference, see § 260.11 of this subchapter), or other equivalent methods approved by the Associate Administrator, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

(B) It is determined to be flammable or extremely flammable using 49 CFR 173.115(l).

* * * * *

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter.

(i) * * *

(A) The material meets the definition of a Division 1.1, 1.2, or 1.3 explosive, as defined in § 261.23(a)(8), in which case it must be classed as an explosive,

* * * * *

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation, it has been determined that the material does not present a hazard in transportation.

* * * * *

Appendic IX to Part 261 [Amended]

■ 7. Amend Appendix IX to Part 261 by removing the text ''1010A'' and adding ''1010B'' in its place, wherever it appears (56 occurrences); and removing the text ''1020B'' and adding ''1020C'' in its place, wherever it appears (56 occurrences).

PART 278—CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS

■ 8. The authority citation for part 278 continues to read as follows:

Authority: 42 U.S.C. 6961 *et seq.*

■ 9. Amend § 278.3 by revising paragraph (b)(1) and adding paragraph (d) to read as follows:

§ 278.3 Criteria for use of chat in Federally funded transportation projects.

* * * * *

(b) * * *

(1) Synthetic Precipitation Leaching Procedure (SPLP) tests are conducted on the proposed material using EPA SW–846 Method 1312, and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 μg/l; or

* * * * *

(d) EPA SW–846 Method 1312, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' Third Edition, September 1994, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. It is available at *www.epa.gov/hw-sw846/.* All approved material is available for inspection at the OLEM Docket in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OLEM Docket is (202) 566–0270. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

[FR Doc. 2020–12695 Filed 7–6–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XY096]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of non-Community Development Quota (CDQ) sablefish by vessels using trawl gear in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2020 non-CDQ sablefish initial total allowable catch (ITAC) in the Bering Sea subarea of the BSAI will be reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 2020, through 2400 hours, A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2020 non-CDQ sablefish trawl ITAC in the Bering Sea subarea of the BSAI is 791 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020). In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2020 non-CDQ sablefish trawl ITAC in the Bering Sea subarea of the BSAI will soon be reached. Therefore, NMFS is requiring that non-CDQ sablefish caught with vessels using trawl gear in the Bering Sea subarea of the BSAI be treated as prohibited species in accordance with 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibited retention of non-CDQ sablefish by vessels using trawl gear in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as June 30, 2020.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by §§ 679.20 and 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 1, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–14591 Filed 7–1–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 130
Tuesday, July 7, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123027–19]

RIN 1545–BP59

Section 42, Low-Income Housing Credit Compliance-Monitoring Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the compliance-monitoring duties of State or local housing credit agencies (Agencies) for purposes of the low-income housing credit under section 42 of the Internal Revenue Code (Code). These proposed regulations would relax the minimum compliance-monitoring sampling requirement for purposes of physical inspections and low-income certification review provided in the Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations (T.D. 9848) published in the **Federal Register** (84 FR 6076). The proposed regulations will affect owners of low-income housing projects, tenants in those low-income housing projects, and Agencies that administer the credit.

DATES: Written or electronic comments and requests for a public hearing must be received by September 8, 2020.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–123027–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–123027–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dillon Taylor or Michael J. Torruella Costa at (202) 317–4137; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Code.

Section 42(m)(1) requires an Agency to allocate housing credit dollar amounts (the potential to earn low-income housing credits) among candidate proposed buildings/projects. The allocation must be pursuant to a qualified allocation plan (QAP) that has been approved by the governmental unit of which the Agency is a part. A QAP not only sets forth selection criteria by which an Agency makes these allocations but also provides a procedure that the Agency must follow in monitoring for noncompliance with the provisions of section 42, including monitoring for noncompliance with habitability standards through regular site visits.

Section 1.42–5 of the Income Tax Regulations (the compliance-monitoring regulations) provides the requirements of a monitoring procedure that must be part of any QAP. Among the requirements, an Agency must perform physical inspections and low-income certification review.

The compliance-monitoring regulations, however, do not require that *every* low-income unit in a project be monitored for non-compliance. Instead, Agencies are permitted to satisfy their compliance-monitoring duties by physically inspecting, and performing low-income certification review, on only samples of those units. *See* T.D. 8430, 57 FR 40118, 40121 (Sept. 2, 1992).[1] For many years, starting in 2000, the minimum sample size for both file review and on-site inspections was 20 percent of the low-income units, regardless of the size of the total population of low-income units in a project. *See* TD 8859, 65 FR 2323, 2327 (Jan. 14, 2000).

On February 25, 2016, the Treasury Department and the IRS published temporary regulations (T.D. 9753) in the **Federal Register** (81 FR 9333), which amended § 1.42–5 of the Income Tax Regulations and permitted the IRS to establish sample-size criteria in guidance published in the Internal Revenue Bulletin. *See* § 601.601(d)(2)(ii)(b) of 26 CFR Chapter 1.[2] Concurrently with the issuance of the temporary regulations, Revenue Procedure 2016–15, 2016–11 I.R.B. 435, was published in the Internal Revenue Bulletin. This revenue procedure permitted an Agency to elect to use sample sizes of either a minimum of 20 percent of the low-income units in a project (rounded up to the nearest whole number) or the number in a chart identifying minimum sample sizes depending on the number of low-income units in a project (the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart). The minimum sample sizes in the chart correspond to the minimum sample sizes required by the Department of Housing and Urban Development's (HUD's) Real Estate Assessment Center for inspections under HUD programs (the REAC numbers). HUD designed this table of sample sizes to produce a statistically consistent level of confidence in the results of physical inspections across a broad range of project sizes.

[1] Initially, the requirements were that the Agency choose which units receive low-income certification review, that the owner receive no more than reasonable notice of the review, and that the Agency have the right to perform on-site inspection. *See* TD 8430 at 40122–23. Subsequently, some on-site inspections were required, and samples for both review and inspection were required to be chosen randomly. *See* TD 8859, 65 FR 2323, 2327 (Jan. 14, 2000).

[2] Also in the same issue of the **Federal Register**, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–150349–12, 81 FR 9379) (proposed regulations). The text of the proposed regulations incorporated by cross-reference the text of the temporary regulations.

The revenue procedure had the effect of reducing the minimum sample sizes for large low-income housing projects (those with more than 110 low-income units). Because of the choice between using the REAC number and 20 percent of the low-income units, the revenue procedure did not impact projects with fewer than 111 low-income units.

The same sample-size provisions applied to independently selected samples on which the Agency must perform low-income certification review. The revenue procedure provided only minimum sample sizes, permitting Agencies to monitor compliance in more units, if desired.

In the preamble to the temporary regulations, the Treasury Department and the IRS expressed concern that, in smaller projects, physical inspection or low-income certification review of only 20 percent of the units might fail to produce sufficiently accurate estimates of the remaining units' overall compliance with habitability and low-income certification. To address this concern, the preamble added that ''the Treasury Department and the IRS intend to consider whether Rev. Proc. 2016–15 should be replaced with a revenue procedure that does not permit use of the 20 percent rule in those circumstances.'' 81 FR at 9334. The removal of the 20 percent option would generally increase the number of units that needed to be inspected in smaller projects. The public comments on the temporary regulations directed very little attention to this potential increase.

In addition, the preamble invited fundamental suggestions to make inspections less burdensome:

> The Treasury Department and the IRS believe the methods in Rev. Proc. 2016–15 reasonably balance the burden on Agencies, tenants, and building owners while adequately monitoring compliance. However, additional comments may be submitted on other possible methods, including stratified sampling procedures and estimation methodologies. To be useful, any such comments should include substantial detail regarding the procedures to be adopted and should provide thorough justification as to whether the suggested methods effectively reduce burden without negatively impacting the confidence that can be placed in the results obtained from the resulting samples.

Id. at 9336. The public submitted no comment letters specifically responsive to this request.

On February 26, 2019, the Treasury Department and IRS published regulations (T.D. 9848) in the **Federal Register** (84 FR 6076), finalizing the temporary regulations. Because these final regulations contain provisions directly addressing all issues previously addressed in Revenue Procedure 2016–15, the preamble of the final regulations declares that revenue procedure obsolete with respect to an Agency as of the date on which the Agency's QAP is amended to reflect the final regulations and, in all cases, after December 31, 2020. *See* 84 FR at 6078. Among other provisions, the final regulations require Agencies to inspect no fewer units than the number specified for projects of the relevant size in the REAC numbers. This requirement has the effect of increasing the sample sizes for smaller projects. The Treasury Department and the IRS determined that the REAC numbers produce a statistically valid sampling of units and that using them yielded a consistent level of confidence in the compliance-monitoring results for projects of various sizes. The final regulations allow Agencies a reasonable period of time to amend their QAPs for this purpose, but require QAPs to be amended no later than December 31, 2020.

Since the publication of the final regulations, the Treasury Department and the IRS have received numerous oral and written comments from Agencies, stakeholders, and trade groups representing Agencies. In particular, these comments expressed concern that the final regulations ended Agencies' ability to use samples of 20 percent of the low-income units in a project when the applicable REAC number is larger. Consistent with the comments and letters, the trade groups' comment letters expressed concern about the situations in which the REAC numbers would increase the number of units that Agencies must examine, thereby increasing Agencies' costs for additional staff and other related expenditures and burdens. One trade group further explained that many Agencies would encounter difficulty in addressing increased staffing needs and other new costs due to overall State budget constraints. The trade group observed that cost increases are also likely to cause Agencies to increase the compliance-monitoring fees that they charge to building owners. If fees are not increased enough to cover the increased costs, Agencies will have to divert resources from other affordable housing priorities to fund their compliance-monitoring activities. The trade group noted that terminating the ability to use the 20 percent samples will have its most significant impact on States with numerous small projects, predominantly in rural areas, and that some States with only small projects may even experience a 100 percent increase in burden.

Explanation of Provisions

The final regulations reflected the belief of the Treasury Department and the IRS that a higher compliance-monitoring burden on Agencies was justified by the increased statistical confidence that results from the use of the REAC numbers to determine sample sizes for smaller projects. The comments on the final regulations, however, have demonstrated the magnitude of the increased costs and burdens that this requirement imposes on Agencies. As a result of these comments, the Treasury Department and the IRS have greater awareness of the many practical challenges Agencies experience in using samples greater than 20 percent while carrying out their compliance-monitoring responsibilities. Furthermore, the comments noted that many Agencies typically evaluate each project to determine if circumstances warrant the inspection and review of more units than the required minimum. Complying with the REAC numbers when an Agency believes that smaller samples would be sufficient may have the effect of depriving the Agency of the resources that it requires to engage in additional compliance-monitoring activities on projects that manifest the need for inspection and review of more than the minimum sample of units.

Although there is value in providing a level of confidence that is more consistent over a broad range of project sizes, that increased consistency is outweighed in this context by concerns over Agencies' compliance-monitoring burdens. One goal of the compliance-monitoring regulations is to increase flexibility and reduce burden, so that Agencies may fulfill their compliance-monitoring responsibilities in an efficient and cost-effective manner. Accordingly, the Treasury Department and the IRS propose returning to the sample-size requirements that applied under the temporary regulations. Thus, under these proposed regulations, the minimum number of low-income units that must be included in the random samples on which an Agency conducts physical inspections or low-income certification review is the lesser of the applicable REAC number or 20 percent of the low-income units in the project, rounded up to the next whole number.

Proposed Applicability Date

These regulations are proposed to apply beginning after the date these regulations are published as final regulations in the **Federal Register**. However, an Agency may rely on these proposed regulations beginning on February 26, 2019, until December 31 of

the calendar year following the year that contains the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6) it is hereby certified that these regulations will not impose a significant economic impact on a substantial number of small entities. These regulations reinstate the minimum compliance-monitoring sampling requirement for purposes of physical inspections and low-income certification review previously provided under the temporary regulations (T.D. 9753) published in the **Federal Register** (81 FR 9333) on February 25, 2016. These previously provided requirements had been and continue to be relied upon by Agencies since 2016.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal authors of these regulations are Dillon Taylor and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Amend § 1.42–5 by revising paragraphs (c)(2)(iii)(B) and (h) to read as follows:

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) *Number of low-income units.* The minimum number of low-income units for which the Agency must conduct on-site inspections and low-income certification review is the lesser of—

(*1*) 20 percent of the low-income units in the low-income housing project, rounded up to the nearest whole number of units; or

(*2*) the Minimum Unit Sample Size set forth in the following Low-Income Housing Credit Minimum Unit Sample Size Reference Chart:

TABLE 1 TO PARAGRAPH (c)(2)(iii)

Number of low-income units in the low-income housing project	Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)
1	1
2	2
3	3
4	4
5–6	5
7	6
8–9	7
10–11	8
12–13	9
14–16	10
17–18	11
19–21	12
22–25	13
26–29	14
30–34	15
35–40	16
41–47	17
48–56	18
57–67	19
68–81	20
82–101	21
102–130	22
131–175	23
176–257	24
258–449	25
450–1,461	26
1,462–9,999	27

* * * * *

(h) *Applicability dates.* The requirements in paragraph (c)(2)(iii)(B) of this section apply beginning after the date final regulations are published in the **Federal Register**.

Douglas W. O'Donnell,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–14555 Filed 7–2–20; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0348]

RIN 1625–AA08

Special Local Regulation; Ohio River, Owensboro, KY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for all navigable waters of the Ohio River from mile marker (MM) 754 .0 to MM 759.0. This action is necessary to provide for the safety of life on these navigable waters near Owensboro, KY, during a high speed boat race on August 14, 2020 through August 16, 2020. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the

Captain of the Port Sector Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 22, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0348 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Craig Colton, Waterways Department Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5335, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On January 13, 2020, the City of Owensboro notified the Coast Guard that it will be hosting a high speed boat race called Owensboro HydroFair from August 14, 2020, through August 16, 2020. The race will be located on the Ohio River in front of the Owensboro Convention Center between Mile Marker (MM) 754 to MM 759. Hazards from high speed boat races include collision, mechanical breakdowns, disabled vessels, capsized vessels, and persons in the water. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the high speed boat race would be a safety concern for anyone on a 5 mile stretch of the Ohio River.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters from MM 754 to MM 759 before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from noon to 6 p.m. on August 14, 2020, from 8 a.m. to 6 p.m. on August 15, 2020, and from 8 a.m. to 6 p.m. on August 16, 2020. The special local regulation would cover all navigable waters from MM 754 to MM 759 on the Ohio River. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled event. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Entry into the regulated area will be prohibited from noon to 6 p.m. on August 14, 2020, from 8 a.m. to 6 p.m. on August 15, 2020, and from 8 a.m. to 6 p.m. on August 16, 2020, from Ohio River MM 754.0 to MM 759.0, unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Moreover, the Coast Guard will issue written Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the temporary special local regulation that is in place.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting 26 hours over a 3 day period that would prohibit entry within a 5 mile stretch of the Ohio River. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.35T08–0348 to read as follows:

§ 100.35T08–0192 Special Local Regulation; Ohio River, Owensboro, KY.

(a) Regulated area. The regulations in this area apply to the following area: All navigable waters of the Ohio River from mile marker (MM) 754.0 to MM 759.0 in Owensboro, KY.

(b) Regulations. (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 13 or 16, or at 1–800–253–7465. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(c) Enforcement periods. This section will be enforced from noon to 6 p.m. on August 14, 2020, from 8 a.m. to 6 p.m. on August 15, 2020, and from 8 a.m. to 6 p.m. on August 16, 2020.

Dated: June 24, 2020.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2020–14407 Filed 7–6–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0343]

RIN 1625–AA08

Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish special local regulations for certain waters of Breton Bay and McIntosh Run. This action is necessary to provide for the safety of life on these navigable waters located at Leonardtown, MD, during a high-speed power boat demonstration event on August 1, 2020, and August 2, 2020. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 22, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0343 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland—National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Southern Maryland Boat Club of Leonardtown, MD, has notified the Coast Guard that it will be conducting the Southern Maryland Boat Club Bash on the Bay from 9 a.m. to 5 p.m. on August 1, 2020, and from 9 a.m. to 5 p.m. on August 2, 2020. The high-speed power boat event consists of approximately 50 participating vintage and historic race boats—including runabouts, v-bottoms, tunnel hulls, and hydroplanes—12 to 21 feet in length. The boats will be participating in an exhibition, operating in heats along a marked racetrack-type course 1 mile in length and 150 feet in width, located in Breton Bay and McIntosh Run at Leonardtown, MD. The regatta is not a competition, but rather a demonstration of the vintage race craft. Hazards from the high-speed power boat demonstration event include participants operating within and adjacent to designated navigation channels and interfering with vessels intending to operate within those channels, as well as operating within approaches to local public boat landings. The Captain of the Port (COTP) Maryland—National Capital Region has determined that potential hazards associated with the high-speed power boat event would be a safety concern for anyone intending to operate within certain waters of Breton Bay and McIntosh Run at Leonardtown, MD, operating in or near the event area.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the more typical 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable to ensure the Coast Guard has time to review and respond to any significant comments submitted by the public in response to this NPRM and has a final rule in effect in time for the scheduled event.

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041, which authorizes the Coast Guard to establish and define special local regulations.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 8 a.m. on August 1, 2020, through 6 p.m. on August 2, 2020. The special local regulations would be enforced from 8 a.m. through 6 p.m. on August 1st and those same hours on August 2nd. The regulated area would cover all navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD, shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16′43″ N and bounded to the west by a line drawn along longitude 076°38′30″ W, located at Leonardtown, MD.

This proposed rule provides additional information about areas within the regulated area, and the restrictions that would apply to mariners. These areas include a ''Race Area'', ''Buffer Area'', ''Milling Area'' and ''Spectator Area''. They lie within an area bounded to the east by a line drawn along latitude 38°16′43″ N and bounded to the west by a line drawn along longitude 076°38′30″ W, located in Breton Bay and McIntosh Run, at Leonardtown, MD.

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 9 a.m. until 5 p.m. on August 1, 2020, and August 2, 2020. The COTP and the Coast Guard Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area.

Except for vessels already at berth, everyone other than Southern Maryland Boat Club Leonardtown Regatta participants, including spectators, would be required to get permission from the COTP or PATCOM before entering the regulated area while the rule is being enforced. Vessel operators could request permission to enter and transit through the regulated area by contacting the PATCOM on VHF–FM channel 16. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels would direct everyone other than participants while within the regulated area. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Only participants and official patrols are allowed within the race area and milling area.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, duration and time of year of the regulated area, which would impact a small designated area of Breton Bay and McIntosh Run for 20 total enforcement hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 20 hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T05–0343 to read as follows:

§ 100.T05–0343 Southern Maryland Boat Club Leonardtown Regatta, Breton Bay, McIntosh Run, Leonardtown, MD.

(a) *Regulated areas.* The regulations in this section apply to the following areas:

(1) *Regulated area.* All navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16′43″ N and bounded to the west by a line drawn along longitude 076°38′30″ W, located at Leonardtown, MD. The following locations are within the regulated area:

(i) *Race Area.* The area is bounded by a line commencing at position latitude 38°17′09.78″ N, longitude 076°38′22.71″ W; thence southeasterly to latitude 38°16′58.62″ N, longitude 076°37′50.91″ W; thence southwesterly to latitude 38°16′51.89″ N, longitude 076°37′55.82″ W; thence northwesterly to latitude 38°17′05.44″ N, longitude 076°38′27.20″ W; thence northeasterly terminating at point of origin.

(ii) *Buffer Area.* The area surrounds the entire Race Area described in the preceding paragraph of this section. The area is bounded by a line commencing at the shoreline west of Leonardtown Wharf Park at position latitude 38°17′13.80″ N, longitude 076°38′24.72″ W; thence easterly to latitude 38°16′58.61″ N, longitude 076°37′44.29″ W; thence southerly to latitude 38°16′46.35″ N, longitude 076°37′52.54″ W; thence westerly to latitude 38°16′58.78″ N, longitude 076°38′26.63″ W; thence northerly to latitude 38°17′07.50″ N, longitude 076°38′30.00″ W; thence northeasterly terminating at point of origin.

(iii) *Milling Area.* The area is bounded by a line commencing at the shoreline east of Leonardtown Wharf Park at position latitude 38°17′10.07″ N, longitude 076°38′14.87″ W; thence easterly and southerly along the shoreline to latitude 38°17′01.54″ N, longitude 076°37′52.24″ W; thence westerly terminating at point of origin.

(iv) *Spectator Areas. Northeast Spectator Fleet Area.* The area is bounded by a line commencing at position latitude 38°16′59.10″ N, longitude 076°37′45.60″ W, thence northeasterly to latitude 38°17′01.76″ N, longitude 076°37′43.71″ W, thence southeasterly to latitude 38°16′59.23″ N, longitude 076°37′37.25″ W, thence southwesterly to latitude 38°16′53.32″ N, longitude 076°37′40.85″ W, thence northwesterly to latitude 38°16′55.48″ N, longitude 076°37′46.39″ W, thence northeasterly to latitude 38°16′58.61″ N, longitude 076°37′44.29″ W, thence northwesterly to point of origin.

(v) *Southeast Spectator Fleet Area.* The area is bounded by a line commencing at position latitude 38°16′47.20″ N, longitude 076°37′54.80″ W, thence southerly to latitude 38°16′43.30″ N, longitude 076°37′55.20″ W, thence easterly to latitude 38°16′43.20″ N, longitude 076°37′47.80″ W, thence northerly to latitude 38°16′44.80″ N, longitude 076°37′48.20″ W, thence northwesterly to point of origin.

(vi) *South Spectator Fleet Area.* The area is bounded by a line commencing at position latitude 38°16′55.36″ N, longitude 076°38′17.26″ W, thence southeasterly to latitude 38°16′50.39″ N, longitude 076°38′03.69″ W, thence southerly to latitude 38°16′48.87″ N, longitude 076°38′03.68″ W, thence northwesterly to latitude 38°16′53.82″ N, longitude 076°38′17.28″ W, thence northerly to point of origin.

(2) Coordinates. These coordinates are based on datum NAD 1983.

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

Buffer Area is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants and spectator vessels or nearby transiting vessels. This area provides separation between a Race Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Milling Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a milling area within the regulated area defined by this section. The area is used before a demonstration start to warm up the boats engines.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Southern Maryland Boat Club Leonardtown Regatta or otherwise designated by the event sponsor as having a function tied to the event.

Race Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a high-speed power boat demonstration area within the regulated area defined by this section.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols and is present with the purpose of observing the event.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Regulations.* (1) Except for vessels already at berth, everyone other than participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or PATCOM.

(3) Vessels are required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger participants or any other craft. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or the operation of any vessel participating in the marine event, at any time if deemed necessary for the protection of life or property.

(4) The race area and milling area are restricted to participants and official patrols.

(5) Spectators are only allowed inside the regulated area if they remain within a designated spectator area.

(6) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to

mariners, and on-scene designated representatives.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 8 a.m. to 6 p.m. on August 1, 2020, and, from 8 a.m. to 6 p.m. on August 2, 2020.

Dated: June 25, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–14264 Filed 7–6–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2020–0002; FRL–10011–12–Region 8]

Determination of Attainment by the Attainment Date for the Salt Lake City, Utah and Provo, Utah 2006 24-Hour $PM_{2.5}$ Nonattainment Areas; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a proposed rule in the **Federal Register** on June 8 2020, determining that the Salt Lake City, Utah and Provo, Utah Serious $PM_{2.5}$ nonattainment areas had attained the 2006 24-hour National Ambient Air Quality Standard (NAAQS) for $PM_{2.5}$ and this document corrects information displayed in a Table within that proposed rule.

DATES: Written comments must be received on or before August 6, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2020–0002, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA issued a proposed rule in the **Federal Register** on June 8, 2020 (85 FR 35033). There was an error in ''Table 1'' contained within section ''II. EPA Evaluation,'' subsection ''C. Evaluation of Current Attainment'' of the June 8, 2020 proposed rule. The table erroneously listed the 2017–2019 98th percentiles and design value for the Spanish Fork monitor twice; one correctly within the row for the Spanish Fork monitor and the second incorrectly within the row for the Lindon monitor. Table 1 should have listed the 98th percentiles and design value for the Lindon monitor as: 2017 98th percentile—28.9 μg/m³; 2018 98th percentile—28.4 μg/m³; 2019 98th percentile—21.2 μg/m³; and 2017–2019 design value—26 μg/m³. This corrective action does not affect our determination that the areas are meeting the NAAQS. This correction document does not otherwise change the remaining portions of the June 8, 2020 notice of proposed rulemaking.

Correction

In FR Document 2020–12074 appearing on pages 35033–35035 in the **Federal Register** of Monday, June 8, 2020, the following correction is made:

On page 35035, in Table 1, under the heading entitled ''NAA'' in the entry entitled ''Provo'' for ''Lindon'' monitoring site, remove the text ''27.6'' associated with column ''98th percentile values'' and ''2017,'' and replace the text with ''28.9''; remove the text ''49.6'' associated with column ''98th percentile values'' and ''2018,'' and replace the text with ''28.4''; remove the text ''17.5'' associated with column ''98th percentile values'' and ''2019,'' and replace the text with ''21.2''; remove the text ''32'' associated with column ''2017–2019 design value,'' and replace the text with ''26.'' The complete corrected table is below:

TABLE 1—SALT LAKE CITY AND PROVO NAAS 2017–2019 24-HOUR $PM_{2.5}$ AIR QUALITY DATA

[μg/m³]

NAA	Monitor site	Monitor ID	98th percentile values			2017–2019 design value
			2017	2018	2019	
Salt Lake City	Bountiful	49–011–0004	35.2	25.7	19.3	27
	Rose Park	49–035–3010	32.4	29.2	27.9	30
	Hawthorn	49–035–3006	35.7	26.2	27.3	30
	Herrimam #3	49–035–3013	28.2	29.0	18.8	25
	Erda	49–045–0004	20.9	30.6	22.9	25
Provo	Lindon	49–049–4001	28.9	28.4	21.2	26
	Spanish Fork	49–049–5010	27.6	49.6	17.5	32

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 25, 2020.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2020–14462 Filed 7–6–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 130

Tuesday, July 7, 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 COMMERCE

Foreign-Trade Zones Board

[B–41–2020]

Foreign-Trade Zone (FTZ) 22—Chicago, Illinois; Notification of Proposed Production Activity; Volflex, Inc.; Correction

The **Federal Register** notice published on June 30, 2020 (85 FR 39163), for the notification of proposed production activity submitted to the FTZ Board on behalf of Volflex, Inc., located in Mokena, Illinois, is corrected as follows:

In paragraph 3, the range of duty rates listed at the end of the second sentence should read: ''(duty rate ranges from duty-free to 3.7%)''.

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: June 30, 2020.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2020–14590 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC) Public Meeting

AGENCY: International Trade Administration, Commerce (DOC).

ACTION: Notice of an open meeting of a Federal advisory committee.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for July 21, 2020, from 12:00 to 3:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register or to submit written comments for dissemination prior to the meeting is 5:00 p.m. EDT on Friday, July 10, 2020.

ADDRESSES: The meeting will take place virtually via Webex. To register and obtain call-in information, or submit comments, please contact: Mr. Adam O'Malley, Office of Energy & Environmental Industries (OEEI), International Trade Administration, via email: *Adam.OMalley@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Adam O'Malley, Office of Energy & Environmental Industries (OEEI), International Trade Administration, via phone or email: 202–482–4850, *Adam.OMalley@trade.gov.*

SUPPLEMENTARY INFORMATION: The meeting will take place virtually on July 21, 2020, from 12:00 to 3:00 p.m. EDT. The general meeting is open to the public, and time will be permitted for public comment from 2:45–3:00 p.m. EDT. Members of the public seeking to attend the meeting are required to register in advance. Those interested in attending must provide notification by Friday, July 10, 2020, at 5:00 p.m. EDT, via the contact information provided above.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Friday, July 10, 2020, at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: At this final meeting of the current (2018–2020) ETTAC charter, the ETTAC will present its recommendations to senior officials from the U.S. Department of Commerce, then interagency representatives of the Trade Promotion Coordinating Committee's Environmental Trade Working Group (TPCC ETWG) will respond to the recommendations that the ETTAC presented. The meeting will be co-chaired by senior officials from the International Trade Administration and the U.S. Environmental Protection Agency. The ETTAC's recommendation letters can be found atwww.export.gov/ettac. The recommendations were developed by the ETTAC's three subcommittees: Trade Policy and Trade Negotiations, Trade Promotion and Export Market Development, and Cooperation on Standards, Certifications and Regulations. OEEI will make the final agenda available to the public one week prior to the meeting. Please email *Adam.OMalley@trade.gov* for a copy.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 16, 2020.

Dated: June 29, 2020.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2020–14338 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 8, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please

reference OMB Control Number 0648–0432 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Seaberry Nachbar, Nancy Foster Scholarship Program Manager, NOAA, 99 Pacific Street, Monterey, CA 93940, 831–647–4204, *Seaberry.Nachbar@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Office of National Marine Sanctuaries administers the Dr. Nancy Foster Scholarship Program which recognizes outstanding achievement in master's and doctoral degrees in oceanography, marine biology, or maritime archaeology—this can include but is not limited to ocean and/or coastal: Engineering, social science, marine education, marine stewardship, resource management disciplines—and particularly to encourage women and members of minority groups to apply. The scholarship supports independent graduate level research through financial support of graduate degrees in such fields. Gender and minority status are not considered when selecting award recipients. However, special outreach efforts are employed to solicit applications from women and members of minority groups. Scholarships are distributed by disciplines, institutions, and geography, and by degree sought, with selections within distributions based on financial need, the potential for success in a graduate level studies program (academic achievement), and the potential for achieving research and career goals. Data collection in the form of a full application, letters of recommendation, grade point average documents, research outline, a letter of financial need statement, and a declaration statement are all required to apply for the scholarship.

II. Method of Collection

Information is collected through an application submission, either electronically through the *Grants.gov* platform or if internet is not available, applicants may submit applications via mail.

III. Data

OMB Control Number: 0648–0432.

Form Number(s): SF–424

Type of Review: Regular (extension of an approved collection).

Affected Public: Individuals.

Estimated Number of Respondents: 190.

Estimated Time per Response: Application and transcripts: 8 hours; Letters of recommendation: 45 minutes; Biographical sketch and photograph of awardees: 1 hour; Annual progress reports: 4 hours; Pre- and post-evaluations and exit interview: 10 minutes each.

Estimated Total Annual Burden Hours: 570 burden hours

Estimated Total Annual Cost to Public: $3,800.

Respondent's Obligation: Voluntary

Legal Authority: 16 U.S.C. 1445c–1 and 16 U.S.C. 1445c.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14562 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA255]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The meeting will be held on Wednesday, July 22, 2020, from 9 a.m. through 5:30 p.m. and Thursday, July 23, 2020, from 8:30 a.m. through 4 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make multi-year acceptable biological catch (ABC) recommendations for Atlantic surfclam, ocean quahog, longfin squid, and butterfish based on the results of the recently completed management track stock assessment updates. The SSC will recommend 2021–26 ABC specifications for Atlantic surfclam and ocean quahog; 2021–23 ABC specifications for longfin squid; and 2021–22 ABC specifications for butterfish. The SSC will also review the most recent survey and fishery data and the previously recommended 2021 ABC for Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass. For summer flounder, scup, and black sea bass, the SSC will consider revising the 2021 ABC recommendation utilizing the new risk policy recently approved by the Council. The SSC will also review and provide feedback on ongoing Council actions, including the Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation

Amendment and the Bluefish Allocation and Rebuilding Amendment. In addition, the SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: July 1, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–14566 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA258]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a three-day meeting via webinar of its Standing, Reef Fish, Mackerel, Ecosystem and Socioeconomic Scientific and Statistical Committees (SSC).

DATES: The meeting will be held on Tuesday, July 21, Wednesday, July 22, and Thursday, July 23, 2020, from 9 a.m. to 5 p.m., EDT daily.

ADDRESSES: The meeting will take place via webinar; you may register by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, July 21, 2020; 9 a.m.–5 p.m.

The meeting will begin with Introductions, Adoption of Agenda, Approval of Minutes from the June 29 and July 8–9, 2020 webinar meetings. Council staff will review the Scope of Work; and, the Committees will select a SSC Representative for the August 24–27, 2020 Gulf Council meeting. Florida Fish and Wildlife Conservation Commission (FWC) staff will review Southeast Data, Assessment, and Review (SEDAR) 64—Southeastern US Yellowtail Snapper Stock Assessment; with Current and Marine Recreational Information Program (MRIP)-adjusted Stock Apportionment between the Gulf of Mexico Fishery Management Council (GMFMC) and South Atlantic Fishery Management Council (SAFMC); and, Current and MRIP-adjusted Stock Allocations for the SAFMC. The Committees will also receive a Stock Assessment Executive Summary.

Committees will review an update of SEDAR 28—Gulf of Mexico Migratory Group Cobia Stock Assessment; including Assessment Presentation and Stock Status Determination, Projections and the Stock Assessment Executive Summary.

Wednesday, July 22, 2020; 9 a.m.–5 p.m.

The Committees will review the July 13, 2020 MRIP Private Recreational Red Snapper Data Calibrations Workshop. The Committees will discuss the NOAA Office of Science and Technology (OST) Calibrations and Southeast Regional Office (SERO) Adjustments to Calibrations, Next Steps for Data Availability and Data Adjusting; Review of State-generated Calibrations; and, SSC Discussion.

Thursday, July 23, 2020; 9 a.m.–5 p.m.

The Committees will conclude their review the July 13, 2020 MRIP Private Recreational Red Snapper Data Calibrations Workshop. The Southeast Fisheries Science Center (SEFSC) will review Individual Fishing Quota (IFQ) Capacity and Technical Efficiency study. SEDAR will update the Committees on the Operational Assessment Process, and Council staff will review the proposed Timelines and Stock Identifications Process for SEDAR 74—Gulf of Mexico Red Snapper. Council and SEFSC staff will then review the Shrimp Stock Assessment Terms of Reference with the Committees.

Lastly, the Committees will discuss any other business items and receive public comments.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

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

Dated: July 1, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–14567 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA221]

Endangered and Threatened Species; Notice of Initiation of a 5-Year Review of the Dusky Sea Snake

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

ACTION: Notice.

SUMMARY: NMFS announces the initiation of a 5-year review for the dusky sea snake (*Aipysurus fuscus*). NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that the listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on the dusky sea snake, particularly information on the status, threats, and recovery of the species that

has become available since their listing, effective November 6, 2015.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than September 8, 2020.

ADDRESSES: You may submit information on this document, identified by NOAA–NMFS–2020–0085, by either of the following methods:

• *Electronic Submission:* Submit electronic information via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2020–0085. Click on the ''Comment Now!'' icon and complete the required fields. Enter or attach your comments.

• *Mail:* Submit written comments to Heather Austin and Grace Carter, Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13634, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the specified period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous submissions (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Heather Austin and Grace Carter at the above address, by phone at (301) 427–8422 or *Heather.Austin@noaa.gov* or *Grace.Carter@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our review of the dusky sea snake (*Aipysurus fuscus*) listed as endangered under the ESA. Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. This will be the first review of this species since it was listed in 2015. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews under section 4(c)(2)(B), we determine whether any species should be removed from the list (*i.e.,* delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; and/or (3) the listed entity does not meet the statutory definition of a species. Any change in Federal classification would require a separate rulemaking process.

Background information on the species is available on the NMFS website at: *https://www.fisheries.noaa.gov/species/dusky-sea-snake.*

Public Solicitation of New Information

To ensure that the reviews are complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of *Aipysurus fuscus.* Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats to the species and its habitats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk. If you wish to provide information for the review, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 30, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–14468 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Northeast Region Observer Providers Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to the Office of Management and Budget (OMB).

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 8, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0546 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Alyson Pitts, Fishery Management Specialist, 978–281–9352, *alyson.pitts@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial

uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resources.

Regulations at 50 CFR 648.11(g) require observer service providers to comply with specific requirements in order to operate as an approved provider in the Atlantic sea scallop (scallop) fishery. Observer service providers must comply with the following requirements: Submit applications for approval as an observer service provider; formally request observer training by the Northeast Fisheries Observer Program (NEFOP); submit observer deployment reports and biological samples; give notification of whether a vessel must carry an observer within 24 hours of the vessel owner's notification of a prospective trip; maintain an updated contact list of all observers that includes the observer identification number; observer's name mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the observer is ''in service.'' The regulations also require observer service providers submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of observer duties as well as all contracts between the service provider and entities requiring observer services for review to NMFS/NEFOP. Observer service providers also have the option to respond to application denials and submit a rebuttal in response to a pending removal from the list of approved observer providers. These requirements allow NMFS/NEFOP to effectively administer the scallop observer program.

II. Method of Collection

The approved observer service providers submit information to NMFS/NEFOP via email, fax, or postal service.

III. Data

OMB Control Number: 0648–0546.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organization.

Estimated Number of Respondents: 515.

Estimated Time per Response: Application for approval of observer service provider, 10 hours; applicant response to denial of application for approval of observer service provider, 10 hours; observer service provider request for observer training, 30 minutes; observer deployment report, 10 minutes; observer availability report, 10 minutes; safety refusal report, 30 minutes; submission of raw observer data, 5 minutes; observer debriefing, 2 hours; biological samples, 5 minutes; rebuttal of pending removal from list of approved observer service providers, 8 hours; vessel request to observer service provider for procurement of a certified observer, 25 minutes; vessel request for waiver of observer coverage requirement, 5 minutes; observer contact list updates, 5 minutes; observer availability updates, 1 minute; service provider material submissions, 30 minutes; service provider contracts, 30 minutes.

Estimated Total Annual Burden Hours: 5,675.

Estimated Total Annual Cost to Public: $46,600.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14563 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NTIA internet Use Survey

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 8, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Rafi Goldberg, Telecommunications Policy Analyst, NTIA, via email at *rgoldberg@ntia.gov.* Please reference OMB Control Number 0660–0021 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Rafi Goldberg, Telecommunications Policy Analyst, NTIA, at (202) 482–4375 or *rgoldberg@ntia.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NTIA seeks renewed approval under the Paperwork Reduction Act (PRA) to add 66 questions to a future edition of the U.S. Census Bureau's Current Population Survey (CPS). This collection of questions is known as the NTIA internet Use Survey, and is also referred to as the CPS Computer and internet Use Supplement. NTIA has sponsored fifteen such surveys since 1994, and previously used the current iteration of the survey instrument in 2017 and 2019.

As the digital economy's accelerating growth reinforces the internet's

importance to the nation's economic prosperity, policymakers, businesses, non-profits, communities, and other stakeholders increasingly rely on data about whether and how Americans use broadband in their routine activities. Digitally-connected Americans provide the modern workforce, creative innovation, and growing customer base to help sustain our nation's global competitiveness; the NTIA internet Use Survey will yield data that can inform investment decisions and resource allocations to advance full participation in the digital economy. The research and policy analysis enabled by this data collection are particularly important as the nation recovers from a pandemic that has further highlighted the importance of the internet in daily life.

NTIA is working with Congress, the Federal Communications Commission (FCC), other federal agencies, state and local governments, as well as with industry and nonprofits to develop and promote policies that foster broadband deployment and adoption. These policies help to ensure that the nation's businesses and consumers can obtain competitively priced high-speed internet access and that everyone is able to gain the skills necessary to use the technology. Collecting current, systematic, and comprehensive information on broadband use and non-use by U.S. households is critical to enabling policymakers to gauge progress made to date, and also to identify specific areas and demographic groups in which broadband adoption is a concern with a specificity that permits carefully targeted and cost-effective responses.

The U.S. Census Bureau is widely regarded as a premier data collector based on centuries of experience and rigorous scientific methods. Collection of NTIA's requested broadband usage data will occur in conjunction with a future edition of the U.S. Census Bureau's CPS, thereby significantly reducing the potential burdens on the U.S. Census Bureau and on surveyed households.

The U.S. government has an increasingly pressing need for comprehensive broadband data. The U.S. Government Accountability Office (GAO), NTIA, and the FCC have issued reports noting the importance of useful broadband adoption data for policymakers. Moreover, Congress passed legislation—the Broadband Data Improvement Act in 2008 and the American Recovery and Reinvestment Act in 2009—wholly or in part to address this deficiency. Modifying the CPS to include NTIA's requested broadband questions will enable the Commerce Department and NTIA to respond to congressional concerns and directives.

NTIA has made a copy of the proposed information collection instrument available at *https://www.ntia.gov/files/ntia/blogimages/november_2019_cps_supplement_-_final.pdf.*

II. Method of Collection

The NTIA internet Use Survey will be administered by the U.S. Census Bureau as a supplement to the CPS. Data will be collected through personal visits and live telephone interviews using computer-assisted telephone interviewing and computer-assisted personal interviewing.

III. Data

OMB Control Number: 0660–0021.

Form Number(s): None.

Type of Review: Regular submission (Extension of a current information collection).

Affected Public: Individuals and households.

Estimated Number of Respondents: 54,000 households.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 9,000.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: 47 U.S.C. 902(b)(2)(M), (P).

IV. Request for Comments

We are soliciting public comments to permit NTIA to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14545 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 200609–0154]

RIN 0660–XC046

Promoting the Sharing of Supply Chain Security Risk Information Between Government and Communications Providers and Suppliers

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: On June 12, 2020, the National Telecommunications and Information Administration (NTIA) published a Notice and Request for public comments on Section 8 of the Secure and Trusted Communications Network Act of 2019 (Act). Section 8 of the Act directs NTIA, in cooperation with other designated federal agencies, to establish a program to share supply chain security risk information with trusted providers of advanced communications service and suppliers of communications equipment or services. Through this Notice, NTIA is extending the comment deadline by 15 days from July 13, 2020, to July 28, 2020.

DATES: Comments must be received on or before July 28, 2020.

ADDRESSES: Written comments may be submitted by email to *supplychaininfo@ntia.gov.* Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Attn: Evelyn L. Remaley, Associate Administrator, Office of Policy Analysis and Development, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number, on

each page of their submissions. All comments received are a part of the public record and will generally be posted to *http://www.ntia.doc.gov/* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NTIA will also accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Megan Doscher, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone (202) 482–2503; *mdoscher@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002, or at *press@ntia.gov.*

SUPPLEMENTARY INFORMATION: Section 8 of the Secure and Trusted Communications Network Act of 2019 (Act) directs NTIA, in cooperation with the Office of the Director of National Intelligence, the Department of Homeland Security (DHS), the Federal Bureau of Investigation, and the Federal Communications Commission (FCC), to establish a program to share ''supply chain security risk'' information with trusted providers of ''advanced communications service'' and suppliers of communications equipment or services. As part of that program, NTIA must ''conduct regular briefings and other events'' to share information with trusted providers and suppliers and ''engage'' with such providers and suppliers, particularly those that are small businesses or that primarily serve rural areas. NTIA must also develop, and submit to Congress, a plan for declassifying material, when feasible, and expediting and expanding the provision of security clearances to facilitate information sharing from the Federal government to trusted providers and suppliers. On June 12, 2020, NTIA published a Notice and Request for public comments seeking public comment on several key terms in the Act, as well as on steps that should be taken to best achieve the purposes of the Act. *See* NTIA, Notice; Request for public comments, *Promoting the Sharing of Supply Chain Security Risk Information Between Government and Communications Providers and Suppliers,* 85 FR 35919 (June 12, 2020), available at: *https://www.ntia.gov/files/ntia/publications/fr-rfc-promoting-sharing-supply-chain-security-risk-information.pdf.* The original deadline for submission of comments was July 13, 2020. With today's Notice, NTIA extends the comment deadline by 15 days until July 28, 2020. All other information in the June 12, 2020, Notice and Request for public comments remain unchanged.

Dated: June 30, 2020.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2020–14477 Filed 7–6–20; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0107]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Education Stabilization Fund—Reimagine Workforce Preparation Grants

AGENCY: Office of Career, Technical and Adult Education, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 6, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202–245–7405.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Education Stabilization Fund—Reimagine Workforce Preparation Grants.

OMB Control Number: 1830–NEW.

Type of Review: New information collection.

Respondents/Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 40.

Total Estimated Number of Annual Burden Hours: 1,600.

Abstract: This is a request for approval of an information collection which solicits applications for Education Stabilization Fund—Reimagine Workforce Preparation Grants (ESF–RWP), which is authorized by section 18001(a)(3) of Division B of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The collection request includes a notice inviting applications and an accompanying application package. These documents set out the selection criteria used to assess the quality of applications and establish application requirements and the performance indicators on which grantees must report. This discretionary grant falls under the Streamlined Clearance Process for Discretionary Grant Information Collections, 1894–0001.

Dated: June 30, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14470 Filed 7–6–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0109]

Agency Information Collection Activities; Comment Request; CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new collection.

DATES: Emergency approval by the OMB has been requested by July 1, 2020 as it relates to the published Interim Final Rule on the CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools (85 FR 39479). Interested persons are invited to submit comments on or before September 8, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0109. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, 202–453–6136.

SUPPLEMENTARY INFORMATION: Since this collection was approved through emergency processing, the Department is providing the public with an opportunity to comment through the regular clearance process. This information collection will be transferred to the information collection requests, 1810–0741 and 1810–0743, to complete the comment period process. The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools.

OMB Control Number: 1810–NEW.

Type of Review: New information collection.

Respondents/Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 1,900.

Total Estimated Number of Annual Burden Hours: 76,393.

Abstract: The U.S. Department of Education (Department) is issuing an interim final rule to clarify the requirement in section 18005 of Division B of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that local educational agencies (LEAs) provide equitable services to students and teachers in non-public schools under the Governor's Emergency Education Relief Fund (GEER Fund) and the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) (collectively, the CARES Act programs). Section 18005(a) of the CARES Act requires an LEA that receives funds under the GEER Fund or the ESSER Fund to provide equitable services in the same manner as provided under section 1117 of the Elementary and Secondary Education Act of 1965 (ESEA) to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools. This is a request for an emergency paperwork clearance from OMB on the data collections associated with the interim final rule.

Additional Information: An emergency clearance approval for the use of the system is described below due to the following conditions:

Pursuant to the Office of Management and Budget (OMB) procedures established at 5 CFR part 1320, the U.S. Department of Education (Department) requests that the following collection of information, non-public school poverty count and enrollment data to be collected by local educational agencies (LEAs) that receive funds under the Governor's Emergency Education Relief Fund (GEER Fund) and the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) (collectively, the CARES Act programs), be processed in accordance with § 1320.13 Emergency Processing. The Department is issuing an interim final rule, Equitable Services to Students and Teachers in Non-Public Schools, to clarify the requirement in section 18005 of Division B of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that LEAs provide equitable services to students and teachers in non-public schools under the CARES Act programs. The Department has determined that LEAs must collect this information prior to the expiration of the time periods established under part 1320, and that approval of this information collection is essential for LEAs to effectively implement the interim final rule. Therefore, the Department is requesting emergency approval to provide LEAs the means to carry out the CARES Act programs as intended.

Dated: July 1, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14550 Filed 7–6–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–SCC–0119]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision to an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 6, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rosa Olmeda, 202–453–5968.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Mandatory Civil Rights Data Collection.

OMB Control Number: 1870–0504.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 17,621.

Total Estimated Number of Annual Burden Hours: 1,487,068.

Abstract: The collection, use, and reporting of education data is an integral component of the mission of the U.S. Department of Education (ED). EDFacts, an ED initiative to put performance data at the center of ED's policy, management, and budget decision-making processes for all K–12 education programs, has transformed the way in which ED collects and uses data. For school years 2009–10 and 2011–12, the Civil Rights Data Collection (CRDC) was approved by OMB as part of the EDFacts information collection (1875–0240). For school years 2013–14, 2015–16, and 2017–18, the Office for Civil Rights (OCR) cleared the CRDC as a separate collection from EDFacts. The currently proposed revised CRDC information collection for school year 2020–21 is modeled after the most recent OMB-approved EDFacts information collection (1850–0925). For the 2020–21 CRDC, OCR is proposing some changes, and those changes will have the net effect of reducing burden on school districts. As with previous CRDC collections, the purpose of the 2020–21 CRDC is to obtain vital data related to the civil rights laws' requirement that public local educational agencies (LEAs) and elementary and secondary schools provide equal educational opportunity. ED has analyzed the uses of many data elements collected in the 2013–14 and 2015–16 CRDCs and sought advice from experts across ED to refine, improve, and where appropriate, add or remove data elements from the collection. ED also made the CRDC data definitions and metrics consistent with other mandatory collections across ED wherever possible. ED seeks OMB approval under the Paperwork Reduction Act to collect from LEAs, the elementary and secondary education data described in the sections of Attachment A. In addition, ED requests that LEAs and other stakeholders respond to the directed questions found in Attachment A–5.

Dated: June 30, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14486 Filed 7–6–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0110]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for the U.S. Presidential Scholars Program

AGENCY: Office of Communications and Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a change to an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 6, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0110. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Program Manager of Strategic Collections and Clearance, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Simone Olson, 202–245–8719.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for the U.S. Presidential Scholars Program.

OMB Control Number: 1860–0504.

Type of Review: Change to an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 3,300.

Total Estimated Number of Annual Burden Hours: 52,800.

Abstract: The United States Presidential Scholars Program is a national recognition program to honor outstanding graduating high school seniors. Candidates are invited to apply based on academic achievements on the SAT or ACT assessments, through nomination from Chief State School Officers, other recognition program partner organizations, on artistic merits based on participation in a national talent program and achievement in career and technical education programs. This program was established by Presidential Executive Orders 11155, 12158 and 13697. The proposed change to the candidate portion of the Presidential Scholars application is to give the applicants a choice between two questions for a short answer essay. Question A is currently on the application. Question B is a new question and will provide the candidate with an option which was not available before.

Dated: July 1, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14556 Filed 7–6–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–198–000.

Applicants: Cassadaga Wind LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Cassadaga Wind LLC.

Filed Date: 6/26/20.

Accession Number: 20200626–5352.

Comments Due: 5 p.m. ET 7/17/20.

Docket Numbers: EG20–199–000.

Applicants: Boswell Wind, LLC.

Description: Self-Certification of EWG Status of Boswell Wind, LLC.

Filed Date: 6/29/20.

Accession Number: 20200629–5333.

Comments Due: 5 p.m. ET 7/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2414–000.

Applicants: Old Trail Wind Farm, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Old Trail Wind Farm, LLC.

Filed Date: 6/26/20.

Accession Number: 20200626–5393.

Comments Due: 5 p.m. ET 8/25/20.

Docket Numbers: ER11–2508–025; ER11–2863–012; ER19–1411–001 ER19–1412–001; R19–1413–001; ER19–1417–002 ER19–1865–001; ER19–1866–001; ER19–1867–001 ER19–1868–001; ER19–1869–001; ER19–1870–001 ER19–1871–001; ER19–1872–001; ER19–2140–002 ER19–2141–002; ER19–2142–002; ER19–2143–002 ER19–2144–002; ER19–2145–002; ER19–2146–002 ER19–2147–002; ER19–2148–002; ER20–1887–001.

Applicants: GenOn Energy Management, LLC, Blossburg Power, LLC, Brunot Island Power, LLC, Chalk Point Steam, LLC, GenOn Bowline, LLC, GenOn Canal, LLC, GenOn Mid-Atlantic, LLC, GenOn Power Midwest, LP, GenOn REMA, LLC, Gilbert Power, LLC, Hamilton Power, LLC, Heritage Power Marketing, LLC, Hunterstown Power, LLC, Niles Power, LLC, Orrtanna Power, LLC, New Castle Power, LLC, Mountain Power, LLC, Portland Power, LLC, Sayreville Power, LLC, Shawnee Power, LLC, Shawville Power, LLC, Titus Power, LLC, Tolna Power, LLC, Warren Generation, LLC.

Description: Updated Market Power Analysis for the Northeast Region of the GenOn Holdings, Inc. subsidiaries.

Filed Date: 6/26/20.

Accession Number: 20200626–5398.

Comments Due: 5 p.m. ET 8/25/20.

Docket Numbers: ER20–1981–000; ER20–1983–000.

Applicants: Pioneer Solar (CO), LLC.

Description: Joint Supplement to June 3, 2020 Pioneer Solar (CO), LLC, et al. tariff filings.

Filed Date: 6/26/20.

Accession Number: 20200626–5404.

Comments Due: 5 p.m. ET 7/17/20.

Docket Numbers: ER20–2201–000.

Applicants: GridLiance High Plains LLC.

Description: Baseline eTariff Filing: Gridliance HP Winfield Joint Ownership Agreement to be effective 9/1/2020.

Filed Date: 6/26/20.

Accession Number: 20200626–5283.

Comments Due: 5 p.m. ET 7/17/20.

Docket Numbers: ER20–2202–000.

Applicants: Cassadaga Wind LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 8/26/2020.

Filed Date: 6/26/20.

Accession Number: 20200626–5289.

Comments Due: 5 p.m. ET 7/17/20.

Docket Numbers: ER20–2203–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revised WMPA, Service Agreement No. 4869; Queue No. AF1–248 to be effective 5/28/2020.

Filed Date: 6/26/20.

Accession Number: 20200626–5297.

Comments Due: 5 p.m. ET 7/17/20.

Docket Numbers: ER20–2204–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 818 to be effective 8/31/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5252.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2205–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3691 MidAmerican Energy, Evergy Missouri

West & MISO Int Agr to be effective 8/28/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5259.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2206–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3038R1 Evergy Metro & AECI Interconnection Agreement to be effective 8/28/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5267.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2207–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 3917, Queue No. Y1—047/Y2–060/Z2–103/AD1–110 (amend) to be effective 6/22/2018.

Filed Date: 6/29/20.

Accession Number: 20200629–5278.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2208–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 4242, Queue No. Z1–092/AD1–142 (amend) to be effective 4/24/2018.

Filed Date: 6/29/20.

Accession Number: 20200629–5280.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2209–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4355, Queue No. Z2–011/AD1–109 (amend) to be effective 5/10/2018.

Filed Date: 6/29/20.

Accession Number: 20200629–5281.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2210–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5067 among PJM, Wolf Run Energy LLC and MAIT (amend) to be effective 4/11/2018.

Filed Date: 6/29/20.

Accession Number: 20200629–5283.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2211–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5149 between PJM, Beaver Dam Energy LLC and MAIT to be effective 7/16/2018.

Filed Date: 6/29/20.

Accession Number: 20200629–5286.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2212–000.

Applicants: FirstLight CT Housatonic LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 6/30/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5296.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2213–000.

Applicants: FirstLight CT Hydro LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 6/30/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5298.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2214–000.

Applicants: FirstLight MA Hydro LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 6/30/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5301.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2215–000.

Applicants: ISO New England Inc., Fitchburg Gas and Electric Light Company.

Description: § 205(d) Rate Filing: Fitchburg Gas and Electric Light Company; Request for Updated Depreciation Rates to be effective 3/1/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5303.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2216–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–06–29_SA 3010 ITC–NSP 1st Rev GIA (J407) to be effective 6/22/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5304.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2217–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–06–29_SA 3508 ITC–NSP FSA (J407) to be effective 6/22/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5307.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2218–000.

Applicants: Northfield Mountain LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 6/30/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5311.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2219–000.

Applicants: New England Power Company.

Description: Compliance filing: Order No. 864 Compliance Filng—NEP Sched III–B Revisions to be effective 1/27/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5342.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2220–000.

Applicants: NorthWestern Corporation.

Description: Tariff Cancellation: Cancellation of SA 877, Firm PTP TSA with Energy Keepers, Inc. to be effective 9/1/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5344.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2221–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Rayos Del Sol Solar 3rd Amended and Restated Interconnection Agreement to be effective 6/11/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5368.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2222–000.

Applicants: Crystal Lake Wind III, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 8/28/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5369.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2223–000.

Applicants: Blossburg Power, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5366.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2224–000.

Applicants: GenOn Mid-Atlantic, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5354.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2225–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5558; Queue No. AE1–142 (amend) to be effective 1/7/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5356.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2226–000.

Applicants: Hamilton Power, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5358.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2227–000.
Applicants: Hunterstown Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5360.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2228–000.
Applicants: Niles Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5361.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2229–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–KC Wind SUA Cancellation to be effective 8/29/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5362.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2230–000.
Applicants: Orrtanna Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5364.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2231–000.
Applicants: Titus Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5370.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2232–000.
Applicants: Tolna Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff to be effective 6/30/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5371.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2233–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3197R1 Evergy Missouri West and Galt, MO Interconnection Agr to be effective 8/28/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5372.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2234–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–LCRA TSC (Asherton) Facility Development Agreement to be effective 6/18/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5373.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2235–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Rayos Del Sol Solar (Vancourt) Interconnection Agreement to be effective 6/11/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5374.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2236–000.
Applicants: Shawnee Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/30/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5375.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2237–000.
Applicants: Weatherford Wind, LLC.
Description: Baseline eTariff Filing: Weatherford Wind, LLC Application for MBR Authority to be effective 8/29/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5384.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2238–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: AMEA NITSA Amendment Filing (Add New Silverhill DP & Revise Attachment A) to be effective 5/29/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5392.
Comments Due: 5 p.m. ET 7/20/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC20–11–000.
Applicants: Faro Energy Ltd.
Description: Notification of Self-Certification of Foreign Utility Company Status.
Filed Date: 6/25/20.
Accession Number: 20200625–5146.
Comments Due: 5 p.m. ET 7/16/20.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF15–28–000; QF15–29–000.
Applicants: CF CVEC Owner One LLC.
Description: Refund Report of CF CVEC Owner One LLC.
Filed Date: 6/26/20.
Accession Number: 20200626–5403.
Comments Due: 5 p.m. ET 7/17/20.

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 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14551 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2202–000]

Cassadaga 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 Cassadaga 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 20, 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 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14554 Filed 7–6–20; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL20–55–000, QF15–28–001, QF15–29–001]

CF CVEC Owner One LLC; Notice of Petition for Declaratory Order

Take notice that on June 26, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2019), CF CVEC Owner One LLC on behalf of CF Katama LLC and CF Nunnepog LLC (Petitioner) hereby submits a petition for declaratory order (Petition) requesting that the Commission issue a declaratory order granting limited waiver, or to the extent necessary remedial relief, of the filing requirements applicable to small power production facilities, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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 27, 2020.

Dated: June 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14526 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2134–000]

Cimarron Bend Wind Project III, 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 Cimarron Bend Wind Project III, 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 20, 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14553 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2249–000]

Priogen Power 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 Priogen Power 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 20, 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 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14546 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–200–000.
Applicants: Duke Energy Corporation, Maryneal Windpower, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Maryneal Windpower, LLC.
Filed Date: 6/29/20.
Accession Number: 20200629–5450.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: EG20–201–000.
Applicants: HO Clarke Generating, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of HO Clarke Generating, LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5272.
Comments Due: 5 p.m. ET 7/21/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1556–009.
Applicants: Longview Power, LLC.
Description: Updated Market Power Analysis for the Northeast Region of Longview Power, LLC.
Filed Date: 6/29/20.
Accession Number: 20200629–5515.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER10–1630–008; ER10–1586–008.
Applicants: Big Sandy Peaker Plant, LLC, Wolf Hills Energy, LLC.
Description: Triennial Market Power Update—Northeast Region of the Avenue MBR Sellers.
Filed Date: 6/29/20.
Accession Number: 20200629–5532.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER10–2131–023.
Applicants: Grand Ridge Energy LLC.
Description: Triennial Report Grand Ridge Energy LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5406.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2137–023; ER14–2799–015.
Applicants: Beech Ridge Energy LLC, Beech Ridge Energy Storage LLC.
Description: Triennial Report of Beech Ridge Energy LLC, et. al.
Filed Date: 6/30/20.
Accession Number: 20200630–5394.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2140–023.
Applicants: Grand Ridge Energy IV LLC.
Description: Triennial Report Grand Ridge Energy IV LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5402.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2141–023; ER14–2187–017.
Applicants: Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC.
Description: Triennial Report of Grand Ridge Energy V LLC, et al.
Filed Date: 6/30/20.
Accession Number: 20200630–5404.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2265–017; ER10–1581–023; ER10–2355–010; ER10–2783–015; ER10–2784–015; ER10–2798–015; ER10–2799–015; ER10–2801–015; ER10–2878–015; ER10–2879–015; ER10–2947–015; ER10–2969–015; ER10–3223–009; ER11–2062–025; ER11–2175–003; ER11–2176–002; ER11–3188–003; ER11–3418–005; ER11–4307–026;

ER11–4308–026; ER12–224–004; ER12–225–004; ER12–2301–003; ER12–261–025; ER16–10–003; ER17–764–003; ER17–765–003; ER17–767–003.

Applicants: NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Connecticut Jet Power LLC, Devon Power LLC, Dunkirk Power LLC, Energy Plus Holdings LLC, Green Mountain Energy Company, Independence Energy Group LLC, Indian River Power LLC, Long Beach Peakers LLC, Middletown Power LLC, Midwest Generation, LLC, Montville Power LLC, NRG Chalk Point CT LLC, Oswego Harbor Power LLC, Reliant Energy Northeast LLC, SGE Energy Sourcing, LLC, Stream Energy Columbia, LLC, Stream Energy Delaware, LLC, Stream Energy Illinois, LLC, Stream Energy Maryland, LLC, Stream Energy New Jersey, LLC, Stream Energy New York, LLC, Stream Energy Pennsylvania, LLC, Stream Ohio Gas & Electric, LLC, Vienna Power LLC, XOOM Energy, LLC.

Description: Updated Market Power Analysis of the NRG Northeast MBR Sellers.

Filed Date: 6/29/20.

Accession Number: 20200629–5491.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER10–2566–011; ER10–1333–015; ER13–2322–007; ER13–2387–008; ER15–190–014; ER18–1343–007; ER19–1819–002; ER19–1820–002; ER19–1821–002.

Applicants: Duke Energy Carolinas, LLC, Duke Energy Commercial Enterprises, Inc., Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Renewable Services, LLC, Broad River Solar, LLC, Stony Knoll Solar, LLC, Speedway Solar NC, LLC, Carolina Solar Power, LLC.

Description: Triennial Updated Market Power Analysis for the Southeast Region of Duke Southeast MBR Sellers.

Filed Date: 6/29/20.

Accession Number: 20200629–5547.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER10–2614–006.

Applicants: ENMAX Energy Marketing, Inc.

Description: Triennial Market Power Analysis of ENMAX Energy Marketing, Inc.

Filed Date: 6/29/20.

Accession Number: 20200629–5518.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER10–2834–007; ER10–2821–007; ER12–1329–007; ER17–1438–002; ER17–2056–001; ER20–173–001.

Applicants: Munnsville Wind Farm, LLC, Radford's Run Wind Farm, LLC, RWE Renewables Energy Marketing, LLC, EC&R O&M, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC.

Description: Updated Market Power Filing for the Northeast Region of Munnsville Wind Farm, LLC, et al.

Filed Date: 6/29/20.

Accession Number: 20200629–5484.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER10–3079–017; ER10–3078–005; ER19–2564–001.

Applicants: Tyr Energy, LLC, Commonwealth Chesapeake Company, LLC, Hickory Run Energy, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Tyr Energy, LLC.

Filed Date: 6/29/20.

Accession Number: 20200629–5510.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER11–1850–008; ER11–1846–008; ER11–1847–008; ER11–2598–011; ER13–1192–005.

Applicants: Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Marketing Inc., Direct Energy Services, LLC, Gateway Energy Services Corporation.

Description: Northeast Region Triennial Report of the Direct Energy Sellers.

Filed Date: 6/29/20.

Accession Number: 20200629–5520.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER12–1383–003; ER14–2798–016; ER15–2453–005 ER17–252–004; ER18–494–005.

Applicants: Passadumkeag Windpark, LLC, Diamond State Generation Partners, LLC, 2016 ESA Project Company, LLC, Beech Ridge Energy II Holdings LLC, Beech Ridge Energy II LLC.

Description: Triennial Market Power Update for the Northeast Region of the Southern NE MBR Sellers.

Filed Date: 6/30/20.

Accession Number: 20200630–5390.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER12–1436–015; ER18–280–005; ER18–533–002; ER18–534–002; ER18–535–002; ER18–536–002; ER18–537–002; ER18–538–003; ER20–1641–001.

Applicants: Eagle Point Power Generation LLC, Lee County Generating Station, LLC, Monument Generating Station, LLC, O.H. Hutchings CT, LLC, Sidney, LLC, Southern Illinois Generation Company, LLC, Tait Electric Generating Station, LLC, Yankee Street, LLC, Montpelier Generating Station, LLC.

Description: Triennial Market-Based Rate Update Filing for the Northeast Region of the Rockland Sellers.

Filed Date: 6/29/20.

Accession Number: 20200629–5522.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER16–1720–012.

Applicants: Invenergy Energy Management LLC.

Description: Triennial Report of Invenergy Energy Management LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5411.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER17–1609–003; ER19–1215–002.

Applicants: Carroll County Energy LLC, Cricket Valley Energy Center, LLC.

Description: Updated Market Power Analysis of the Indicated MBR Sellers.

Filed Date: 6/29/20.

Accession Number: 20200629–5514.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER18–491–004; ER18–492–004.

Applicants: Hardin Wind Energy LLC, Hardin Wind Energy Holdings LLC.

Description: Triennial Report of Hardin Wind Energy LLC, et al.

Filed Date: 6/30/20.

Accession Number: 20200630–5409.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER18–1106–002.

Applicants: Kestrel Acquisition, LLC.

Description: Updated Market Power Analysis for Northeast Region of Kestrel Acquisition, LLC.

Filed Date: 6/29/20.

Accession Number: 20200629–5519.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER19–2269–002; ER10–1852–039; ER10–1951–021; ER10–2641–036; ER11–4462–042; ER16–1277–009; ER16–1293–008; ER16–1354–008; ER16–1913–006; ER17–838–017; ER18–1952–008; ER19–2226–002; ER19–2269–002; ER19–774–005.

Applicants: Dougherty County Solar, LLC, Florida Power & Light Company, Gulf Power Company, Live Oak Solar, LLC, NextEra Energy Marketing, LLC, NextEra Energy Services Massachusetts, LLC, NEPM II, LLC, Oleander Power Project, Limited Partnership, Quitman Solar, LLC, River Bend Solar, LLC, Stanton Clean Energy, LLC, White Oak Solar, LLC, White Pine Solar, LLC.

Description: Southeast Region Triennial Market Power Update, et al. of the NextEra Companies.

Filed Date: 6/29/20.

Accession Number: 20200629–5545.

Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER19–2507–002; ER12–1260–015; ER13–1793–014.

Applicants: Convergent Energy and Power LP, Hazle Spindle, LLC, Stephentown Spindle, LLC.

Description: Updated Market Power Analysis: Northeast Region of the Convergent MBR Sellers.

Filed Date: 6/29/20.
Accession Number: 20200629–5544.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER20–838–003.
Applicants: Duke Energy Ohio, Inc.
Description: Tariff Amendment: DEO–AEP Amendment to Amend IA PJM SA No. 1491 Request for Extension to be effective 12/21/2019.
Filed Date: 6/30/20.
Accession Number: 20200630–5106.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–1385–001; ER10–2638–010; ER10–3194–007; ER10–3195–007; ER11–4535–002; ER16–2271–003; ER16–2549–002; ER16–581–004; ER16–582–004; ER16–806–003; ER17–1370–003; ER19–997–001.
Applicants: Bluestone Farm Solar, LLC, ENGIE Energy Marketing NA, Inc., ENGIE Portfolio Management, LLC, ENGIE Resources LLC, ENGIE Retail, LLC, MATEP LLC, MATEP Limited Partnership, Nassau Energy LLC, Pinetree Power LLC, Pinetree Power-Tamworth, LLC, Waterbury Generation LLC, Plymouth Rock Energy, LLC.
Description: Triennial Compliance Filing of the ENGIE Northeast MBR Sellers.
Filed Date: 6/29/20.
Accession Number: 20200629–5549.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER20–1436–002; ER20–1437–002; ER20–1438–002; ER20–879–002.
Applicants: Energy Harbor LLC, Energy Harbor Generation LLC, Energy Harbor Nuclear Generation LLC, Pleasants LLC.
Description: Triennial Market Power Update Analysis of the Energy Harbor Public Utilities.
Filed Date: 6/29/20.
Accession Number: 20200629–5500.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER20–1436–003; *ER20–1437–003; ER20–1438–003; ER20–879–003*.
Applicants: Energy Harbor LLC, Energy Harbor Generation LLC, Energy Harbor Nuclear Generation LLC, Pleasants LLC.
Description: Notification of Change in Status of the Energy Harbor Public Utilities.
Filed Date: 6/29/20.
Accession Number: 20200629–5502.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–2240–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 893—Firm PTP Transmission Service Agreement with Energy Keepers Inc. to be effective 9/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5000.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2241–000.
Applicants: Indiana Michigan Power Company, AEP Indiana Michigan Transmission Company, Inc., American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP submits ILDSAs, SA No. 1452, 1453, 1544 and 1456, and BAA SA No. 5677 to be effective 6/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5002.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2242–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1790R1 Occidental Chemical Corporation LGIA to be effective 8/29/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5050.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2243–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3631 Milligan 1 Wind LLC Sponsored Upgrade Agr to be effective 6/26/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5052.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2244–000.
Applicants: SWG Colorado, LLC.
Description: Tariff Cancellation: Cancellation of MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5057.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2245–000.
Applicants: CPV Fairview, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/30/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5060.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2246–000.
Applicants: Longview Power, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5062.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2247–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2632R2 Sunflower/Evergy KS Central/Evergy KS South Inter Agr to be effective 8/29/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5064.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2248–000.
Applicants: SWG Colorado, LLC.
Description: Tariff Cancellation: Cancellation of Rate Schedules Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5076.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2249–000.
Applicants: Priogen Power LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 8/31/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5078.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2250–000.
Applicants: Spruance Operating Services, LLC.
Description: § 205(d) Rate Filing: Request for Category 1 Seller Status in the NE Region and Revised MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5082.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2251–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Extend Tariff Administration between SPP and SPA through 12/31/2021 to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5089.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2252–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3330R2 City of Nixa, Missouri to be effective 6/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5091.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2253–000.
Applicants: New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: Rate Schedule FERC No. 87 Supplement to be effective 9/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5116.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2254–000.
Applicants: New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: NYSEG–NYPA Attachment C—O&M Annual Update to be effective 9/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5121.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2255–000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–06–30_SA 3509 Certificate of Concurrence MidAmerican-Evergy IA to be effective 8/28/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5122.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2256–000.
Applicants: Copenhagen Wind Farm, LLC.
Description: Market-Based Triennial Review Filing: Triennial Market Power Update of Copenhagen Wind Farm to be effective 8/30/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5134.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER20–2257–000.
Applicants: Vermont Transco LLC.
Description: Compliance filing: Compliance 2020 Exibit A to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5141.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2258–000.
Applicants: Northern Indiana Public Service Company.
Description: § 205(d) Rate Filing: Filing of an Amended CIAC Agreement to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5160.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2259–000.
Applicants: New York Transco, LLC, New York Independent System Operator, Inc.
Description: Compliance filing: NY Transco compliance re: Order No. 864 ? Accumulated Deferred Income Tax to be effective 1/26/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5173.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2260–000.
Applicants: All Dams Generation, LLC.
Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status for the NE Region and Revised MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5175.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2261–000.
Applicants: Black River Hydroelectric, LLC.
Description: Compliance filing: Request for Cat. 1 Seller Status for the NE Region and Revised MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5177.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2262–000.
Applicants: Lake Lynn Generation, LLC.
Description: § 205(d) Rate Filing: Request for Category 1 Seller Status for the NE Region and Revised MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5178.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2263–000.
Applicants: PE Hydro Generation, LLC.
Description: § 205(d) Rate Filing: Request for Category 1 Seller Status for the NE Region and Revised MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5194.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2264–000.
Applicants: York Haven Power Company, LLC.
Description: § 205(d) Rate Filing: Request for Category 1 Seller Status for the NE Region and Revised MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5211.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2265–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: TO Tariff Revision to Formula Capital Structure to be effective 8/31/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5286.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2266–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 607R38 Evergy Kansas Central, Inc. NITSA NOA to be effective 6/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5299.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2267–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–NCMPA1 (SA–212) Revised to be effective 6/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5320.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2268–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Cooperative Energy NITSA Amendment Filing (Remove Oak Grove DP) to be effective 6/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5322.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2269–000.
Applicants: Alliance Development Group, LLC.
Description: Petition for Limited Waiver of Alliance Development Group, LLC.
Filed Date: 6/29/20.
Accession Number: 20200629–5543.
Comments Due: 5 p.m. ET 7/20/20

Docket Numbers: ER20–2270–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Second Amended GDEMA with Black Hills Wyoming to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5353.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2271–000.
Applicants: Caithness Long Island, LLC.
Description: Market-Based Triennial Review Filing: Updated Market Power Analysis for the Northeast Region and Revised MBR Tariff to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5354.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER20–2272–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Second Amended GDEMA with Gillette, WY to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5360.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2273–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3705 Public Service Co of OK & Evergy Kansas South Inter Agr to be effective 8/29/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5364.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2274–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Third Amended GDEMA with Cheyenne Light, Fuel and Power Company to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5366.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2275–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Second Amended GDEMA with Black Hills Colorado to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5369.
Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2276–000.
Applicants: Moxie Freedom LLC.
Description: Market-Based Triennial Review Filing: Updated Market Power Analysis for the Northeast Region and Revised MBR Tariff to be effective 7/1/2020.

Filed Date: 6/30/20.

Accession Number: 20200630–5371.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER20–2277–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: July 2020 Membership Filing to be effective 7/1/2020.

Filed Date: 6/30/20.

Accession Number: 20200630–5373.

Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2278–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3024R1 Evergy Missouri West & Transource Missouri Inter Agr to be effective 8/29/2020.

Filed Date: 6/30/20.

Accession Number: 20200630–5382.

Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER20–2279–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Second Amended GDEMA with Montana-Dakota Utilities Co. to be effective 8/1/2020.

Filed Date: 6/30/20.

Accession Number: 20200630–5391.

Comments Due: 5 p.m. ET 7/21/20.

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 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14552 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD20–3–000]

Commission Information Collection Activities FERC–725N Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposedinformation collection FERC–725N (Mandatory Reliability TPL Standards: TPL–007–4, (Transmission System Planned Performance for Geomagnetic Disturbance Events)) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due August 6, 2020.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0264. Send written comments on FERC–725N to OMB thru *www.reginfo.gov/public/do/PRAMain.* Attention Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control Number (1902–0264) in the submect line of your comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Using the search function under the Currently Under Review field select comment to the right of the subject collection. A copy of the comments should also be sent to the Commission, in Docket No. RD20–3–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Express Services:* 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.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain*; using the search function under the Currently Under Review field select Federal Energy Regulatory Commission; click submit and select comment to the right of the subject collection. FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION: *Title:* FERC–725N, Mandatory Reliability Standards TPL–007–4, Transmission System Planned Performance for Geomagnetic Disturbance Events.

OMB Control No.: 1902–0264.

Type of Request: Revisions to the information collection, as discussed in Docket No. RD20–3–000.

Abstract: The proposed Reliability Standard TPL–007–4 requires owners and operators of the Bulk-Power System to conduct initial and on-going vulnerability assessments of the potential impact of defined geomagnetic disturbance events on Bulk- Power System equipment and the Bulk-Power System as a whole. Specifically, the Reliability Standard requires entities to develop corrective action plans for vulnerabilities identified through supplemental geomagnetic disturbance vulnerability assessments and requires entities to seek approval from the Electric Reliability Organization of any extensions of time for the completion of corrective action plan items.

On August 8, 2005, Congress enacted into law the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005).[1] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO

[1] Energy Policy Act of 2005, Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (codified at 16 U.S.C. 824*o*).

subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[2]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[3] Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO.[4] The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

On February 7, 2020, the North American Electric Reliability Corporation filed a petition seeking approval of proposed Reliability Standard TPL–007–4 (Transmission System Planned Performance for Geomagnetic Disturbance Events).

NERC's filed petition was noticed on February 11, 2020, with interventions, comments and protests due on or before March 9, 2020. No interventions or comments were received.

The DLO was issued on March 19, 2020. The standard goes in effect at NERC on October 1, 2020.

On April 16, 2020, the Commission published a Notice in the **Federal Register** in Docket No. RD20–3–000 requesting public comments. The Commission received no public comment(s) which is addressed here and in the related submittal to OMB.

Type of Respondents: Generator Owner, Planning Coordinator, Distribution Provider and Transmission Owners.

Estimate of Annual Burden:[5] Our estimates are based on the NERC Compliance Registry Summary of Entities as of January 31, 2020.

The individual burden estimates include the time needed to gather data, run studies, and analyze study results. These are consistent with estimates for similar tasks in other Commission-approved standards. Estimates for the additional average annual burden and cost[6] as proposed in Docket No. RD20–3–000 follow:

FERC–725N IN DOCKET NO. RD20–3–000

	Annual number[1] of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hrs. & Cost ($) per response (4)	Total annual burden hours & cost ($) (rounded) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
GO[7]	969	1	969	40 hours; $3,200	38,760 hours; $3,100,800	$3,200
PC[8]	71	1	71	40 hours; $3,200	2,840 hours; $ 227,200	3,200
DP[9]	318	1	318	40 hours & $3,200	12,720 hours; $1,017,600	3,200
TO[10]	321	1	321	40 hours & $3,200	12,840 hours; $1,027,200	3,200
Total			1,679		67,160 hours; $5,372,800	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

Dated: June 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14533 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2739–026; ER10–1631–015; ER10–1854–015; ER10–1892–013; ER10–2678–016; ER10–2729–010; ER10–2744–016; ER11–3320–015; ER11–3321–009; ER13–2316–013; ER14–1219–010; ER14–19–014; ER14–2548–007; ER16–1652–014; ER16–1732–009; ER16–2405–009; ER16–2406–010; ER17–1946–008; ER17–1947–003; ER17–1948–003; ER17–989–008; ER17–990–008; ER17–992–008; ER17–993–008; ER18–95–005; ER20–1440–001; ER20–660–001.

Applicants: LS Power Marketing, LLC, Armstrong Power, LLC, Aurora Generation, LLC, Bath County Energy, LLC, Bolt Energy Marketing, LLC, Buchanan Energy Services Company, LLC, Buchanan Generation, LLC, Chambersburg Energy, LLC, Columbia Energy LLC, Doswell Limited Partnership, Gans Energy, LLC, Helix Ironwood, LLC, Helix Maine Wind Development, LLC, Helix Ravenswood, LLC, LifeEnergy, LLC, LSP University Park, LLC, Ocean State Power LLC, Riverside Generating Company, L.L.C., Rockford Power, LLC, Rockford Power II, LLC, Seneca Generation, LLC, Springdale Energy, LLC, Troy Energy, LLC, University Park Energy, LLC, Wallingford Energy LLC, West Deptford Energy, LLC, Yards Creek Energy, LLC.

Description: Updated Market Power Analysis for the Northeast Region of the LS Northeast MBR Sellers.

Filed Date: 6/26/20.

Accession Number: 20200626–5422.

Comments Due: 5 p.m. ET 8/25/20.

[2] 16 U.S.C. 824*o*(e)(3).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. 31,212 (2006).

[4] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC 61,126 (2006), *order on compliance,* 118 FERC 61,190, *order on reh'g,* 119 FERC 61,046 (2007), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[6] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–725N(1) are approximately the same as the Commission's average cost. The FERC 2019 average salary plus benefits for one FERC full-time equivalent (FTE) is $167,091/year (or $80.00/hour).

[7] Generator Owner.

[8] Planning Coordinator.

[9] Distribution Provider.

[10] Transmission Owner.

Docket Numbers: ER10–2794–032; ER12–1825–030; ER14–2672–017.
Applicants: EDF Trading North America, LLC, EDF Energy Services, LLC, EDF Industrial Power Services (CA), LLC.
Description: Updated Market Power Analysis for the Northeast Region of EDF Trading North America, LLC, et al.
Filed Date: 6/29/20.
Accession Number: 20200629–5414.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER15–1456–009; ER10–2934–015; ER10–2959–016; ER11–2335–015; ER11–3859–020; ER11–4634–009; ER14–1699–010; ER15–1457–009; ER15–748–006; ER17–436–008; ER18–920–005; ER19–464–002; ER19–967–003; ER19–968–003.
Applicants: Beaver Falls, L.L.C., Chambers Cogeneration Limited Partnership, Dighton Power, LLC, Fairless Energy, L.L.C., Garrison Energy Center LLC, Hazleton Generation LLC, Logan Generating Company, LP, Manchester Street, L.L.C., Marco DM Holdings, L.L.C., Marcus Hook Energy, L.P., Milford Power, LLC, Plum Point Services Company, LLC, Syracuse, L.L.C., Vermillion Power, L.L.C.
Description: Triennial Market Power Update of Beaver Falls, L.L.C., et al.
Filed Date: 6/29/20.
Accession Number: 20200629–5472.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER15–1905–008.
Applicants: Amazon Energy, LLC.
Description: Triennial Market Power Analysis for the Northeast Region of Amazon Energy, LLC.
Filed Date: 6/26/20.
Accession Number: 20200626–5419.
Comments Due: 5 p.m. ET 8/25/20.
Docket Numbers: ER15–2013–011; ER10–2435–018; ER10–2440–013; ER10–2442–015; ER10–2444–017; ER10–2446–013; ER10–2449–015; ER10–3286–014; ER10–3299–013; ER12–2510–010; ER12–2512–010; ER15–2014–007; ER15–2018–006; ER15–2022–006; ER15–2026–006; ER18–2252–002; ER19–2250–003; ER19–481–003.
Applicants: Talen Energy Marketing, LLC, Brandon Shores LLC, Brunner Island, LLC, Camden Plant Holding, L.L.C., Dartmouth Power Associates Limited Partnership, Elmwood Park Power, LLC, H.A. Wagner LLC, LMBE Project Company LLC, Martins Creek, LLC, MC Project Company LLC, Millennium Power Partners, LP, Montour, LLC, New Athens Generating Company, LLC, Newark Bay Cogeneration Partnership, L.P, Pedricktown Cogeneration Company LP, Susquehanna Nuclear, LLC, York Generation Company LLC, TrailStone Energy Marketing, LLC.
Description: Updated Market Power Analysis for the Riverstone Northeast MBR Sellers.
Filed Date: 6/29/20.
Accession Number: 20200629–5436.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER17–1314–003; ER10–2398–009; ER10–2399–009; ER10–2406–010; ER10–2408–006; ER10–2409–009; ER10–2410–009; ER10–2411–010; ER10–2412–010; ER11–2935–011; ER13–1816–012; ER14–1933–009; ER16–1152–004; ER16–1724–006; ER17–1315–006; ER18–1189–004; ER19–1281–001; ER19–1282–002.
Applicants: Arkwright Summit Wind Farm LLC, Blackstone Wind Farm, LLC, Blackstone Wind Farm II LLC, Headwaters Wind Farm LLC, High Trail Wind Farm, LLC, Lexington Chenoa Wind Farm LLC, Jericho Rise Wind Farm LLC, Marble River, LLC, Meadow Lake Wind Farm LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm V LLC, Meadow Lake Wind Farm VI LLC, Paulding Wind Farm II LLC, Paulding Wind Farm III LLC, Paulding Wind Farm IV LLC, Sustaining Power Solutions LLC.
Description: Updated Market Power Analysis for the Northeast Region of Arkwright Summit Wind Farm LLC, et al.
Filed Date: 6/26/20.
Accession Number: 20200626–5423.
Comments Due: 5 p.m. ET 8/25/20.

Docket Numbers: ER18–2399–003; ER15–1147–003; ER18–1990–003; ER19–1194–002.
Applicants: Canal Generating LLC, Canal 3 Generating LLC, Stonepeak Kestrel Energy Marketing LLC, Bucksport Generation LLC.
Description: Updated Market Power Analysis for the Northeast Region of Canal Generating LLC, et al.
Filed Date: 6/29/20.
Accession Number: 20200629–5437.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER19–106–002.
Applicants: Birdsboro Power LLC.
Description: Triennial Compliance Filing and Notice of Non-Material Change in Status of Birdsboro Power LLC.
Filed Date: 6/29/20.
Accession Number: 20200629–5399.
Comments Due: 5 p.m. ET 8/28/20.

Docket Numbers: ER19–1200–001; ER10–2346–010; ER10–2353–010; ER11–4351–010; ER19–842–001.
Applicants: Clearway Power Marketing LLC, Energy Center Paxton LLC, Forward WindPower LLC, Lookout WindPower LLC, Pinnacle Wind, LLC.
Description: Updated Market Power Analysis for the Northeast Region of the Clearway Northeast MBR Sellers.
Filed Date: 6/25/20.
Accession Number: 20200625–5192.
Comments Due: 5 p.m. ET 8/25/20.

Docket Numbers: ER20–2014–000.
Applicants: Rattlesnake Flat, LLC.
Description: Supplement to June 8, 2020 Rattlesnake Flat, LLC tariff filing.
Filed Date: 6/25/20.
Accession Number: 20200625–5187.
Comments Due: 5 p.m. ET 7/6/20.

Docket Numbers: ER20–2239–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Kansas Power Pool Formula Rate to be effective 9/1/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5433.
Comments Due: 5 p.m. ET 7/20/20.

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 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14549 Filed 7–6–20; 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 has received the following Natural Gas Pipeline Rate and Refund Report filings:
Docket Numbers: RP20–865–001.
Applicants: Leaf River Energy Center LLC.
Description: Compliance filing Leaf River Energy Center LLC NAESB Compliance Filing to be effective 6/25/2020.

Filed Date: 6/29/20.
Accession Number: 20200629–5341.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–970–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases to Emera Energy to be effective 7/1/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5204.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–971–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Update Filing (Conoco July 20) to be effective 7/1/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5332.
Comments Due: 5 p.m. ET 7/13/20.

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 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14547 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–22–000]

NEXUS Gas Transmission, LLC; Notice of Extension of Time Request

Take notice that on June 26, 2020, NEXUS Gas Transmission, LLC (NEXUS) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until August 25, 2021, to complete the construction of the Waterville Compressor Station in Lucas County, Ohio, as authorized as part of the NEXUS Project in the August 25, 2017 Order Issuing Certificates and Granting Abandonment [1] (August 25 Order). The August 25 Order required NEXUS to complete construction and make the facilities available for service within two years of the Order date. NEXUS commenced service on the majority of the NEXUS Project on October 13, 2018. On July 16, 2019, the Commission granted NEXUS's request for an extension of time until and including August 25, 2020 to complete construction and make available for service the remaining NEXUS Project facilities, which included the Waterville Compressor Station and the TGP meter station and related facilities in Columbiana County Ohio. NEXUS states that it has completed construction of the TGP meter station and related facilities and placed them into service.

NEXUS states that it commenced service for approximately 840,000 dekatherms per day (Dth/d) of the total 1,500,000 Dth/d of certificated capacity. NEXUS asserts that it has since increased firm commitments on the pipelines to more than 1,315,000 Dth/d. NEXUS avers that the Waterville Compressor Station, the remaining NEXUS Project facility for which construction has not yet been completed, is required to provide its full certificated capacity.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on NEXUS's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[2]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[3] the Commission will aim to issue an order acting on the request within 45 days.[4] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[5] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[6] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[7] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on July 15, 2020.

[1] *NEXUS Gas Transmission, LLC, et al.,* 160 FERC 61,022 (2017).

[2] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 39 (2020).

[3] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[4] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

[5] *Id.* at P 40.

[6] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[7] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

Dated: June 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14527 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–68–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: COH Rates effective May 29 2020 to be effective 5/29/2020.

Filed Date: 6/26/2020.

Accession Number: 202006265134.

Comments/Protests Due: 5 p.m. ET 7/17/2020.

Docket Numbers: RP18–923–000.

Applicants: Enable Mississippi River Transmission, LLC.

Description: Report Filing: MRT Refund and Billing Adjustment Report—RP18–923 & RP20–131.

Filed Date: 6/26/20.

Accession Number: 20200626–5209.

Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: RP20–968–000.

Applicants: Big Sandy Pipeline, LLC.

Description: § 4(d) Rate Filing: Big Sandy EPC 2020 to be effective 8/1/2020.

Filed Date: 6/26/20.

Accession Number: 20200626–5239.

Comments Due: 5 p.m. ET 7/8/20.

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.

Dates: June 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14548 Filed 7–6–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–OAR–2020–0312; FRL–10011–92–ORD]

Call for Information on the Integrated Science Assessment for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; call for information.

SUMMARY: The Environmental Protection Agency (EPA) is preparing an Integrated Science Assessment (ISA) as part of the review of the primary and secondary National Ambient Air Quality Standards (NAAQS) for Lead (Pb). The ISA will be completed by EPA's Office of Research and Development's Center for Public Health and Environmental Assessment (CPHEA). When final, the ISA is intended to update the previous Pb ISA (EPA/600/R–10/075F), published on June 26, 2013. Interested parties are invited to assist EPA in developing and refining the scientific information base for the review of the Pb NAAQS by submitting research studies and data that have been published, accepted for publication, or presented at a public scientific meeting since January 1, 2011.

DATES: All communications and information should be received by EPA by September 8, 2020.

ADDRESSES: Information may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For information on the period of submission, contact the OAR Docket at the EPA Headquarters Docket Center; phone: 202–566–1742; fax: 202–566–9744; or email: *a-and-r-Docket@epa.gov.* For technical information, contact Evan Coffman; phone: 919–541–0567; fax: 919–541–1818; or email: *Coffman.Evan@epa.gov;* or Meredith Lassiter; phone: 919–541–3200; fax: 919–541–1818; or email: *lassiter.meredith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain air pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare''; [1] and to issue air quality criteria for them. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . . .''. Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d)(1) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the NAAQS review process, see *https://www.epa.gov/naaqs*).

EPA has established NAAQS for six criteria pollutants, including for lead (Pb). Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA provides the scientific basis for EPA's decisions, in conjunction with additional technical and policy assessments, on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. Early steps in this process include announcing the beginning of this periodic NAAQS review and the development of the ISA, and EPA requesting that the public submit scientific literature that they want to bring to the attention of the Agency as it begins this process. The Clean Air Scientific Advisory Committee (CASAC), whose review and advisory functions are mandated by section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the Agency's air quality criteria.

The ISA will build on the scientific assessment for the last review,[2] focusing on assessing the information newly available since that considered in the 2013 ISA. With regard to development of the ISA, the public is encouraged to assist in identifying relevant scientific

[1] Under Clean Air Act section 302(h), welfare effects include, but are not limited to, ''effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

[2] The scientific assessment for the last review is documented in the Integrated Science Assessment for Lead (Final Report, July 2013), EPA/600/R–10/075F; 78 FR 38318, June 26, 2013.

information for the review by submitting research studies that were not part of the prior review, and have been published or accepted for publication in a peer-reviewed journal. The Agency is interested in obtaining information from new and emerging studies showing effects or no effects from Pb exposure. For example, the Agency is interested in information about studies of effects of controlled exposure to Pb, including in laboratory animals and *in vitro* systems; epidemiologic (observational) studies of associations of health outcomes with population exposures to Pb; and studies of ecological effects of Pb exposure. With regard to health effect studies, of particular interest are those studies that address or provide new information on health outcomes for which the scientific evidence presented in the 2013 ISA supported a ''causal relationship'' or ''likely to be causal relationship'' with Pb, *e.g.,* cognitive effects in children, cardiovascular effects, and immune system effects; endpoints with less overall evidence and/or notable uncertainties at the time of the 2013 Pb ISA, such as attention deficit hyperactivity disorder, neurodegenerative effects, and adult obesity; endpoints not previously identified in the 2013 Pb ISA; relationships between Pb exposure concentrations and occurrence of health-related endpoints; health effects associated with blood lead levels below 10 μg/dL and/or with near current exposure concentrations; Pb toxicokinetics and toxicokinetic modeling; information and data useful for assessing biological plausibility for Pb-related health effects; and identification of populations and life stages at increased risk of Pb-related health effects. For ecological effects of Pb, studies that address or provide new information on terrestrial and aquatic biota are of particular interest including, but not necessarily limited to, effects of Pb on vegetation, soil and aquatic fauna, communities and populations of microorganisms, plants, and animals, as well as research on fate and transport of Pb in environmental media, and exposure-response relationships between Pb in ambient air or other media and ecological endpoints.

Information particular to air-related pathways of human and ecological exposure, including those involving deposition, are also of interest to the Agency. Air-related pathways are those that include air and may also involve media other than air, including indoor and outdoor dust, soil, surface water and sediments, vegetation and biota. Air-related Pb pathways of human exposure include inhalation of ambient air or ingestion of food, water or other materials, including dust and soil, containing Pb that has deposited from ambient air.

EPA also seeks recent information in other areas of Pb research such as human and ecological exposure assessment and exposure assessment methodologies, sources and emissions, chemistry and physics, sampling and analytical methodology, ambient concentrations and size distributions, including environmental media concentration changes in response to changes in Pb deposition, and other effects on public welfare or the environment not listed above.

The Agency also seeks information regarding the design and scope of the review of the air quality criteria and the primary (health-based) and secondary (welfare-based) Pb standards to ensure that it addresses key policy-relevant issues and considers the new science that is relevant to informing our understanding of these issues. The Agency also seeks new scientific information that may address key uncertainties identified in the last Pb NAAQS review, which are provided in the Policy Assessment (EPA–452/R–14, May 2014).[3] Other opportunities for submission of new peer-reviewed, published (or in-press) papers will be possible as part of public comment on the draft ISAs that will be reviewed by the CASAC.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your materials identified by Docket ID No. EPA–HQ–OAR–2020–0312 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* Office of Air and Radiation (OAR) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The phone number is 202–566–1752. Due to COVID–19, there may be a delay in processing comments submitted by mail.

Note: The EPA Docket Center and Reading Room is currently in the reopening process. Visitors may be considered on an exception basis. Visitors must complete docket material requests in advance and then make an appointment to retrieve the material. Visitors will be allowed entrance to the Reading Room by appointment only, and no walk-ins will be allowed.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2020–0312. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all materials it receives in the public docket without change and to make the materials available online at *www.regulations.gov,* including any personal information provided, unless materials includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the materials that are placed in the public docket and made available on the internet. If you submit electronic materials, EPA recommends that you include your name and other contact information in the body of your materials and with any disk or CD–ROM you submit. If EPA cannot read your materials due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider the materials you submit. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EPA's Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OAR Docket in EPA's Headquarters Docket Center.

[3] The 2014 Policy Assessment is available at: *https://www3.epa.gov/ttn/naaqs/standards/pb/data/140501_pa_pb_fin.pdf.*

Dated: June 30, 2020.

Wayne Cascio,

Director, Center for Public Health and Environmental Assessment.

[FR Doc. 2020–14575 Filed 7–6–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0470; FRL–10009–91]

Public Workshop; Laminated Products—Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a public workshop to discuss the laminated product provisions and the rulemaking petition for exemption from the definition of hardwood plywood in the formaldehyde emission standards for composite wood products final rule of 2016. The workshop will aid with informing potential development of future guidance for petitioning EPA for an exemption under the 2016 final rule. The primary audience for this public workshop is Third Party Certifiers (TPCs), panel producers, and fabricators or laminated product producers who contract with TPCs to certify composite wood products under the 2016 final rule. This workshop is also open to the general public.

DATES: The workshop will be held on September 8, 2020 from 9:30 a.m. to 5:30 p.m. (EST).

To participate in the workshop, you must register online on or before August 31, 2020.

Written comments that participants would like to be considered during the workshop should be submitted on or before August 24, 2020. EPA will also accept written comments and materials submitted after the conclusion of the workshop until November 4, 2020.

To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATON CONTACT,** preferably at least 10 days prior to the workshop, to give EPA as much time as possible to process your request.

ADDRESSES: The workshop will be held remotely via a teleconference platform and does not have an in-person attendance option. To register to participate in the workshop, go to *https://tscatitlevi.eventbrite.com.* See Unit III. for information on public participation in the workshop.

Submit your written comments, identified by Docket Identification (ID) number EPA–HQ–OPPT–2019–0470, using 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

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 about the Technical Issues Workshop; Formaldehyde Emission Standards for Composite Wood Products workshop contact:* Todd Coleman, National Programs Chemical Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1208; email address: *coleman.todd@epa.gov.*

For workshop logistics or registration contact: Sarah Cox, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3961; email address: *cox.sarah@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. General Information

A. Does this action apply to me?

This public workshop is primarily directed to the TPCs, panel producers, and fabricators or laminated product producers who contract with TPCs to certify composite wood products under the formaldehyde emission standards for composite wood products final rule codified in 2016 at 40 CFR part 770. EPA is hosting the workshop to help inform potential development of future guidance to assist those seeking to petition the Agency through the provisions at 40 CFR 770.4(b), which ask EPA to initiate a rulemaking for additional exemptions for laminated products from the definition of hardwood plywood in the formaldehyde emission standards for composite wood products final rule. While the issue is of most relevance to laminated product producers, in general, importers, distributors and retailers who are affected by the formaldehyde emission standards for composite wood products final rule may also be interested in this workshop. Since other stakeholders may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the issues to be discussed at the public workshop.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket ID number EPA–HQ–OPPT–2019–0470, is available at *http://www.regulations.gov.* For assistance with the docket, and additional information about commenting, please go to *http://www.epa.gov/dockets.*

II. Background

The final rule, entitled ''Formaldehyde Emission Standards for Composite Wood Products'' and codified at 40 CFR part 770, published in the **Federal Register** of December 12, 2016 (81 FR 89674) (FRL–9949–90) and became effective on May 22, 2017 (82 FR 14324, March 21, 2017) (FRL–9960–28–OP). Since publication of the final rule, EPA received feedback from regulated stakeholders requesting guidance on the process at 40 CFR 770.4(b) for the laminated product rulemaking petition for exemption from the definition of hardwood plywood. In the **Federal Register** of May 24, 2018, EPA announced a public related to *Technical Issues—Formaldehyde Emission Standards for Composite Wood Products* (83 FR 24104) (FRL–9978–21), where the Agency stated its intent to address the issue of working with stakeholders, through an additional workshop, to inform potential development of future guidance on how one can petition the Agency for this exemption. Thus, EPA will host this public workshop to discuss what types of information a petitioner should consider providing the Agency to support a determination on a petition submitted under 40 CFR 770.4(b). The workshop will also discuss what a typical submittal process may look like.

The Agency's intent is for participants to actively engage in an open dialogue with EPA and other participants on the agenda topics and to provide supporting

documentation (in advance or after the workshop) as appropriate for EPA's consideration. The Agency plans to record the workshop and will post a written transcript in the docket for this workshop during the comment period that follows the workshop.

The Agency is allowing the comment period on this public workshop to remain open until after the workshop to provide stakeholders and interested parties ample time to develop additional comments, compile data, studies, and/or reports that can aid EPA in considering the development of guidance for submitting and supporting a laminated product rulemaking petition under 40 CFR 770.4(b) for exemption from the definition of hardwood plywood. Should the Agency develop guidance related to the rulemaking petitions for exemption under 40 CFR 770.4(b), EPA will provide a draft for public comment and post such guidance on the Agency's website.

An agenda for the public workshop has been included in the docket for this workshop.

III. How can I request to participate in this workshop?

A. Registration

The workshop will only be accessible remotely (*i.e.,* web conferencing) for registered participants. Participants will be provided information on how to connect to the workshop prior to its start that is sent to the email address participants provided when they registered for this workshop.

To register to attend the workshop and receive remote access, you must register online as described under **ADDRESSES** and by the date specified under **DATES**.

B. Required Registration Information

Attendees and participants will be offered the opportunity to speak and provide feedback during the workshop. To register for the workshop online, you must provide your full name, organization or affiliation, and contact information.

Authority: 15 U.S.C. 2697.

Dated: June 30, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–14515 Filed 7–6–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sub-Saharan Africa Advisory Committee; Requests for Nominations

The Export-Import Bank of the United States (EXIM) is accepting nominations for the EXIM Sub-Saharan Africa Advisory Committee from July 6, 2020 to July 31, 2020.

The Congressionally-established Sub-Saharan Africa Advisory Committee meets at least twice annually to provide guidance and advice regarding EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

Candidates wishing to be considered for membership to the Sub-Saharan Africa Advisory Committee must submit a questionnaire, resume, and letter of support demonstrating why they would be asset to the committee. Letters may be written by candidates themselves or by supportive individuals, and should be submitted on official company or organization letterhead.

Full application requirements and materials will be available beginning July 6, 2020 at: *https://www.exim.gov/about/leadership/sub-saharan-africa-advisory-committee.*

All nominations are due by 5:30 p.m. EDT, July 31, 2020.

For additional information please contact the Office of External Engagement at *external@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–14473 Filed 7–6–20; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

Advisory Committee: Request for Nominations

The Export-Import Bank of the United States (EXIM) is accepting nominations for the EXIM Advisory Committee from July 6, 2020 to July 31, 2020.

The Congressionally-established Advisory Committee meets at least quarterly to advise EXIM concerning its policy and programs, in particular on the extent to which EXIM provides competitive financing to support American jobs through exports.

Candidates wishing to be considered for membership to the Advisory Committee must submit a questionnaire, resume, and letter of support demonstrating why they would be asset to the committee. Letters may be written by candidates themselves or by supportive individuals, and should be submitted on official company or organization letterhead.

Full application requirements and materials will be available beginning July 6, 2020 at: *https://www.exim.gov/about/leadership/advisory-committee*

All nominations are due by 5:30 p.m. EDT, July 31, 2020.

For additional information please contact the Office of External Engagement at *external@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–14472 Filed 7–6–20; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0906; FRS 16901]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before August 6, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0906.

Title: Annual DTV Ancillary/Supplemental Services Report for DTV Stations, FCC Form 2100, Schedule G; 47 CFR 73.624(g).

Form Number: FCC Form 2100, Schedule G (formerly FCC Form 317).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 7,652 respondents, 15,304 responses.

Frequency of Response: Recordkeeping requirement, annual reporting requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, 336 and 403 of the Communications Act of 1934, as amended.

Estimated Time per Response: 2–4 hours.

Total Annual Burden: 45,912 hours.

Total Annual Cost: $1,147,800.

Nature and Extent of Confidentiality: There is no need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In 2018, the Commission revised section 73.624(g) of its rules to require only those DTV stations that provided ''feeable'' ancillary or supplementary services during the relevant reporting period to submit Form 2100, Schedule G to the Commission. See Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services, MB Docket Nos. 17–264, 17–105, FCC 18–41, Report and Order. Each licensee/permittee of a digital television (DTV) station that provides feeable ancillary or supplementary services during the relevant reporting period must file on an annual basis FCC Form 2100, Schedule G. Specifically, required filers include the following (but we generally refer to all such entities herein as a ''DTV licensee/permittee''):

A licensee of a digital commercial or noncommercial educational (NCE) full power television (TV) station, low power television (LPTV) station, TV translator or Class A TV station.

A permittee operating pursuant to digital special temporary authority (STA) of a commercial or NCE full power TV station, LPTV station, TV translator or Class A TV station.

Each DTV licensee/permittee must report the feeable ancillary or supplementary services that were provided during the reporting cycle.

Each DTV licensee/permittee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. Each NCE licensee/permittee must also retain for eight years documentation sufficient to show that its entire bitstream was used ''primarily'' for NCE broadcast services on a weekly basis.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–14534 Filed 7–6–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receivership

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the following insured depository institution, was charged with the duty of winding up the affairs of the former institution and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIP

Fund	Receivership name	City	State	Termination date
10284	Shorebank	Chicago	IL	7/1/2020

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination date listed above, the Receivership has been terminated, the

Receiver has been discharged, and the Receivership has ceased to exist as a legal entity.

Authority: 12 U.S.C. 1819

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 1, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–14543 Filed 7–6–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary approval of information collection, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has temporarily revised the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) pursuant to the authority delegated to the Board by the Office of Management and Budget (OMB), per 5 CFR part 1320, App.A(1)(a)(3)(A) (OMB Regulations on Controlling Paperwork Burdens on the Public). Additionally, the Board invites comment on a proposal to extend the FR Y–9 family of reports for three years, with these revisions to the FR Y–9C.

DATES: Comments must be submitted on or before September 8, 2020.

ADDRESSES: You may submit comments, identified by FR Y–9, by any of the following methods:

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

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Alex Goodenough—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

- Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. Pursuant to its delegated authority, the Board may temporarily approve a revision to a collection of information, without providing opportunity for public comment, if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligations.

As discussed below, the Board has made certain temporary revisions to the FR Y–9C information collection. The Board's delegated authority requires that the Board, after temporarily approving a collection, publish a notice soliciting public comment. Therefore, the Board is also inviting comment on a proposal to extend the FR Y–9 family of reports for three years, with these revisions to the FR Y–9C.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

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

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

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

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

Report title: Financial Statements for Holding Companies.

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

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies (SHCs), and U.S. intermediate holding companies (IHCs)

(collectively, holding companies (HCs)).[1]

Estimated number of respondents: FR Y–9C (non-advanced approaches (AA) HCs community bank leverage ratio (CBLR)) with less than $5 billion in total assets—71, FR Y–9C (non AA HCs CBLR) with $5 billion or more in total assets—35, FR Y–9C (non AA HCs non-CBLR) with less than $5 billion in total assets—84, FR Y–9C (non AA HCs non-CBLR) with $5 billion or more in total assets—154, FR Y–9C (AA HCs)—19, FR Y–9LP—434, FR Y–9SP—3,960, FR Y–9ES—83, FR Y–9CS—236.

Estimated average hours per response:

Reporting

FR Y–9C (non AA HCs CBLR) with less than $5 billion in total assets—29.17, FR Y–9C (non AA HCs CBLR) with $5 billion or more in total assets—35.14, FR Y–9C (non AA HCs non-CBLR) with less than $5 billion in total assets—41.01, FR Y–9C (non AA HCs non-CBLR) with $5 billion or more in total assets—46.98, FR Y–9C (AA HCs)—48.80, FR Y–9LP—5.27, FR Y–9SP—5.40, FR Y–9ES—0.50, FR Y–9CS—0.50.

Recordkeeping

FR Y–9C—1, FR Y–9LP—1, FR Y–9SP—0.50, FR Y–9ES—0.50, FR Y–9CS—0.50.

Estimated annual burden hours:

Reporting

FR Y–9C (non AA HCs CBLR) with less than $5 billion in total assets—8,284, FR Y–9C (non AA HCs CBLR) with $5 billion or more in total assets—4,920, FR Y–9C (non AA HCs non-CBLR) with less than $5 billion in total assets—13,779, FR Y–9C (non AA HCs non-CBLR) with $5 billion or more in total assets—28,940, FR Y–9C (AA HCs)—3,709, FR Y–9LP—9,149, FR Y–9SP—42,768, FR Y–9ES—42, FR Y–9CS—472.

Recordkeeping

FR Y–9C—1,452, FR Y–9LP—1,736, FR Y–9SP—3,960, FR Y–9ES—42, FR Y–9CS—472.

General description of report: The FR Y–9 family of reporting forms continues to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. Financial data from these reporting forms are used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate holding company mergers and acquisitions, and to analyze a holding company's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C report serves as standardized financial statements for the consolidated holding company. The FR Y–9LP and FR Y–9SP are parent-company only financial statements submitted primarily based on the HC's total consolidated assets. The FR Y–9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the voluntary FR Y–9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FR Y–9C on a quarterly basis, the FR Y–9LP quarterly, the FR Y–9SP semiannually, and the FR Y–9ES annually, as applicable, and the FR Y–9CS on a schedule that is determined when this supplement is used.

Current Actions

The Board has temporarily revised the FR Y–9C to collect four new data items related to the Paycheck Protection Payment (PPP) loans and the Paycheck Protection Program Liquidity Facility (PPPLF).[2]

In addition, the Board temporarily revised the FR Y–9C to collect two new items related to Section 4013 of the CARES Act. Section 4013 of the CARES Act permits holding companies flexibility in modifying loans related to the coronavirus disease 2019 (COVID–19).

New Data Items Related to the PPPLF

Section 1102 of the CARES Act allows for banking organizations to make loans under a program of the Small Business Administration (SBA) in connection with COVID–19 disruptions to small businesses (referred to as PPP loans or PPP covered loans). While the loans are funded by the banking organizations, they receive a guarantee from the SBA. The Federal Reserve subsequently established a liquidity facility to permit banking organizations to obtain non-recourse loans, for which PPP loans are pledged to the facility, to provide additional liquidity.

The Board needs to collect information on the number and outstanding balance of PPP loans, as well as the outstanding balance and quarterly average of PPP loans pledged to the liquidity facility, for use in supervising holding companies. These items also would enable Federal Reserve supervision staff to monitor credit and liquidity risk, aggregate industry trends, and individual institutions' use of the PPPLF. Therefore, the Board temporarily approved the addition of four new data items to collect this information, with the collection of these items expected to be time-limited. The Board would collect these items through the December 31, 2021, as-of date. If the Board subsequently determines that there is a supervisory need for this information beyond December 31, 2021, an extension of these items would be published for comment in a separate **Federal Register** notice.

Starting with the June 30, 2020, reporting period, a holding company will be required to report the total number of PPP loans outstanding, the outstanding balance of PPP loans, the outstanding balance of PPP loans pledged to the Federal Reserve's liquidity facility, and the quarterly average amount of PPP loans pledged to the Federal Reserve's liquidity facility and excluded from average total assets in the calculation of the leverage ratio. These items have been added to Schedule HC–M, as items 25.a, 25.b, 25.c, and 25.d.

Section 4013 of Cares Act

Section 4013 of the CARES Act suspends the requirements under United States generally accepted accounting principles for eligible loan modifications related to the COVID–19 pandemic that would otherwise be categorized as troubled debt restructurings (TDRs). The CARES Act defines an eligible loan under section 4013 (section 4013 loan) as a loan modification that is (1) related to COVID–19, (2) executed on a loan that was not more than 30 days past due as of December 31, 2019, and (3) executed between March 1, 2020, and the earlier of (A) 60 days after the date of termination of the National Emergency concerning the COVID–19 outbreak or (B) December 31, 2020. Section 4013(d)(2) of the CARES Act provides that federal banking agencies may collect data about section 4013 loans for supervisory purposes.

Holding companies accounting for eligible loans under Section 4013 are not required to apply ASC Subtopic 310–40 to the Section 4013 loans for the term of the loan modification. In

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

[2] 85 FR 20387 (April 13, 2020).

addition, HCs do not have to report Section 4013 loans as TDRs in regulatory reports. However, as provided for under Section 4013, HCs should maintain records of the volume of section 4013 loans and the collection of data about such loans may be required for supervisory purposes.

Consistent with section 4013(d)(2) of the CARES Act, the Board has added two new data items for section 4013 loans to the FR Y–9C, which would be collected quarterly beginning with the June 30, 2020, report date. These confidential items would enable Federal Reserve supervision staff to monitor credit risk, aggregate industry trends, and individual institutions' use of the temporary relief provided by section 4013. These new items, Memorandum item 16.a, ''Number of Section 4013 loans outstanding,'' and Memorandum item 16.b, ''Outstanding balance of Section 4013 loans,'' have been added to Schedule HC–C, Part I, Loans and Leases. These items will enable the Board to monitor individual HCs' use of the temporary relief provided by Section 4013 as well as the volume of loans modified in accordance with section 4013. The Board would collect these items through the December 31, 2021, as-of date. If the Board subsequently determines that there is a supervisory need for this information beyond December 31, 2021, an extension of these items would be published for comment in a separate **Federal Register** notice.

The Board will collect institution-level section 4013 loan information on a confidential basis. The Board has encouraged financial institutions to work with their borrowers during the National Emergency related to COVID–19, including use of the relief under Section 4013.[3] However, public disclosure of supervisory information on Section 4013 loans could have a detrimental impact on holding companies offering modifications under this provision to borrowers that need relief due to COVID–19.

The Board has determined that these temporary revisions to the FR Y–9C must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, would interfere with the Board's ability to perform its statutory duties and to properly supervise holding companies.

Additionally, the Board proposes to extend the FR Y–9 family of reports for three years, with the revisions to the FR Y–9C discussed above, in order to permit continued accurate reporting of related data.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the FR Y–9 family of reports on BHCs pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844); on SLHCs pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) and (3)), as amended by sections 369(8) and 604(h)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); on U.S. IHCs pursuant to section 5 of the BHC Act (12 U.S.C 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12 U.S.C. 511(a)(1) and 5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)(A)). The obligation to submit the FR Y–9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory.

With respect to the FR Y–9C report, Schedule HI's memoranda data item 7(g) ''FDIC deposit insurance assessments,'' Schedule HC–P's data item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies,'' and Schedule HC–P's data item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties'' are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

For both the FR Y–9C report and the FR Y–9SP report, Schedule HC's memorandum item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Additionally, items on the FR Y–9C, Schedule HC–C for loans modified under section 4013, data items Memorandum items 16.a, ''Number of Section 4013 loans outstanding'' and Memorandum items 16.b, ''Outstanding balance of Section 4013 loans'' are considered confidential. While the Board generally makes institution-level FR Y–9C report data publicly available, the Board is collecting section 4013 loan information as part of condition reports for the impacted HCs and the Board considers disclosure of these items at the HC level would not be in the public interest.[4] Such information is permitted to be collected on a confidential basis, consistent with 5 U.S.C. 552(b)(8).[5] In addition, holding companies may be reluctant to offer modifications under section 4013 if information on these modifications made by each holding company is publicly available, as analysts, investors, and other users of public FR Y–9C report information may penalize an institution for using the relief provided by the CARES Act. The Board may disclose section 4013 loan data on an aggregated basis, consistent with confidentiality or as otherwise required by law.

Aside from the data items described above, the remaining data items on the FR Y–9C report and the FR Y–9SP report are generally not accorded confidential treatment. The data items collected on FR Y–9LP, FR Y–9ES, and FR Y–9CS reports are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

[3] See ''Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)'' (April 7, 2020), available at *https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-50a.pdf.*

[4] See 12 U.S.C. 1464(v)(2).

[5] Exemption 8 of the Freedom of Information Act (FOIA) specifically exempts from disclosure information ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.''

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

Consultation outside the agency: The Federal Reserve consulted with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation in the development of this proposal.

Board of Governors of the Federal Reserve System, July 1, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–14572 Filed 7–6–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 191 0158]

Eldorado Resorts and Caesars Entertainment; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 6, 2020.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Eldorado and Caesars; File No. 191 0158'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joshua Smith (202–326–3018), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website (for June 26, 2020), at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 6, 2020. Write ''Eldorado and Caesars; File No. 191 0158'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Eldorado and Caesars; File No. 191 0158'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive

public comments that it receives on or before August 6, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Consent Orders To Aid Public Comment

I. Introduction and Background

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Eldorado Resorts, Inc. (''Eldorado'') and Caesars Entertainment Corporation (''Caesars''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would likely result from Eldorado's acquisition of Caesars (''the Acquisition''). Under the terms of the proposed Decision and Order (''Order'') contained in the Consent Agreement, Eldorado is required to divest to Twin River Worldwide Holdings, Inc. (''Twin River''): (1) Eldorado's only casino in the South Lake Tahoe area, the MontBleu Resort Casino and Spa (''MontBleu'') in Stateline, Nevada; and (2) Eldorado's only casino in the Bossier City-Shreveport, Louisiana, area, the Eldorado Casino Resort (''Eldorado Shreveport''). The divestitures must be completed by the earlier of (i) 12 months from the closing of the Acquisition; or (ii) 30 days from the date that Twin River receives all regulatory approvals. Additionally, if Eldorado does not consummate its sale of the Isle of Capri casino (''Isle of Capri'') in Kansas City, Missouri, within 60 days from the closing of the Acquisition, the proposed Consent Agreement provides the Commission with the option (at its discretion) to require Eldorado to divest the Isle of Capri casino to a Commission-approved acquirer within 12 months. The Isle of Capri sale is independent from the Acquisition.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

On June 24, 2019, Eldorado agreed to acquire Caesars for approximately $17.3 billion. By a vote of 3–1–1 on June 25, 2020, the Commission issued an administrative complaint alleging that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating meaningful and substantial competition between Eldorado and Caesars for casino services in the South Lake Tahoe, Bossier City-Shreveport, and Kansas City area markets. The elimination of this competition would likely have caused significant competitive harm, specifically higher prices and diminished quality and service levels in each of these markets. The proposed Consent Agreement would remedy the alleged violations by requiring a divestiture in the affected markets. The divestitures will establish a new independent competitor to Eldorado in each relevant area, replacing the competition that otherwise would be lost as a result of the Acquisition.

II. The Parties

Eldorado is a publicly traded casino entertainment and hospitality services provider headquartered in Reno, Nevada. Founded in 1973, Eldorado operates 23 casino gaming properties in 11 states. Eldorado operates casinos under several brands, including Eldorado, Isle of Capri, and Tropicana. In the aggregate, Eldorado's properties feature approximately 23,900 slot machines, 660 table games, and more than 11,300 hotel rooms. In the South Lake Tahoe area market, Eldorado operates the MontBleu casino in Stateline, Nevada. In the Bossier City-Shreveport area market, Eldorado operates the Eldorado Shreveport casino in Shreveport, Louisiana. In the Kansas City area market, Eldorado operates the Isle of Capri casino in Kansas City, Missouri. Eldorado had approximately $2.5 billion in revenue in 2019.

Caesars is a publicly traded casino entertainment and hospitality services provider headquartered in Las Vegas, Nevada. It operates 53 properties in 14 states and five countries outside of the United States. Caesars' properties offer approximately 38,000 slot machines, 2,700 table games, and more than 36,000 hotel rooms. Caesars' gaming properties operate primarily under the Harrah's, Caesars, and Horseshoe brand names. In the South Lake Tahoe area, Caesars operates two facilities offering casino services: Harrah's Lake Tahoe Hotel and Casino, and Harveys Lake Tahoe Hotel and Casino, both in Stateline, Nevada. In the Bossier City-Shreveport area, Caesars operates two facilities offering casino services: Horseshoe Bossier City Hotel and Casino in Bossier City, Louisiana, and Harrah's Louisiana Downs, a gaming and racetrack facility located eight miles east in Shreveport, Louisiana. In the Kansas City area market, Caesars operates Harrah's Kansas City Hotel and Casino in Kansas City, Missouri. Caesars had approximately $8.7 billion in revenue in 2019.

Twin River is a publicly traded casino entertainment and hospitality services provider headquartered in Providence, Rhode Island. It operates eight properties in four states, including the Twin River Casino Hotel in Lincoln, Rhode Island. Twin River's properties feature approximately 9,130 slot machines, 267 table games, and 1,200 hotel rooms. The company had approximately $524 million in revenue in 2019.

III. Casino Services in South Lake Tahoe, Bossier City-Shreveport and Kansas City

Eldorado's proposed acquisition of Caesars would likely result in substantial competitive harm in the markets for casino services in South Lake Tahoe, Bossier City-Shreveport and Kansas City. The relevant product market in which to assess the competitive effects of the proposed Acquisition is casino services. The casino services market consists of casino-based gaming services (*e.g.,* slots and table games), as well as other amenities such as lodging, entertainment, and food and beverage services. Casino operators typically generate the vast majority of their revenues from gaming. Casino services differ significantly from other entertainment and leisure activities in a number of respects. For example, casinos are highly regulated, with a limited number of casinos licensed to operate in any given state and age restrictions on who can gamble. Consistent with prior Commission precedent, the evidence here supports a distinct relevant market consisting of casino services.

Local geographic markets are appropriate to assess the competitive effects of the proposed Acquisition. There are three relevant geographic markets in which to analyze the merger's effects: (1) The South Lake Tahoe area, which approximately corresponds to the area in and around the cities of Stateline, Nevada, and South Lake Tahoe, California; (2) the Bossier City-Shreveport, Louisiana area, which approximately corresponds to the Bossier City-Shreveport, Louisiana metropolitan statistical area; and (3) the Kansas City area, which approximately corresponds to the Kansas City, Missouri metropolitan statistical area.

Absent relief, the Acquisition would result in significant increases in concentration and lead to highly

concentrated markets in all three markets, resulting in a presumption of the enhancement of market power under the Horizontal Merger Guidelines. Further, Eldorado and Caesars are close and vigorous competitors in the South Lake Tahoe, Bossier City-Shreveport, and Kansas City area markets. Absent relief, the Acquisition would substantially lessen the significant head-to-head competition between Eldorado and Caesars and would likely increase Eldorado's ability and incentive to raise prices post-Acquisition in the form of hold rates, rake rates, and table game rules and odds that are less favorable to customers, and lower player reinvestments. The proposed Acquisition also would likely diminish Eldorado's incentive to maintain or improve the quality of services and amenities to the detriment of casino customers in each of these markets.

New entry or expansion is unlikely to deter or counteract the likely anticompetitive effects of the Acquisition in the South Lake Tahoe, Bossier City-Shreveport, and Kansas City area markets. The affected markets are insulated from new entry or expansion by significant regulatory barriers, including limitations on the number of casino licenses available and the ability to expand existing gaming operations. In the South Lake Tahoe area market, entry or expansion is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals. In the Bossier City-Shreveport area market, Louisiana law limits the number of casino licenses and it has already issued all available licenses. Louisiana also has statutory restrictions that make significant expansion by current market participants unlikely absent legislative action. Similarly, in the Kansas City area market, Missouri and Kansas law limit the total number of casino licenses available and both states have already issued all available licenses. Expansion in Missouri is unlikely and only limited expansion in Kansas is possible. Entry or repositioning would be unlikely to be sufficient to deter or counteract the anticompetitive effects of the Acquisition.

IV. The Proposed Consent Agreement

The proposed Consent Agreement remedies the likely anticompetitive effects in the South Lake Tahoe and Bossier City-Shreveport area markets by requiring divestitures of the MontBleu and Eldorado Shreveport casinos to Twin River by the earlier of (i) 12 months from the closing of the Acquisition; or (ii) 30 days from the date Twin River receives all regulatory approvals. Until the completion of each divestiture, the parties are required to abide by the Order to Hold Separate and Maintain Assets, which requires them to maintain the viability, marketability, and competitiveness of the divestiture assets until the divestitures are completed. The proposed Consent Agreement appoints a Monitor to ensure the parties' compliance with the Order to Hold Separate and Maintain Assets, Consent Agreement, and divestiture agreements between Eldorado and Twin River following the divestiture. The proposed Consent Agreement also remedies the likely anticompetitive effects in the Kansas City area market in the event that Eldorado's independent sale of the Isle of Capri casino does not close within 60 days from the closing of the Acquisition. In the event the Isle of Capri sale does not timely close as required, the proposed Consent Agreement provides the Commission with the option (at its discretion) to require Eldorado to divest the Isle of Capri casino to a Commission-approved acquirer within 12 months. Although these divestiture deadlines are longer than typically ordered by the Commission, they are appropriate in this matter to accommodate the lengthy state regulatory approval process, which may be subject to continued disruption from the COVID–19 pandemic.

Additionally, the proposed Consent Agreement requires the parties to provide transitional services to the approved acquirer for up to 12 months after the divestiture, as needed, to assist the acquirer with the transfer and operation of the divested assets. Finally, the proposed Consent Agreement contains standard terms regarding the acquirer's access to employees, protection of material confidential information, and compliance reporting requirements, among other things, to ensure the viability of the divested business.

A. South Lake Tahoe

The proposed Consent Agreement remedies the likely anticompetitive effects of the proposed Acquisition in the South Lake Tahoe area market by requiring the divestiture of Eldorado's MontBleu. This remedy would preserve the status quo in the South Lake Tahoe area casino services market, maintaining three independent casino operators and resulting in no change in market concentration.

B. Bossier City-Shreveport

The proposed Consent Agreement remedies the likely anticompetitive effects of the proposed Acquisition in the Bossier City-Shreveport area market by requiring Eldorado to divest the Eldorado Shreveport. This remedy would preserve four independent casino operators and result in no change in market concentration.

C. Kansas City

In the Kansas City area market, the proposed Consent Agreement provides the Commission with the option (at its discretion) to require Eldorado to divest its Isle of Capri casino to a Commission-approved buyer within 12 months if its independent sale of the Isle of Capri fails to consummate within 60 days of closing the Acquisition. If a divestiture is required, the proposed Consent Agreement remedies the likely anticompetitive effects of the Acquisition by requiring Eldorado to divest the Isle of Capri. The proposed Consent Agreement would preserve four independent casino operators and result in no change in market concentration.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement to aid the Commission in determining whether it should make the proposed Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

By direction of the Commission, Commissioner Chopra dissenting, Commissioner Slaughter not participating.

April J. Tabor,

Secretary.

Dissenting Statement of Commissioner Rohit Chopra Summary

- The Commission should not agree to merger settlements unless divestitures are completed promptly to a qualified buyer ready and willing to compete on day one.
- It is risky and makes little sense to propose a complex settlement with a prolonged divestiture period and unorthodox terms to justify a merger that has no meaningful benefits, particularly given the financial uncertainties stemming from the COVID–19 crisis.
- I am concerned that the Commission's standard process for vetting divestiture buyers minimizes or ignores major financial red flags. We should revamp our approach.

Caesars Entertainment (NASDAQ: CZR) is selling itself to one of its smaller competitors, Eldorado Resorts (NASDAQ: ERI). The transaction has no noteworthy benefits to customers, workers, suppliers, or competition. If anything, the transaction is risky for everyone involved.

The enormous amount of debt financing could materially increase the likelihood of financial distress of the combined casino conglomerate, and rating agencies have already started to downgrade Eldorado's debt.[1] Given the major financial uncertainties looming over the gaming industry stemming from the pandemic, as well as the industry's past experiences with leveraged buyouts, the proposed transaction might make conditions even more fragile and precarious.

The agreement is subject to review by state gaming regulators and the Federal Trade Commission. In comparison to state regulators, who must weigh a number of public interest factors, the Federal Trade Commission's mandate is more specific: To determine whether the transaction violates U.S. antitrust laws. Based on the Commission's investigation, I agree that the transaction is illegal and I support the complaint.

However, I have serious reservations about the terms of the settlement. As a policy matter, I disagree that the Commission should enter into risky, complicated settlements with delayed divestitures—like the resolution proposed here.

The Proposed Buyer Will Not Immediately Restore Competitive Intensity

To remedy an illegal transaction, the FTC should only agree to settlements when divestitures will quickly restore the competitive intensity killed off from a merger. It is not enough to have some of the competition restored; it must be fully restored. A new competitor should be able to step in on day one to compete.

For example, in 2015, the FTC prevailed in its challenge of the merger of Sysco and US Foods, the nation's two largest food distributors, when divestitures could not cure the harmful merger on ''day one.'' The companies proposed to divest a lengthy list of US Foods' assets to an entity controlled by the Blackstone Group. The FTC argued this was insufficient, and the court agreed that the new competitor could not replicate the same level of competitive intensity of US Foods.[2]

The Commission's proposed remedy will definitely not cure this harmful casino merger on day one. Under the terms of the Commission's proposed settlement, Eldorado is required to divest one property in Nevada and another in Louisiana to Twin River Worldwide Holdings (NYSE: TRWH)—but after a prolonged period of time.[3] Allowing a lengthy divestiture only compounds the problems with this settlement, as it necessitates the addition of other risky settlement provisions.

To mitigate the anticompetitive harm from the prolonged divestiture schedule, the FTC's proposed settlement sets up a complex arrangement where some casinos will be operated separately by Commission-appointed casino property managers until a buyer is ready to take over the assets. I do not believe that the Commission should be in the business of appointing casino property managers here.[4]

The Commission will also appoint a monitor. It is particularly unclear how the Commission and the appointed monitor can remove or discipline the casino property managers. In addition, the casino property managers will operate under a similar compensation and bonus plan as provided by the prior owner, which could easily lead to anticompetitive distortions. The anticompetitive harms could grow if Twin River is rejected as a suitable buyer by state regulators.

There may be rare circumstances where unusual settlement terms are warranted, but this isn't one of them. The proposed remedy is also a gamble on several other fronts.

First, the Commission's due diligence on Twin River did not adequately analyze the role of new investors exerting enormous control. The FTC must always consider the incentives and plans for those in control of a divestiture buyer. Sometimes, new investors can help a stagnant company change strategic direction. But too often, new investors find ways to buy, strip, and flip, rather than create a strong, long-term competitor. This is particularly true for certain private equity and hedge fund investors, so careful due diligence is critical.

In 2019, a Wall Street hedge fund, Standard General, accumulated a major ownership stake in Twin River. Standard General now has significant control over the company and is, by far, its largest shareholder. Its stake is roughly equivalent to the maximum amount allowable under state law.[5] Another hedge fund, HG Vora, has also emerged as a major holder of Twin River.[6] Standard General and similar funds often seek to accumulate board seats to implement their desired investment strategy. Indeed, just a few months ago, Twin River's longtime chairman ''reluctantly'' stepped down and was replaced by Standard General's managing partner, Soohyung Kim.[7]

By approving Twin River as the divestiture buyer, I am concerned that the Commission is relying on Twin River's past track record, rather than analyzing how changes in ownership and control of the company will impact their future business strategy.

Second, buyers of divested assets need to prioritize competing on day one, but they cannot if other high-priority mergers and acquisitions distract them. In this matter, Twin River is in the midst of a string of other takeovers.

In 2019, it completed an acquisition of Dover Downs Hotel and Casino in Delaware,[8] and then in January of this year, Twin River acquired three casinos in Colorado.[9] Several other acquisitions are pending: in the last twelve months, it has inked deals to purchase casinos in Missouri and Mississippi.[10] Outside of

[1] *See e.g., Moody's downgrades Eldorado Resorts CFR to B2, rates new debt for Caesars acquisition; outlook,* Moody's Investor Service (June 17, 2020), *https://www.moodys.com/ngrades-Eldorado-Resorts-CFR-to-B2-rates-new-debt-PR_426702?cid=7QFRKQSZE021.*

[2] *Fed. Trade Comm'n* v. *Sysco Corp.,* 113 F. *Supp.* 3d 1, 73 (D.D.C. 2015).

[3] [3] The *divestitures* must be complete by the earlier of 12 months from the closing of the merger or within 30 days of state regulatory approval. In theory, the divestitures may be completed before 12 months. However, past experience suggests that the approval process requires significant due diligence over an extended period of time.

[4] If the state gaming regulators had already approved the transaction (as well as the corresponding divestitures) and selected casino property managers, this would raise fewer concerns.

[5] In a recent Schedule 13D securities filing, Standard General revealed that it was managing its holdings of Twin River, given Twin River's share repurchase plan that could lead to Standard General violating the Rhode Island casino ownership cap of 39%. *See* Twin River Worldwide Holdings, Inc., Amendment No. 6 to Schedule 13D at 4 (Feb. 20, 2020).

[6] Recent securities filings reveal significant ownership of Twin River by HG Vora Capital Management. *See* HG Vora Capital Management, LLC, Form 13F Information Table (Form 13F) (Aug. 8, 2019). Standard General and HG Vora are currently on the same side of a major battle in another public company. *See* Svea Herbst-Bayliss, *EXCLUSIVE-Hedge fund HG Vora wants Tegna to consider a sale or merger—sources,* Reuters (Jan. 21, 2020), *https://www.reuters.com/article/tegna-hgvora/exclusive-hedge-fund-hg-vora-wants-tegna-to-consider-a-sale-or-merger-sources-idUKL1N29Q0KT.*

[7] Ted Nesi, *John Taylor out at Twin River,* 12WPRI.com (Dec. 9, 2019), *https://www.wpri.com/business-news/john-taylor-out-at-twin-river/.*

[8] Press Release, Twin River Worldwide Holdings, Inc., Dover Downs Stockholders Approve Merger with Twin River; Merger Set to Close on March 28, 2019 (Mar. 26, 2019), *https://investors.twinriverwwholdings.com/news/news-details/2019/Dover-Downs-Stockholders-Approve-Merger-with-Twin-River-Merger-Set-to-Close-on-March-28-2019/default.aspx.*

[9] Press Release, Twin River Worldwide Holdings, Inc., Twin River Worldwide Holdings Completes Acquisition of Three Colorado Casinos (Jan. 24, 2020), *https://investors.twinriverwwholdings.com/news/news-details/2020/Twin-River-Worldwide-Holdings-Completes-Acquisition-of-Three-Colorado-Casinos/default.aspx.*

[10] Press Release, Twin River Worldwide Holdings, Inc., Twin River Worldwide Holdings

this settlement, it has also struck a deal to purchase Bally's, its first foray into the large Atlantic City market.[11] These acquisitions will require significant management attention, and I did not find any compelling evidence that Twin River will prioritize the divested assets to fully restore competitive intensity in the markets that the Commission believes would suffer from killed-off competition.

Finally, the Commission should avoid acting without the benefit of a full review by the state gaming regulators. State regulatory agencies have unique insights and expertise into the industries they regulate; their findings inform the issues the Commission takes into consideration, and not just relating to the appointment of casino managers. Some states have a specific mandate to look at the ownership and financial conditions of the transacting firms, and we would benefit from that expertise. Their analysis is particularly important during this period of uncertainty, as the industry is roiling from closures due to the current COVID–19 pandemic. It is important that we consider all of the information and work across government bodies to protect competition. While the Commission does work with some of these authorities, I am not convinced that acting before state regulators have completed their analysis is the right approach.

Conclusion

The proposed resolution in this transaction offers a unique window into the assumptions and philosophy of the Federal Trade Commission. The merger is clearly anticompetitive in the markets where the Commission alleged a violation, and offers no meaningful benefits to the public. Since the Commission would not need to go to trial to block the transaction because the state regulators have yet to act, there is no immediate concern about limiting FTC resources or weighing the litigation risk. Given these facts, why would the Commission put the public at risk with delayed divestitures to a questionable buyer that has no guarantee of obtaining a license?

I am concerned that the Commission is rolling the dice with this complex settlement that will clearly not lead to an immediate restoration of lost competition. It is also clear that we must revamp our approach when it comes to vetting proposed divestiture buyers, particularly when a new financial investor is in charge in the boardroom.

Our state partners will obviously need to scrutinize the financial aspects of the proposed transaction between Caesars and Eldorado, given the harms inflicted on the public and regional economies from past leveraged buyouts—and resulting bankruptcies—in the industry.[12] They will also need to carefully assess whether the restoration of competition will come too late, and whether Twin River can guarantee that it will actually accomplish this goal. The stakes are high right now. For these reasons, I dissent.

[FR Doc. 2020–14582 Filed 7–6–20; 8:45 am]

BILLING CODE 6750–01–P

Signs Definitive Agreement To Acquire Two Casinos From Eldorado Resorts (July 11, 2019), *https://investors.twinriverwwholdings.com/news/news-details/2019/Twin-River-Worldwide-Holdings-Signs-Definitive-Agreement-To-Acquire-Two-Casinos-From-Eldorado-Resorts/default.aspx.*

[11] Press Release, Twin River Worldwide Holdings, Inc., Twin River Worldwide Holdings to Acquire Three Casinos from Eldorado and Caesars (Apr. 24, 2020), *https://investors.twinriverwwholdings.com/news/news-details/2020/Twin-River-Worldwide-Holdings-to-Acquire-Three-Casinos-from-Eldorado-and-Caesars/default.aspx.*

[12] *See, e.g.,* Sujeet Indap, *What happens in Vegas...the messy bankruptcy of Caesars Entertainment,* THE FIN. TIMES (Sept. 16, 2017), *https://www.ft.com/content/a0ed27c6-a2d4-11e7-b797-b61809486fe2.*

FEDERAL TRADE COMMISSION

[File No. 201–0074]

Tri Star Energy, LLC; Analysis of Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 6, 2020.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Tri Star Energy, LLC; File No. 201–0074'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ashley Masters (202–326–2291), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website (for June 24, 2020), at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 6, 2020. Write ''Tri Star Energy, LLC; File No. 201–0074'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Tri Star Energy, LLC; File No. 201–0074'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex

D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 6, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Tri Star Energy, LLC (''Tri Star'') and Hollingsworth Oil Company, Inc., C & H Properties, and Ronald L. Hollingsworth (''Hollingsworth'' and collectively, the ''Respondents''). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Tri Star's proposed acquisition of retail fuel assets from Hollingsworth.

Under the terms of the proposed Consent Agreement, Tri Star must divest to the upfront buyer, Cox Oil Company, Inc. (''Cox''), retail fuel assets in two local markets in Tennessee. Tri Star must complete the divestiture within 10 days after the closing of Tri Star's acquisition of Hollingsworth. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date Cox acquires the outlet.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent Tri Star, a company headquartered in Nashville, Tennessee, owns and operates convenience stores and retail fuel outlets throughout Tennessee, Alabama, Georgia, and Kentucky. Tri Star operates 89 convenience stores with attached retail fuel outlets, including 82 in Tennessee. Tri Star's convenience stores operate under the Twice Daily, Hightail, and t-Fuel names, and its retail fuel outlets sell under a variety of third-party branded and unbranded fuel banners. Tri Star also supplies fuel to a network of 285 dealer locations.

Respondent Mr. Ronald L. Hollingsworth, a resident of the state of Tennessee, controls both Hollingsworth Oil Company, Inc. and C & H Properties, entities operating in Tennessee. Hollingsworth operates a network of 54 convenience stores under the Sudden Service name with attached retail fuel outlets throughout middle Tennessee. Hollingsworth provides a variety of third-party branded and unbranded fuels at its Sudden Service outlets and to 172 wholesale fuel locations.

III. The Proposed Acquisition

On March 6, 2020, Tri Star entered into an agreement to acquire certain retail fuel outlets and other interests, from Hollingsworth and related entities (the ''Acquisition''). The Acquisition would expand Tri Star's presence throughout middle Tennessee.

The Commission's Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and that the Acquisition agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition for the retail sale of gasoline and the retail sale of diesel in each of two local markets in Tennessee.

IV. The Retail Sales of Gasoline and Diesel

The Commission's Complaint alleges that the relevant product markets in which to analyze the Acquisition are the retail sale of gasoline and the retail sale of diesel fuel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Likewise, consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. The retail sale of gasoline and the retail sale of diesel fuel constitute separate relevant markets because the two are not interchangeable—vehicles that run on gasoline cannot run on diesel and vehicles that run on diesel cannot run on gasoline.

The Commission's Complaint alleges the relevant geographic markets in which to assess the competitive effects of the Acquisition are two local markets in and around Whites Creek, Tennessee, and Greenbrier, Tennessee.

The geographic markets for retail gasoline and retail diesel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting a number of considerations, including commuting

patterns, traffic flows, and outlet characteristics. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes. The geographic markets for the retail sale of diesel are likely similar to the corresponding geographic markets for retail gasoline as many diesel consumers exhibit the same preferences and behaviors as gasoline consumers.

The Acquisition would eliminate competition in these local markets, resulting in a merger to monopoly in each market for the retail sale of gasoline and the retail sale of diesel fuel. Retail fuel outlets compete on price, store format, product offerings, and location, and pay close attention to competitors in close proximity, on similar traffic flows, and with similar store characteristics. The combined entity would be able to raise prices unilaterally in the two local markets. Absent the Acquisition, Tri Star and Hollingsworth would continue to compete head to head in these local markets.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

V. The Proposed Consent Agreement

The proposed Consent Agreement would remedy the Acquisition's likely anticompetitive effects by requiring Tri Star to divest certain Tri Star and Hollingsworth retail fuel assets to Cox in each local market.

The proposed Consent Agreement requires that the divestiture be completed no later than 10 days after Tri Star consummates the Acquisition. The proposed Consent Agreement further requires Tri Star and Hollingsworth to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestiture to Cox is complete. For up to twelve months following the divestiture, Tri Star and Hollingsworth must make available transitional services, as needed, to assist Cox with the divestiture assets.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires Respondents to provide the Commission notice before re-acquiring the divested outlets for ten years. The prior notice provision is necessary because an acquisition of either or both divested assets would likely raise the same competitive concerns and may fall below the HSR Act premerger notification thresholds.

The proposed Consent Agreement contains additional provisions designed to ensure the effectiveness of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business, through the date the Respondents complete the divestiture. The Commission may appoint an independent third party as a Monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission, Commissioner Slaughter not participating.

April J. Tabor,

Secretary.

[FR Doc. 2020–14508 Filed 7–6–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1411]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Data to Support Cross-Center Collaboration for Social Behavioral Sciences Associated With Disease Prevention, Treatment, and the Safety, Efficacy, and Usage of Food and Drug Administration Regulated Products

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on a new collection of information to collect entitled ''Generic Clearance for Data to Support Cross-Center Collaboration for Social Behavioral Sciences Associated with Disease Prevention, Treatment, and the Safety, Efficacy, and Usage of FDA Regulated Products.''

DATES: Submit either electronic or written comments on the collection of information by September 8, 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 September 8, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 8, 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–2020–N–1411 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Data to Support Cross-Center Collaboration for Social Behavioral Sciences Associated with Disease Prevention, Treatment and the Safety, Efficacy, and Usage of FDA Regulated Products.'' 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, 240–402–7500.

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

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

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 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.

Generic Clearance for Data To Support Cross-Center Collaboration for Social Behavioral Sciences Associated With Disease Prevention, Treatment and the Safety, Efficacy, and Usage of FDA Regulated Products

OMB Control Number 0910–NEW

FDA is seeking to conduct qualitative and quantitative research studies to better understand consumers', patients', caregivers', academic/scientific experts', and public health professionals' perceptions and behaviors regarding various issues and outcomes associated with disease prevention, treatment, and the safety and efficacy off all FDA-regulated products. These studies may consist of small groups, focus groups, individual indepth interviews, and surveys relating to the evaluation of disease prevention and treatment and the safety, efficacy, and usage of FDA-regulated products and communication messages and strategies, and other materials directed to consumers, patients, caregivers, and public health professionals (*e.g.,* evaluate the effectiveness of communication messages, educational materials, and interventions directed toward promoting and protecting human and animal health).

Among the general provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA is charged with promoting the public health through regulatory oversight as well as clinical research. Specifically, section 1003 of the FD&C Act (21 U.S.C. 393(d)(2)(C) and (D)) provides that the Commissioner of Food and Drugs shall be responsible for research. Accordingly, FDA is seeking to conduct qualitative and quantitative research studies. These studies may consist of small groups, focus groups, individual in-depth interviews, and surveys relating to the evaluation of disease prevention and treatment and the safety, efficacy, and usage of FDA-regulated products and communication messages and strategies, and other materials directed to consumers, patients, caregivers, and public health professionals (*e.g.,* evaluate the effectiveness of communication messages, educational materials, and interventions directed toward promoting and protecting human and animal health).

The information collection is intended to support research conducted by, or on behalf of, FDA. Understanding consumers, patients, caregivers, academic/scientific experts, and public health professionals' perceptions and behaviors plays an important role in improving FDA's decision-making processes and communications impacting various stakeholders. To better understand consumers, patient, caregivers, academic/scientific experts, and public health professionals' perceptions and behaviors regarding various issues and outcomes associated the disease prevention, treatment, and the safety, efficacy, and usage of products overseen by the Agency, FDA is requesting approval of this generic information collection request.

The qualitative and quantitative research anticipated by FDA aligns with Agency objectives. For example, among

eight scientific priorities is the goal to support social and behavioral sciences. Such research helps the Agency meet this goal by:

- Identifying gaps in the target audience's knowledge regarding FDA-regulated products, and outcomes associated the disease prevention, treatment;
- reaching diverse audiences;
- assessing target audiences' knowledge, perceptions, and behaviors about FDA-regulated products;
- evaluating the effectiveness of FDA's communications;
- exploring ways to incorporate patient input into decision-making;
- leveraging real-world data;
- evaluating outcomes; and
- integrating the knowledge gained from the research into Agency communications, activities, interventions, and programs.

FDA will only submit a collection for approval under this generic clearance if it meets the following conditions: information provided by respondents will be kept private and anonymous, except as otherwise required by law. This will be communicated to respondents by means of introductory letters, explanatory texts on the cover pages of questionnaires, scripts read prior to focus groups or telephone interviews, and consent forms as appropriate. Respondents also will be advised of the following: (1) The nature of the activity; (2) the intended purpose and use of the data collected; (3) FDA sponsorship (when appropriate); and (4) the fact that participation is voluntary at all times. Because responses are voluntary, respondents will be assured that there will be no penalties if they decide not to respond, either to the information collection as a whole or to any individual questions.

Only Agency or Agency-sponsored personnel will have access to individual-level surveys, interviews, or focus group data. All project staff from a contractor or cooperative agreement grantee conducting the information collection must take required measures to ensure respondent privacy and confidentiality of data. Personally identifiable information (PII) shall be limited to data that may be required in the process of respondent enrollment. PII will be accessible to only those contractors or cooperative agreement grantee who need it and will not be linked to interview data. Neither FDA employees nor any Federal employee of any other agency will have access to PII. All PII will be destroyed by contractors as soon as feasible following data collected during interviews.

All electronic and hard-copy data will be maintained securely throughout the information collection and data processing phases. While under review, electronic data will be stored in locked files on secured computers; hard-copy data will be maintained in secure building facilities in locked filing cabinets. As a further guarantee of privacy and anonymity, all data will be reported to FDA in aggregate form, with no links to individuals preserved. Reports generated by this information collection will be used only for research purposes and for the development of communication messages.

Social and behavioral testing efforts described in this proposal are typically considered exempt from the ''Regulations for the Protection of Human Subjects'' in accordance with 45 CFR 46.101(b)(3). Before data are collected, FDA researchers must obtain either an exemption or an expedited or full approval for all research from FDA's institutional review board (IRB).

When FDA's IRB determines that minors are capable of giving assent, the IRB shall determine whether adequate provisions are made for soliciting assent. Generally, assent requires securing the signature of a minor potentially participating in the research in a separate assent form, in addition to the consent form the parent or legal guardian signs. An assent document should: (1) Contain an explanation of the study; (2) a description of what is required of the subject (*e.g.,* what he or she will experience (whether the minor will be in the hospital, whether the minor's parents will be with him or her, etc.)); (3) an explanation of any risks and pain associated with the study; (4) an explanation of any anticipated change in the minor's appearance; and (5) an explanation of the benefits to the minor or others.

FDA plans to use the data collected under this generic clearance to inform its FDA-regulated products educational, interventions, outcomes, and regulatory science programs, materials and resources and disease prevention and treatment. FDA expects the data to guide the formulation of the Agency's educational and public health objectives on FDA-regulated products and support development of subsequent research efforts. The data will not be used to make policy or regulatory decisions. Rather, these data will: (1) Inform FDA's public education campaigns and other educational/interventional materials directed to informing consumers, patients, caregivers, and public health professionals about human and animal health issues and (2) provide information on the safety, efficacy, and usage of FDA-regulated products.

If these conditions are not met, FDA will submit an information collection request to OMB for approval through the normal PRA process.

To obtain approval for a collection that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the interview or moderator guide, screening questionnaire).

FDA will submit individual qualitative and quantitative collections under this generic clearance to the OMB. Individual collections will also undergo review by FDA's IRB, senior leadership in the for the primary investigator's respective offices, and PRA specialists.

Description of Respondents: The respondents to this collection of information are all FDA stakeholders including, general population individuals, as well as consumers of certain products, patients and their caregivers, academic/scientific experts, individuals from specific target labor groups such as physicians, medical specialists, pharmacists, dentists, nurses, veterinarians, dietitians, and other public health professionals.

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
Interviews/Surveys/Focus Groups	2,520	14.6	36,792	0.25 (15 minutes)	9,198

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This is a new collection of information whose total estimated annual reporting burden is 9,198 hours. The number of participants to be included in each individual generic submission under this collection of information will vary, depending on the nature of the compliance efforts and the target audience.

Dated: June 30, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14517 Filed 7–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1206]

Electronic Study Data Submission; Data Standards; Support and Requirement Begin for Study Data Tabulation Model Version 1.7 Implementation Guide 3.3 and for Define-Extensible Markup Language Version 2.1; Requirement Ends for Study Data Tabulation Model Version 1.3 Implementation Guide 3.1.3

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Biologics Evaluation and Research (CBER) and Center for Drug Evaluation and Research (CDER) are announcing the dates that support and requirement will begin for version 1.7 of the Clinical Data Interchange Standards Consortium (CDISC) for Study Data Tabulation Model (SDTM) Implementation Guide (IG) 3.3, as well as for version 2.1 of the Define-Extensible Markup Language (Define-XML). CBER and CDER are also announcing the date that support and requirement will end for version 1.3 of the CDISC SDTM IG 3.1.3. The Agency will update the FDA Data Standards Catalog (Catalog) to reflect these changes.

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

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1206 for ''Electronic Study Data Submission; Data Standards; Support and Requirement Begin for Study Data Tabulation Model Version 1.7 Implementation Guide 3.3 and for Define-Extensible Markup Language Version 2.1; Requirement Ends for Study Data Tabulation Model Version 1.3 Implementation Guide 3.1.3.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Chenoa Conley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, 301–796–0035, *cderdatastandards@fda.hhs.gov,* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: On December 17, 2014, FDA published a final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data'' (eStudy Data guidance), posted on FDA's Study Data Standards Resources web page at *https://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm.* The eStudy Data guidance implements the electronic submission requirements of section 745A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379k–1(a)) for study data contained in new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and certain investigational new drug applications (INDs) submitted to

CDER or CBER by specifying the format for electronic submissions. The eStudy Data guidance states that a **Federal Register** notice will specify any new standards and version updates, when the support begins or ends, and when the requirement begins or ends, that will be added to the Catalog. Support for version 1.7 of the CDISC SDTM IG 3.3 and version 2.1 of the Define-XML will begin on March 15, 2021, and the date that the requirement begins will be on March 15, 2022, for NDAs, ANDAs, and certain BLAs. For noncommercial INDs, the date that requirement begins will be March 15, 2023. Support and requirement ended for version 1.3 of the CDISC SDTM IG 3.1.3 will end on March 15, 2021.

Dated: June 30, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14512 Filed 7–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1307]

Agency Information Collection Activities; Proposed Collection; Comment Request; Examination of Secondary Claim Disclosures and Biosimilar Disclosures in Prescription Drug Promotional Materials

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled, ''Examination of Secondary Claim Disclosures and Biosimilar Disclosures in Prescription Drug Promotional Materials.''

DATES: Submit either electronic or written comments on the collection of information by September 8, 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 September 8, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 8, 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–2020–N–1307 for ''Examination of Secondary Claim Disclosures and Biosimilar Disclosures in Prescription Drug Promotional Materials.'' 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.*

For copies of the questionnaire contact: Office of Prescription Drug Promotion (OPDP) Research Team, *DTCresearch@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 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.

Examination of Secondary Claim Disclosures and Biosimilar Disclosures in Prescription Drug Promotional Materials

OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotional material is truthful, balanced, and accurately communicated, so that patients and health care providers can make informed decisions about treatment options. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission. Our research focuses in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of our research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first two topic areas: Advertising features, including content and format, and target populations.

Because we recognize that the strength of data and the confidence in the robust nature of the findings is improved by utilizing the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm090276.htm.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a survey on direct-to-consumer (DTC) advertisements conducted in 1999.

The purpose of this research is to build on prior FDA research on the topic of disclosures by examining the impact of disclosures of two different types of information, detailed later in this notice. The literature on disclosures suggests their effectiveness is subject to format, design, and audience factors, among other things (Ref. 1). For example, research on consumer attitudes have found some people believe that FDA evaluates certain dietary supplement claims despite the presence and consumer awareness of language required by the Dietary Supplement Health and Education Act, which clearly states that FDA has not evaluated those claims (Refs. 2 and 3). In the context of prescription drug promotion, there is initial evidence that—when noticed—disclosures may effectively convey important information (Refs. 4 to 6); however, what role disclosures may play in educating or correcting misunderstanding warrants further investigation.

In the new study proposed here, the first type of disclosed information we will examine is clinical benefit information based on a secondary endpoint reported in a product's approved labeling (a secondary claim). In some cases, truthful and non-misleading presentations about secondary endpoints in well-designed clinical studies can provide reliable information about treatment effects that may be distinct from the treatment effects described in the product's indication statement. For example, a product may be indicated to treat a specific type of cancer based on a primary endpoint of survival. However, a secondary endpoint in the study of that product may provide data about an additional distinct benefit, such as functional status.

Phase 1 of the proposed research will examine the impact of adding a disclosure about a secondary claim in DTC and healthcare professional (HCP)-directed promotion in the context of a prescription drug website. We will also examine the effect of the presence of a comparative claim about the secondary claim. Our proposed main outcome measures are perceptions of and attitudes toward the product, the secondary claim, and the disclosure. The pretest and main studies for Phase 1 will have the same design, will be conducted online, and will follow the same procedure. We will examine four levels of secondary claim disclosure to explore the effects of disclosing that the secondary benefit is not one of the indicated uses of the product (*e.g.,* not a treatment for [the secondary benefit claim], quantitative information about claim, not a treatment for [claim] and quantitative information about claim, or no disclosure), and two levels (presence or absence) of a comparative element regarding the secondary claim, for a total of eight experimental conditions (see table 1). Participants will be randomly assigned to one of these conditions; they will view one version of a website. This 4×2 design will be replicated across two target populations (HCPs and consumers).

TABLE 1—PHASE 1 STUDY DESIGN

Phase 1: Secondary claim disclosure by comparative secondary claim in online prescription drug websites				
Comparative secondary claim	Secondary claim disclosure			
	"Drug X is not a treatment for [claim]"	"In a clinical trial, participants [quantitative information] on Drug X"	"Drug X is not a treatment for [claim]" AND "In a clinical trial, participants [quantitative information] on Drug X."	None (no secondary claim)
HCPs:				
Present: Compared to [xx] on Drug Y.				
Absent.				
Consumers:				
Present: Compared to [xx] on Drug Y.				
Absent.				

The second, independent phase of the proposed research will examine disclosures about a biosimilar product. In both consumer and HCP audiences, we will assess the impact of a disclosure designating the product as a biosimilar as well as varying basic factual statements about biosimilars. Phase 2 will examine the impact of: (1) Adding a disclosure designating the product as a biosimilar; (2) adding general informational statements about biosimilars; and (3) naming a reference product. This approach allows us to examine the effect of disclosing biosimilar status, examines the additive effect of including one, two, or three additional basic statements of information about biosimilars, and measures the effect of naming the reference product. Our proposed main outcome measures are perceptions of and attitudes toward the biosimilar product and the disclosure.

We propose to examine seven different disclosure conditions plus a control with no disclosure for a total of eight test conditions. As a baseline, each of the seven disclosure conditions will include a statement that the drug is a biosimilar. Six of the seven disclosure conditions will include this baseline statement and will vary the amount of additional basic factual information about biosimilar products in the following way: (1) Two of the six conditions have the baseline + statement A; (2) two of the six conditions have the baseline + statement A + statement B; and (3) two of the six conditions have the baseline + statement A + statement B + statement C. Moreover, three of the six disclosure conditions will name the specific reference product while the other three will refer to a reference product generally (for example, ''This biosimilar is a biological product that is highly similar to and has no clinically meaningful differences from an existing FDA-approved reference product''). The wording of the disclosure will be tailored to the audience; for example, the disclosures for the consumer audience will avoid technical terms. A control condition will also be included in which no biosimilar statement or additional information disclosure is presented.

The pretest and main studies for Phase 2 will have the same design, will be conducted online, and will follow the same procedure. Both phases will be conducted concurrently. Sample sizes were determined on the basis of power analysis that will allow us to detect medium effect sizes.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Phase 1 Pretest screener (HCPs)	432	1	432	.08 (5 minutes)	35
Phase 1 Pretest screener (consumers)	432	1	432	.08 (5 minutes)	35
Phase 1 Pretest completes (HCPs)	238	1	238	.33 (20 minutes)	79
Phase 1 Pretest completes (consumers)	238	1	238	.33 (20 minutes)	79
Phase 2 Pretest screener (HCPs)	112	1	112	.08 (5 minutes)	9
Phase 2 Pretest screener (consumers)	112	1	112	.08 (5 minutes)	9
Phase 2 Pretest completes (HCPs)	62	1	62	.33 (20 minutes)	21
Phase 2 Pretest completes (consumers)	62	1	62	.33 (20 minutes)	21
Phase 1 screener (HCPs)	720	1	720	.08 (5 minutes)	58
Phase 1 screener (consumers)	720	1	720	.08 (5 minutes)	58
Phase 1 completes (HCPs)	396	1	396	.33 (20 minutes)	131
Phase 1 completes (consumers)	396	1	396	.33 (20 minutes)	131
Phase 2 screener (HCPs)	1,040	1	1,040	.08 (5 minutes)	83
Phase 2 screener (consumers)	1,040	1	1,040	.08 (5 minutes)	83
Phase 2 completes (HCPs)	572	1	572	.33 (20 minutes)	189
Phase 2 completes (consumers)	572	1	572	.33 (20 minutes)	189
Total	7,144		7,144		1,210

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

References

The following references are on display with the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at *https://www.regulations.gov* as these references are copyright protected. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Andrews, J.C. (2011). ''Warnings and Disclosures.'' In *Communicating Risks and Benefits: An Evidence-Based User's Guide.* Fischhoff, B., N.T. Brewer, and J.S. Downs, (Eds). FDA: Silver Spring, MD, pp. 149–161.
2. Russo France, K. and P. Fitzgerald Bone (2005). ''Policy Makers' Paradigms and Evidence from Consumer Interpretations of Dietary Supplement Labels.'' *Journal of Consumer Affairs,* 39(1), 27–51.
3. Mason, M.J. and D.L. Scammon (2011). ''Unintended Consequences of Health Supplement Information Regulations: The Importance of Recognizing Consumer Motivations.'' *Journal of Consumer Affairs,* 45(2), 201–223.
4. Betts, K.R., K.J. Aikin, V. Boudewyns, M. Johnson, et al. (2017). ''Physician Response to Contextualized Price-Comparison Claims in Prescription Drug Advertising.'' *Journal of Communication in Healthcare,* 10(3), 195–204.
5. Betts, K.R., V. Boudewyns, K.J. Aikin, C. Squire, et al. (2018). ''Serious and Actionable Risks, Plus Disclosure: Investigating an Alternative Approach for Presenting Risk Information in Prescription Drug Television Advertisements.'' *Research in Social and Administrative Pharmacy,* 14(10), 951–963.
6. Sullivan, H.W., A.C. O'Donoghue, K.T. David, and N.J. Patel (2018). ''Disclosing Accelerated Approval on Direct-To-Consumer Prescription Drug websites.'' *Pharmacoepidemiology and Drug Safety,* 27(11), 1277–1280.

Dated: June 30, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14514 Filed 7–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1538]

Prescription Drug User Fee Act; Stakeholder Consultation Meetings on the Prescription Drug User Fee Act Reauthorization; Request for Notification of Stakeholder Intention to Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing this notice to request that public stakeholders—including patient and consumer advocacy groups, healthcare professionals, and scientific and academic experts—notify FDA of their intent to participate in periodic consultation meetings on the reauthorization of the Prescription Drug User Fee Act (PDUFA). The statutory authority for PDUFA expires in September 2022. At that time, new legislation will be required for FDA to continue collecting user fees for the prescription drug program. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that FDA consult with a range of stakeholders in developing recommendations for the next PDUFA program. The FD&C Act also requires that FDA hold discussions (at least every month) with patient and consumer advocacy groups during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure continuity and progress in these monthly discussions by establishing consistent stakeholder representation.

DATES: Submit notification of intention to participate in these series of meetings by August 17, 2020. Stakeholder meetings will be held monthly. It is anticipated that they will commence in September 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The meetings will take place virtually and will be held by webcast only. Submit notification of intention to participate in monthly stakeholder meetings by email to *PDUFAReauthorization@fda.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 301–796–5003, *Graham.Thompson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is requesting that public stakeholders—including patient and consumer advocacy groups, healthcare professionals, and scientific and academic experts—notify the Agency of their intent to participate in periodic stakeholder consultation meetings on the reauthorization of PDUFA. PDUFA authorizes FDA to collect user fees from the regulated industry for the process for the review of human drugs. The authorization for the current program (PDUFA VI) expires in September 2022. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the human drug review process.

Section 736B(f)(1) of the FD&C Act (21 U.S.C. 379h–2(f)(1)) requires that FDA consult with a range of stakeholders, including representatives from patient and consumer groups, healthcare professionals, and scientific and academic experts, in developing recommendations for the next PDUFA program. FDA will initiate the reauthorization process by holding a public meeting on July 23, 2020, where stakeholders and other members of the public will be given an opportunity to present their views on the reauthorization. The FD&C Act further requires that FDA continue meeting with these stakeholders at least once every month during negotiations with the regulated industry to continue discussions of stakeholder views on the reauthorization. It is anticipated that these monthly stakeholder consultation meetings will commence in September 2020.

FDA is issuing this **Federal Register** notice to request that stakeholder representatives from patient and consumer groups, healthcare professional associations, as well as scientific and academic experts, notify FDA of their intent to participate in the periodic stakeholder consultation meetings on PDUFA reauthorization. FDA believes that consistent stakeholder representation at these meetings will be important to ensure progress in these discussions. If you wish to participate in the stakeholder consultation meetings, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions. Stakeholders who identify themselves through this notice will be included in all stakeholder consultation discussions while FDA

negotiates with the regulated industry. If a stakeholder decides to participate in these monthly meetings at a later time, that stakeholder may join the remaining monthly stakeholder consultation meetings after notifying FDA of this intention (see **ADDRESSES**). These stakeholder discussions will satisfy the consultation requirement in section 736B(f)(3) of the FD&C Act.

II. Notification of Intent To Participate in Periodic Stakeholder Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding PDUFA reauthorization, please provide notification by email to *PDUFAReauthorization@fda.hhs.gov* by August 17, 2020. Your email should contain complete contact information, including name, title, affiliation, address, email address, phone number, and notice of any special accommodations required because of disability. Stakeholders will receive confirmation and additional information about the first meeting after FDA receives this notification.

Dated: July 1. 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14585 Filed 7–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5973]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Health Care Providers' Understanding of Opioid Analgesic Abuse Deterrent Formulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Fax written comments on the collection of information by August 6, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Health Care Providers' Understanding of Opioid Analgesic Abuse Deterrent Formulations.'' Also include the FDA docket number found in brackets in the heading of this document.

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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Health Care Providers' Understanding of Opioid Analgesic Abuse Deterrent Formulations

OMB Control Number 0910–NEW

I. Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

Prescription opioids play a significant role in the opioid misuse and abuse epidemic in the United States. Opioid analgesics with properties designed to deter abuse, commonly known as abuse deterrent formulations (ADFs), may play a role in helping to curb this epidemic. Currently available ADFs have been demonstrated to deter some forms of abuse (injection, snorting, or, in some cases, chewing and swallowing). FDA's own research and other evidence suggests considerable variability in health care providers' (HCPs) knowledge of and attitudes toward prescription opioid products and practices (Ref. 1), including understanding of ADFs. ADF prescription practices may present opportunities for HCPs to reduce opioid abuse. Conducting a comprehensive evaluation of opioid prescribers' knowledge, attitudes, perceptions, experiences, and behaviors related to ADFs will help to inform FDA's approaches to ADFs.

Given the significance and far-reaching nature of the opioid crisis, along with FDA concerns about potential misunderstanding among HCPs about ADF terminology and capabilities, FDA determined that systematic research was necessary to provide the detailed and comprehensive evidence on which to base the Agency's ADF-related policy, regulatory, and communication decisions, including potential alternative language that may be necessary to describe and explain these products. This work aligns with Priority 1 of the FDA's Strategic Policy Roadmap (*https://www.fda.gov/about-fda/reports/healthy-innovation-safer-families-fdas-2018-strategic-policy-roadmap*), and the Department of Health and Human Services (HHS) and the Administration have similarly placed high priorities on addressing the epidemic of misuse and abuse of opioid drugs harming U.S. families.

The study's purpose is to explore and assess the ADF-related knowledge, attitudes, and behaviors among opioid prescribers (physicians, nurse practitioners and physician assistants) and dispensers/pharmacists, including the related terms addiction and abuse deterrence, and to explore possible alternative language for describing these products. Phase 1 consisted of focus groups (OMB approval under control number 0910–0695). The research described in this notice represents Phases 2 and 3 of the overall project.

Phase 2 will consist of a survey based on the Phase 1 focus group findings related to: (1) Health care provider understanding of addiction, abuse, and abuse deterrent formulations; (2) attitudes toward, perceptions about, and experiences with abuse-deterrent opioid analgesics and abuse deterrence, including prescribing decisions and practices, potential barriers to using ADFs, the quality and understandability of the ADF nomenclature, and the underlying reasons for these perceptions; and (3) HCPs' ideas for minimizing confusion about ADFs, the kinds of ADF training needed, and suggested language/terms they believe would best convey the concept of abuse deterrence to HCPs. The objective of the survey will be to determine the prevalence of HCP knowledge, attitudes, behaviors, and perceptions identified through the qualitative discussion occurring in the Phase 1 focus groups and to uncover any subgroup differences among opioid prescribers and dispensers. We will conduct one pretest, averaging not longer than 20 minutes, to pilot the main survey

procedures among the target HCP populations. The main survey will also average 20 minutes.

Phase 3 will build on findings from the Phase 1 focus groups and Phase 2 survey and will consist of an experimental study examining variations in descriptive terminology for abuse deterrent formulation products. We will conduct two pretests, each averaging not longer than 20 minutes, to test the experimental manipulations and pilot the main study procedures. The main study procedure will also average 20 minutes in length. Participants will be randomly assigned to read a description of abuse deterrent formulation opioids that contains one of four terms that could be used to refer to these products (ADF will function as the control term) and then complete a questionnaire that assesses their comprehension and perceptions of the information, including terminology, as well as their attitudes, behavioral intentions, and experience related to these types of opioid products.

For all phases of this research, we will recruit adult health care professional volunteers 18 years of age or older. We will exclude individuals who work for HHS or work in the health care, marketing, or pharmaceutical industries. The sample will consist of 10 percent pharmacists, at least half of whom dispense ADF opioids. The other 90 percent will be prescribers who, at the time they are recruited, spend at least 50 percent of their time seeing patients and who have prescribed opioids to at least five different patients in the last 30 days, with at least half of the opioids they prescribe being for chronic non-cancer pain. The prescriber sample will be segmented to include 70 percent primary care providers (*i.e.,* those practicing in family practice, or internal or general medicine) and 30 percent a mix of specialists practicing in a variety of fields such as rheumatology, neurology, anesthesiology, pain management, emergency medicine, surgery, orthopedics, and physical medicine and rehabilitation. In each of these groups, 60 to 70 percent will consist of physicians, 15 percent nurse practitioners, and 15 percent physician assistants. A minimum of 30 percent must have experience prescribing an ADF opioid.

We will use soft quotas to ensure that our sample includes a diversity of participants, including related to age, race/ethnicity, gender, years and location of practice, and opioid prescribing levels. We will also exclude pretest participants from the main studies, and participants will not be able to participate in more than one phase of the project. With the sample sizes described below, we will have sufficient power to detect primarily small-sized effects for Phases 2 and 3.

In the **Federal Register** of February 5, 2020 (85 FR 6562), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received three submissions that were PRA-related. Within those submissions, FDA received multiple comments, which the Agency has addressed below.

(Comment 1) I believe Phase 2 should include more pharmacists than 10 percent ratio.

(Response 1) We have carefully planned the sample for the study to ensure sufficient numbers of prescribers, including primary care providers and several types of specialists (including neurologists, pain management specialists, rheumatologists, neurologists, surgeons, orthopedists, physical medicine and rehabilitation specialists), physician assistants and nurse practitioners, as well as including a group of pharmacists for analysis. Expanding the sample further is beyond the scope of what we have planned for the project. Our power analysis suggests we will have sufficient power to ensure comparisons between groups in the sample. In addition, in the earlier focus group phase, pharmacists said they rarely talk with patients about ADFs and never talk with health care professionals about them, suggesting the feedback we would receive from them would likely be limited.

(Comment 2) Practitioners chosen should be based on greater prescribing habits. Those practitioners who are the larger rate of treating chronic non-cancer pain with ADF opioid should be the target of information gathering.

(Response 2) One of our screening criteria is that at least half of a provider's prescriptions must be for chronic, non-cancer pain. We plan to include approximately equal numbers of low, medium, and high prescribers across each prescriber type and field of practice so that comparisons can be made between groups. In addition, in the earlier focus group phase, current prescribers of ADFs were already aware of and had significant knowledge about ADFs, so their feedback likely would not provide the kind of insight needed about the misunderstanding and confusion we previously observed among other prescribers.

(Comment 3) We support FDA's decision to conduct a comprehensive evaluation of opioid prescribers' knowledge, attitudes, perceptions, experiences, and behaviors related to ADFs and agree with the FDA that new language is needed to better describe and explain ADFs.

(Response 3) Thank you for this comment.

(Comment 4) We strongly encourage testing the impact of terminology that more accurately describes the product's abuse-deterrent properties. For example, if a pill is formulated to be difficult to crush, it should be labeled ''crush-resistant.''

(Response 4) The survey, in part, will provide HCPs an opportunity to propose terms they think best describe these opioids and will test both objectively and subjectively numerous alternative terms that were commonly cited as appropriate by HCP participants in the earlier focus group phase of this study. This includes terms that relate to physical manipulation such as ''alteration-resistant opioids'' and ''tamper-resistant opioids.''

(Comment 5) We support FDA's efforts to ensure the diversity of the sample populations for the three proposed studies. It is important to study health care providers with varying opioid prescribing levels, and years and locations of practice. We particularly commend the efforts to additionally account for diverse ages, ethnicities, and gender of the health care providers, as all of these factors can affect knowledge, attitudes, and the patients they serve.

(Response 5) Thank you for this comment.

(Comment 6) The proposed study plans to include a wide range of health care providers, including primary care providers; specialists from various fields such as rheumatology, neurology, anesthesiology, pain management, emergency medicine, surgery, orthopedics, and physical medicine and rehabilitation; nurse practitioners; physician assistants; as well as dispensers/pharmacists. However, there is clear evidence that dentists, periodontists, and oral surgeons should also be included, since research has shown that they often overprescribe opioids.

(Response 6) While the reviewers raises an important consideration, the inclusion of dentists and oral surgeons is beyond the scope of the current study. Dentists do not typically prescribe for long-term pain and are therefore less likely to prescribe an abuse-deterrent formulation opioid or ADF, which is the main focus of this study. For a similar reason, based on what we heard in the earlier focus group phase of this study, we chose to exclude emergency medicine physicians from the sample survey populations.

(Comment 7) The proposed study should explore providers' knowledge of

how ADF opioids are used and abused once they are on the market. Opioids considered to be abuse-deterrent are still widely abused through the most common oral route.

(Response 7) Our survey questions will include items about provider knowledge of ADFs, including specific questions to test whether they are aware that ADFs can still be abused, as well as related to their experiences with use, misuse, and abuse of opioids.

(Comment 8) We applaud the effort to gather information about HCPs' understanding of these products. This effort is consistent with the Agency's history of extensive and diverse efforts to balance the needs of people seeking relief from severe acute and chronic pain and the simultaneous need to avoid worsening of the abuse, addiction, and diversion of opioid medications in these times of the opioid overdose epidemic.

(Response 8) Thank you for this comment.

(Comment 9) We believe that the proposed sample design adequately accounts for current ADF product prescribers for chronic non-cancer pain. It is not clear, however, whether the proposed sample design would adequately capture the second relevant population, *i.e.* appropriate potential prescribers of ADF products for chronic non-cancer pain. Commenter recommends that FDA focus on those HCPs who specialize in chronic non-cancer pain management, because these relatively few HCPs manage a disproportionate volume of patients with chronic non-cancer pain and, therefore, manage a disproportionate volume of current and appropriate potential prescriptions of ADF products for chronic non-cancer pain.

Suggestions:

- The proposed threshold of 5 patients treated with opioids for chronic non-cancer pain in a typical month is too low. A low threshold does not ensure that pain specialists will be included, and evidence has shown that the treatment of chronic non-cancer pain with opioids has consolidated under such pain specialists in recent years.
- Study should focus on HCPs who specialize in chronic non-cancer pain management. This small subset of HCPs manage a disproportionate volume of patients with chronic non-cancer pain, and therefore, they manage a disproportionate volume of current and appropriate potential ADF prescriptions.
- Study can capture both intended populations (current and ''appropriate potential'' prescribers) by recruiting only pain specialists and imposing a threshold for experience prescribing ADF products.

(Response 9) Pain management is one of the specialties included on our recruitment screener (in addition to rheumatology, neurology, anesthesiology, surgery, orthopedics, and physical medicine and rehabilitation). Our screening criteria will ensure an approximately equal number of low, medium, and high-volume prescribers across each provider group. We also have included a requirement that at least 50 percent of prescriptions must be for chronic, non-cancer pain. A key objective of this study is to gain insight into misunderstandings about ADF opioids and the terminology and how to best address the confusion and misunderstandings that we found in the earlier focus group phase of the study as well as in prior research FDA conducted. These data indicated pain management specialists already tend to have considerable knowledge about and experience with ADFs, suggesting their feedback would likely be of limited usefulness with respect to the study's key objectives. This is similarly the case for ADF prescribers, which is the reason the study populations were purposely inclusive of a broad cross-section of opioid prescribers.

(Comment 10) Include a screening question with a list of ADF products to account for respondents' lack of knowledge about which products are and are not ADF.

(Response 10) Thank you for the suggestion. Our recruitment screener includes such a question, which asks respondents to identify which of 17 different listed opioids they have prescribed, including six abuse-deterrent formulations that will not be identified as such. The survey questionnaire itself also asks prescribers to specifically cite in an open-ended question the ADF opioids they have prescribed, which will be used, in part, to asses ADF knowledge.

(Comment 11) Set quotas to ensure recruitment of representative sample sizes for both non-specialists and pain specialists.

(Response 11) Early in the protocol development we identified the need for samples of prescribers working in primary care fields and among those in specific specialties, which research has shown generally prescribe the most opioids overall, and the sample populations included in the study will reflect this necessary diversity.

(Comment 12) Lower Ns for Phase 2 and 3 to ensure timely completion. In the company's experience, a survey of 200 HCPs takes 5 weeks to complete.

(Response 12) We identified current sample sizes based on power calculations. Any reduction in sample size would reduce our power to find effects. We have planned a timeline for the project to complete both phases 2 and 3 based experience collecting data using these methods but will be adjusting as necessary given the COVID–19 pandemic and any other unforeseen factors. This project is an FDA priority, and we will prioritize rigorous methodology that ensures representativeness and robust data and evidence even if it means taking a little more time.

(Comment 13) Implement appropriate honoraria to ensure feasibility and timely results.

(Response 13) The financial incentive rates were based on going rates for incentives in provider panel surveys and on recent research on incentives for physician surveys. These will also comport with those allowable by OMB. In addition, our experience has shown that the topic of this study—opioids and the national crisis—and the fact that the research is being undertaken by FDA, the Federal agency responsible for regulating these products, are additional incentives for participation.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1 2 4]

Activity	Number of respondents [3]	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Phase 2:					
Pretest screener	470	1	470	0.17 (10 minutes)	79.90

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1 2 4]—Continued

Activity	Number of respondents [3]	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest	235	1	235	0.33 (20 minutes)	77.55
Survey screener	2,120	1	2,120	0.17 (10 minutes)	360.40
Survey	1,060	1	1,060	0.33 (20 minutes)	349.80
Phase 3:					
Pretests screener	732	1	732	0.17 (10 minutes)	124.44
Pretests	366	1	366	0.33 (20 minutes)	120.78
Main study screener.	2,120	1	2,120	0.17 (10 minutes)	360.40
Main study	1,060	1	1,060	0.33 (20 minutes)	349.80
Total					1,823.07

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Includes total burden for project phases 2 and 3.
[3] Includes 10 percent overage.
[4] With online surveys, several participants may be in the process of completing the survey at the time that the total target sample is reached. Those participants will be allowed to complete the survey, which can result in the number of valid completes exceeding the target number. With this in mind, we have included an additional 10 percent over our target number of valid completes to account for some overage.

II. Reference

The following reference is on display with the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is not available electronically at *https://www.regulations.gov* as this reference is copyright protected.

1. Hwang, C.S., L.W. Turner, S.P. Kruszewski, et al. ''Primary Care Physicians' Knowledge and Attitudes Regarding Prescription Opioid Abuse and Diversion.'' *The Clinical Journal of Pain, 32*(4), 279–284, 2016.

Dated: June 30, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14516 Filed 7–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Sickle Cell Disease Treatment Demonstration Regional Collaborative Program, OMB No. 0906–xxxx—New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than August 6, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: *Information Collection Request Title:* Sickle Cell Disease Treatment Demonstration Regional Collaborative Program, OMB No. 0906–xxxx—New.

Abstract: The Sickle Cell Disease Treatment Demonstration Regional Collaborative Program (SCDTDRCP) was reauthorized by the Sickle Cell Disease and Other Heritable Blood Disorders Research, Surveillance, Prevention, and Treatment Act of 2018 (Pub. L. 115–327), which added section 1106 of the Public Health Service Act, 42 U.S.C. 300b–5. The purpose of the proposed Quality Improvement (QI) and Performance Measures (N) data collection is to evaluate the effectiveness of the SCDTDRCP and how the program can improve the coordination of service delivery for individuals with sickle cell disease (SCD), train health professionals to increase access to quality care and collaborate with various stakeholders to optimize health outcomes for individuals with SCD. The goals of the SCDTDRCP are to improve health outcomes in individuals with SCD; reduce morbidity and mortality caused by SCD; reduce the number of individuals with SCD receiving care only in emergency departments; and improve the quality of coordinated and comprehensive services to individuals with SCD and their families. The program funds five grantees to establish regional networks to provide leadership and support for regional and statewide activities in SCD. The grantees develop and establish systemic mechanisms to improve the treatment of SCD, by: (1) Increasing the number of providers treating individuals with SCD using the National Heart, Lung and Blood

Institute Evidence-Based Management of SCD Expert Panel Report; (2) using tele-mentoring, telemedicine and other provider support strategies to increase the number of providers administering evidence-based sickle cell care; and (3) developing and implementing strategies to improve access to quality care with emphasis on individual and family engagement/partnership, adolescent transitions to adult life, and care in a medical home. Per the statutory requirement, the data collected will be used to evaluate the program and will be published in a report to Congress.

A 60-day notice published in the **Federal Register** on January 23, 2020, vol. 85, No. 15; pp. 3935–37. There were no public comments.

Need and Proposed Use of the Information: The purpose of the proposed QI and PM data collection is to evaluate the effectiveness of the SCDTDRCP and how the program can improve the coordination of service delivery for individuals with sickle cell disease, train health professionals to increase access to quality care and collaborate with various stakeholders to optimize health outcomes for individuals with sickle cell disease. Pursuant to 42 U.S.C. 300b–5(b)(3)(B), the National Coordinating Center (NCC) will work with the grantees to gather data and prepare a Report to Congress at the conclusion of the program.

Quality Improvement

All five SCDTDRCP grantees are required to conduct QI initiatives to improve quality of SCD treatment and access to care. Each grantee also works with and supports local sites (*i.e.,* university, medical center, etc.) that provide SCD care within their region to implement QI initiatives. All the grantees and local sites are required to implement initiatives to increase the hydroxyurea use and conduct one or more additional QI initiatives on the following topics: pneumococcal vaccinations, Transcranial Doppler screening, and transition planning. The grantees and local sites will collect data on a quarterly basis on applicable measures depending on which QI initiatives they are undertaking. The data will be extracted from patients' charts either via chart reviews or electronic health records. The local sites will send their data to the grantees using an excel spreadsheet or by entering data into a database form of their choice developed by the grantee. The grantees will aggregate their own data and the data received from the local sites and submit the aggregate data to the NCC.

Performance Measures

In order to understand SCD care provided and the reach of the SCDTDRCP activities across regions, seven PM have been established (*e.g.* number of SCD patients seen by a provider in the past year). The five SCDTDRCP grantees will send a survey once a year to providers they work with within their region who provide care to SCD patients to collect PM data. Once the providers complete the survey, the grantees will aggregate the individual responses and submit the PM data to the NCC.

Likely Respondents: For QI data, the five SCDTDRCP grantees and local sites that provide SCD care that the grantees work with. For PM data, the five SCDTDRCP grantees and providers the grantees work with within their region who provide care to SCD patients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the tables below:

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent per year	Total responses per year	Average burden per response (hrs/yr)	Total burden hours per year
SCDTDRCP					
Quality Improvement Measures*	55	4	220	13	2,860
SCDTDRCP Performance Measures	305	1	305	1	305
Total	360		525		3,165

* Note: Total burden hours per year shown represents the maximum number of estimated hours. Actual hours may be lower since many of the respondents may not be collecting data all QI initiatives.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–14612 Filed 7–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID–19 Hoarding Prevention Measures; Change in Information Contact, Removal of Chloroquine Phosphate and Hydroxychloroquine HCl; Correction

AGENCY: Office of the Secretary (OS), DHHS.

ACTION: Notice; correction.

SUMMARY: This document updates the March 30, 2020, **Federal Register** Notice entitled ''Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID–19 Hoarding Prevention Measures,'' by replacing the named contact and updating the ''Notice of Designation of Scarce Materials or Threatened Materials'' section.

FOR FURTHER INFORMATION CONTACT: Paige Ezernack, Office of the Assistant Secretary for Preparedness and Response, Office of Strategy, Policy, Planning, and Requirements, Suite

5440—O'Neill House Office Building, 200 C Street SW, Washington, DC 20201, (202) 260–0365.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2020–06641 of March 30, 2020 (85 FR 17592–17593), the contact for more information is now *aspr.dpa@hhs.gov.* Chloroquine phosphate and hydroxychloroquine HCl are no longer listed as scarce or threatened materials following the withdrawal of the FDA emergency use authorizations for these drugs on June 15, 2020.

II. Correction of Errors

In FR Doc. 2020–06641 of March 30, 2020 (85 FR 17592–17593), make the following corrections:

On page 17592, first full column, in FR Doc. 2020–06641, Further Information section, change Bryan Shuy: 202–703–8610; *bryan.shuy@hhs.gov (mail to: Bryan.Shuy@hhs.gov)* to the ASPR DPA Office: 202–838–3420; *aspr.dpa@hhs.gov.*

On page 17593, first column, in FR Doc. 2020–06641, Notice of Designation of Scarce Materials or Threatened Materials, remove ''Drug product with active ingredient chloroquine phosphate or hydroxychloroquine HCl.''

Dated: June 30, 2020.

Wilma Robinson,

Deputy Executive Secretary, Department of Health and Human Services.

[FR Doc. 2020–14525 Filed 7–6–20; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Training Programs for Institutions that Promote Diversity (T32).

Date: August 5, 2020.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Zhihong Shan, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, 301–827–7985, *zhihong.shan@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze: Enabling Technologies.

Date: August 6, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Stimulating Access to Research in Residency (StARR).

Date: August 21, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 827–7953, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Bench to Bassinet Coordinating Center.

Date: August 21, 2020.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–Q, Bethesda, MD 20892–7924, (301) 827–7913, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 30, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14478 Filed 7–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

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 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 Cancer Institute Special Emphasis Panel; Tools to Address COVID–19 Pandemic.

Date: July 27, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20850, 240–276–5856, *nadeem.khan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 30, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14480 Filed 7–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of 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 Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 10, 2020.

Closed: 12:00 p.m. to 12:50 p.m.

Agenda: To review and evaluate grant applications.

Open: 1:00 p.m. to 4:30 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Advisory Council, Director, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 1458, MSC 6902, Bethesda, MD 20892, 301–443–9737, *bautista@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: June 30, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14479 Filed 7–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0313]

National Maritime Security Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee teleconference meeting.

SUMMARY: The National Maritime Security Advisory Committee (Committee) will meet via teleconference, to review and discuss the Coast Guard's efforts to develop the Maritime Cyber Risk Analysis Model and updates to the Navigation and Vessel Inspection Circular 03–03. This teleconference will be open to the public.

DATES:

Meeting: The Committee will meet by teleconference on Wednesday, July 29, 2020 from 1:00 p.m. until 3:00 p.m. This teleconference may close early if all business is finished.

Comments and supporting documentation: To ensure your comments are received by Committee members before the teleconference, submit your written comments no later than July 15, 2020.

ADDRESSES: The teleconference will be broadcasted via a web enabled interactive online format and teleconference line. To participate via teleconference, dial 1–202–475–4000; the pass code to join is 812 197 73#. Additionally, if you would like to participate in this teleconference via the online web format, please log onto *https://share.dhs.gov/nmsac/* and follow the online instructions to register for this meeting. If you encounter technical difficulties, contact Mr. Ryan Owens at (202)302–6565.

For information on services for individuals with disabilities, or to request special assistance, contact the individual listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the teleconference as time permits, but if you want Committee members to review your comment before the teleconference, please submit your comments no later than July 15, 2020. We are particularly interested in comments on the issues in the ''Agenda'' section below. We encouraged you to submit comments through Federal eRulemaking Portal at *https://regulations.gov.* If your material cannot be submitted using *https://regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2020–0313]. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided. For more about privacy submissions in response to this document, see DHS's eRulemaking System Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Officer of the National Maritime Security Advisory Committee, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593, Stop 7581, Washington, DC 20593–7581; telephone 202–372–1108 or email *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (5 U. S. C., Appendix 2). The National Maritime Security Advisory Committee operates under Section 70112 of the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295, November 25, 2002, as codified in 46

U.S.C. Chapter 701, 46 U.S.C. 70101 *et seq.*). This Committee will advise the Secretary of the Department of Homeland Security, via the Commandant of the U.S. Coast Guard, on matters relating to national maritime security, including on enhancing the sharing of information related to cybersecurity risks that may cause a transportation security incident, between relevant Federal agencies and State, local, and tribal governments; relevant public safety and emergency response agencies; relevant law enforcement and security organizations; maritime industry; port owners and operators; and terminal owners and operators

Agenda

(1) Call to Order.

(2) Opening Remarks.

(3) Maritime Cybersecurity Risk Analysis Model.

The Coast Guard is working on the Maritime Cyber Risk Analysis Model. As per the section 601 of the Frank LoBiondo Coast Guard Authorization Act of 2018 (CGAA18), Public Law 115–282, 132 Stat. 4192, the Committee will be tasked with reviewing the work to date and assisting the Coast Guard in further development of the model.

(4) Navigation and Vessel Inspection Circular Number 03–03, Change 3.

The Coast Guard is in the process of updating to Navigation and Vessel Inspection Circular Number 03–03, Change 2, *Implementation Guidance for the Regulations Mandated by the Maritime Transportation Security Act of 2002 (MTSA) for Facilities*. Change 3 will provide further clarity and guidance for the implementation of the maritime security regulations mandated by the MTSA as amended by the CGAA18 and the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347; 120 Stat. 1884).

(5) Public comment period.

(6) Closing Remarks.

(7) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/NMSAC* by July 15, 2020. Alternatively, you may contact Mr. Ryan Owens as noted in the **FOR FURTHER INFORMATION** section above.

There will be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes and keep their remarks to the topic of the Maritime Cyber Risk Analysis Model. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: June 24, 2020.

Wayne Arguin,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2020–14571 Filed 7–6–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 218.65 acres, more or less, an addition to the reservation of the Shakopee Mdewakanton Sioux Community on June 10, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NE, Box #44, Albuquerque, New Mexico 87111, 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.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. The land was proclaimed to be the Shakopee Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota, Scott County, and State of Minnesota.

Shakopee Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

1 Parcel

Fifth Principal Meridian, Scott County, Minnesota

Legal Descriptions Containing 218.65 Acres, More or Less

Inyan Ceyaka Otonwe (ICO) Parcel, 411 T 1027

Parcel ID Numbers: 25–204–0011, 25–904–0160, 25–904–0170, 25–904–0180, 25–904–0190, 25–905–0170, 25–905–0180, 25–905–0190, 25–905–0200, 25–932–0160, 25–932–0170, 25–932–0171, 25–932–0172, 25–932–0173, 25–933–0010, 25–933–0011, 25–933–0012, 25–933–0013, 25–933–0015, 25–933–0016, 25–933–0020, 25–933–0030, 25–933–0060, 25–933–0061, 25–933–0062.

HECKER Parcel 1

That part of Government Lot 3, Section 32, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota, which lies southerly of Registered Land Survey No. 153, and easterly of the Plat of Howard Lake Estates, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

AND

That part of Lot 1, Block 1, Howard Lake Estates, described as commencing at the Northeast corner of said Lot 1; thence on an assumed bearing of South 3 degrees 38 minutes 22 seconds West, along the east line of said Lot 1, a distance of 115.97 feet to the actual point of beginning of the land to be described; thence South 26 degrees 02 minutes 55 seconds West a distance of 75.05 feet; thence South 56 degrees 08 minutes 26 seconds East a distance of 33.11 feet to the east line of said Lot 1; thence North 3 degrees 38 minutes 22 seconds East, along the east line of said Lot 1, a distance of 86.05 feet to the actual point of beginning, according to the recorded plat thereof, and situate in Scott County, Minnesota.

Being registered land as is evidenced by Certificate of Title No. 43938.

HECKER Parcel 2

That part of Government Lot 4, Section 32, Township 115 North, Range 22 West of the 5th P.M., Scott County, Minnesota and that part of Government Lot 1 Section 5, Township 114 North, Range 22 West of the 5th P.M., Scott County, Minnesota, lying Northerly and Westerly of the following described line: Beginning at a point on the East line of said Government Lot 4, distant 323.60 feet South of the Northeast corner of said Lot 4, thence deflecting to the right (as measured south to west) at an angle of 98 degrees 44 minutes 00 seconds, a distance of 380.43 feet; thence in a southwesterly direction a distance of 2347.11 feet to a point on the westerly extension of the South line of said Government Lot 1, distance 544.40 feet west of the Southeast corner thereof and there terminating, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Abstract Property.

AND

SAKUMA Parcel 1

The North One-Half of the Southwest Quarter (N ½ of SW ¼) of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota, EXCEPT the following described tracts:

Tract 1: A tract on the West side of the Northwest Quarter of the Southwest Quarter, said tract to be 2 rods wide and 40 rods more or less in length beginning at the Northwest corner of said Southwest Quarter and running south along said west line of said Southwest Quarter until it intersects the Shakopee and Spring Lake Road, the same to be used for road purposes, all in Section 33, Township 115 North, Range 22 West of the fifth Principal Meridian, Scott County, Minnesota.

Tract 2: A tract of land in the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota, described as follows: Commencing at the Northwest corner of said Section 33; thence South along the West line of said Section 33, 2939.6 feet to the actual point of beginning, thence continuing South 401.4 feet to the north right of way of County Road 10; thence Southeasterly along said right of way 108.0 feet; thence Northeasterly at right angles to said County Road 10, 105.0 feet; thence Northwesterly parallel to said County Road 10, 492.4 feet to the actual point of beginning.

Tract 3: The North 26.66 rods (or 440 feet) of the North Half of the Southwest Quarter, Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota.

Tract 4: The East 33 rods of the South 53.34 rods of the Northeast Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota.

Abstract Property.

SAKUMA Parcel 2

All that part of the Southwest Quarter of the Southwest Quarter (SW¼ of SW¼) of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota, lying Northerly of County Road 81, as now located, except the East 180 feet thereof.

Abstract Property.

SAKUMA Parcel 3

The West Half of the Northwest Quarter of the Southeast Quarter EXCEPT the West Thirty-six (36) rods of the North 26.66 (or 440 feet) thereof; and the East 33 rods of the Northeast Quarter of the Southwest Quarter EXCEPT the North 26.66 rods (or 440 feet thereof); all in Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota. Together with a perpetual easement for ingress and egress for both pedestrian and vehicular travel, and for construction and maintenance of a roadway and of utility installations over and across the North 33 feet of the East Half of the Northwest Quarter of the Southeast Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota.

Abstract Property.

AND

MICKO Parcel

The Easterly 180 feet of that part of the SW¼ of the SW¼ of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota, according to the United States Government Survey thereof and situate in Scott County, Minnesota, lying Northerly of the center line of County Road No. 14 as now laid out.

Abstract Property.

AND

MENDEN2 Parcel A

That part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota, lying southwesterly of the public road (formerly County Road 81); and northwesterly of the following described line: Commencing at the northwest corner of said Southwest Quarter of the Southwest Quarter; thence South 01 degree 32 minutes 24 seconds East, assumed bearing, along the west line of said Southwest Quarter of the Southwest Quarter a distance of 323.60 feet to the point of beginning of the line to be described; thence North 43 degrees 24 minutes 42 seconds East to the north line of said Southwest Quarter of the Southwest Quarter and there terminating.

Abstract Property.

MENDEN2 Parcel B

That part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 11 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

Beginning at the southwest corner of said Southwest Quarter of the Southwest Quarter; thence North 89 degrees 12 minutes 12 seconds East (assumed bearing) along the south line of said Southwest Quarter of the Southwest Quarter a distance of 1135.15 feet to the west line of the east 198.00 feet of said Southwest Quarter of the Southwest Quarter; thence northerly along said west line of the east 198.00 feet a distance of 744 feet more of less to the centerline of County Road No. 81; thence northwesterly along said centerline to its intersection with a line drawn North 43 degrees 22 minutes 02 seconds East from the point of beginning; thence South 43 degrees 22 minutes 02 seconds West a distance of 1276.41 feet to the point of beginning.

Abstract Property.

MENDEN2 Parcel C

That part of the Northwest Quarter of the Northwest Quarter of Section 4, Township 114 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

Beginning at the northwest corner of the east 132.00 feet of said Northwest Quarter of the Northwest Quarter; thence southerly along the west line of said east 132.00 feet a distance of 66.00 feet to the south line of the north 66.00 feet of said Northwest Quarter of the Northwest Quarter; thence South 89 degrees 12 minutes 12 seconds West along said south line of the north 66.00 feet a distance of 476.74 feet; thence South 00 degrees 31 minutes 54 seconds East a distance of 320.00 feet; thence South 4 degrees 06 minutes 06 seconds West a distance of 913.98 feet to the south line of said Northwest Quarter of the Northwest Quarter; thence south 88 degrees 57 minutes 29 seconds West along said south line of the Northwest Quarter of the Northwest Quarter a distance of 230.69 feet to a point distant 913.29 feet west of the southeast corner of said Northwest Quarter of the Northwest Quarter; thence North 00 degrees 14 minutes 57 seconds West a distance of 913.06 feet; thence North 00 degrees 31 minutes 54 seconds West a distance of 384.61 feet to the north line of said Northwest Quarter of the Northwest Quarter; thence easterly along said north line a distance of 776.74 feet to the point of beginning. Together with that part of the west 66.00 feet of the east 198.00 feet of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota.

Abstract Property.

MENDEN2 Parcel E

That part of the Northwest Quarter of the Northwest Quarter of Section 4,

Township 114 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota and that part of Government Lot 1, Section 5, Township 114 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

Beginning at the northwest corner of the east 66.00 feet of said Government Lot 1; thence southerly along the west line of said east 66.00 feet to the south line of the north 66.00 feet of said Government Lot 1; thence easterly along said south line of the north 66.00 feet a distance of 66.00 feet to the east line of said Government Lot 1, the same being the west line of said Northwest Quarter of the Northwest Quarter; thence easterly along the south line of the north 66.00 feet of said Northwest Quarter of the Northwest Quarter a distance of 124.24 feet; thence southerly a distance of 1232.90 feet to a point on the south line of said Northwest Quarter of the Northwest Quarter distant 121.16 feet east of the southwest corner; thence North 88 degrees 57 minutes 29 seconds East along said south line a distance of 295.51 feet to a point distant 913.29 feet west of the southeast corner of said Northwest Quarter of the Northwest Quarter; thence North 00 degrees 14 minutes 57 seconds West a distance of 913.06 feet; thence North 00 degrees 31 minutes 54 seconds West a distance of 384.61 feet to the north line of said Northwest Quarter of the Northwest Quarter; thence westerly along said north line a distance of 424.41 feet to the northwest corner of said Northwest Quarter of the Northwest Quarter; thence westerly along the north line of said Government Lot 1, a distance of 66.00 feet to the point of beginning.

Together with that part of Government Lot 4, Section 32, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota and that part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

A strip of land 66.00 feet in width the west and northwesterly line of which is described as follows: Beginning at the southwest corner of the east 66.00 feet of said Government Lot 4; thence North 1 degree 32 minutes 24 seconds West along the west line of said east 66.00 feet a distance of 724.26 feet; thence North 43 degrees 24 minutes 42 seconds East a distance of 697.80 feet to the centerline of County Road No. 81 and there terminating. The side line of said tract shall be extended or shortened as required to provide a full 66.00 feet width from the south line of Government Lot 4 to and along the centerline of County Road No. 81.

Abstract Property.

MENDEN2 Parcel G

The land referred to is situated in the State of Minnesota, County of Scott, and is described as that part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

Beginning at the southwest corner of said Southwest Quarter of the Southwest Quarter; thence North 01 degrees 32 minutes 24 seconds West (assumed bearing) along the west line of said Southwest Quarter of the Southwest Quarter a distance of 696.79 feet; thence North 43 degrees 24 minutes 42 seconds East a distance of 679 feet more or less to the centerline of County Road No. 81; thence southeasterly along said centerline to its intersection with a line drawn North 43 degrees 22 minutes 02 seconds East from the point of beginning; thence South 43 degrees 22 minutes 02 seconds West a distance of 1276.41 feet to the point of beginning.

Abstract Property.

MENDEN2 Parcel H

That part of the Northwest Quarter of the Northwest Quarter of Section 4, Township 114 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota and that part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

Beginning at the southeast corner of said Northwest Quarter of the Northwest Quarter; thence South 88 degrees 57 minutes 29 seconds West along the south line of said Northwest Quarter of the Northwest Quarter a distance of 398.94 feet; thence North 00 degrees 16 minutes 39 seconds West a distance of 721.64 feet; thence North 35 degrees 58 minutes 57 seconds East a distance of 554.13 feet to the west line of the east 66.00 feet of said Northwest Quarter of the Northwest Quarter; thence northerly along said west line of the east 66.00 feet to the north line of said Northwest Quarter of the Northwest Quarter; thence northerly along the west line of the east 66.00 feet of said Southwest Quarter of the Southwest Quarter a distance of 612.25 feet to the centerline of County Road No. 81; thence southeasterly along said centerline to the east line of said Southwest Quarter of the Southwest Quarter; thence southerly along said east line to the southeast corner of said Southwest Quarter of the Southwest Quarter, the same being the northeast corner of said Northwest Quarter of the Northwest Quarter; thence southerly along the east line of said Northwest Quarter of the Northwest Quarter to the point of beginning.

Abstract Property.

MENDEN2 Parcel I

That part of Government Lot 1, Section 5, Township 114 North, Range 22 West of the Fifth Principal, Scott County, Minnesota and that part of the Northwest Quarter of the Northwest Quarter of Section 4, Township 114 North, Range 22 West of the Fifth Principal, Scott County, Minnesota described as follows:

Beginning at the northwest corner of the east 66.00 feet of said Government Lot 1; thence southerly along the west line of said east 66.00 feet to the south line of the north 66.00 feet of said Government Lot 1; thence easterly along said south line of the north 66.00 feet a distance of 66.00 feet to the east line of said Government Lot 1, the same being the west line of said Northwest Quarter of the Northwest Quarter; thence easterly along the south line of the north 66.00 feet of said Northwest Quarter of the Northwest Quarter a distance of 124.24 feet; thence southerly a distance of 1232.90 feet to a point on the south line of said Northwest Quarter of the Northwest Quarter distant 121.16 feet east of the southwest corner; thence westerly along said south line a distance of 121.16 feet to said southwest corner; thence South 88 degrees 24 minutes 26 seconds West along the south line of said Government Lot 1, a distance of 184.42 feet; thence North 00 degrees 31 minutes 54 seconds West a distance of 1233.15 feet to the south line of the north 66.00 feet of said Government Lot 1; thence easterly along said south line a distance of 49.34 feet to the west line of the east 132.00 feet of said Government Lot 1; thence northerly along the west line of said east 132.00 feet a distance of 66.00 feet to the north line of said Government Lot 1; thence easterly along the north line of said Government Lot 1, a distance of 66.00 feet to the point of beginning.

Together with that part of Government Lot 4, Section 32, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota and that part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows: A strip of land 66.00 feet in width the west and

northwesterly line of which is described as follows:

Beginning at the southwest corner of the east 132.00 feet of said Government Lot 4; thence North 1 degree 32 minutes 24 seconds West along the west line of said east 132.00 feet a distance of 751.74 feet; thence North 43 degrees 24 minutes 42 seconds East a distance of 717.22 feet to the centerline of County Road No. 81. The side line of said tract shall be extended or shortened as required to provide a full 66.00 feet width from the south line of Government Lot 4 to and along the centerline of County Road No. 81.

Abstract Property.

MENDEN2 Parcel J

That part of Government Lot 1, Section 5, Township 114 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota lying easterly of the following described line:

Beginning at a point on the east line of Government Lot 4, Section 32, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota, distant 323.60 feet southerly of the northeast corner of said Lot 4; thence deflecting to the right (as measured south to west) at an angle of 98 degrees 44 minutes 00 seconds a distance of 380.43 feet; thence in a southwesterly direction a distance of 2347.11 feet to a point on the westerly extension of the south line of said Government Lot 1, distant 544.40 feet west of the southeast corner thereof and there terminating. And westerly of the following described line: Commencing at the southeast corner of said Government Lot 1; thence South 88 degrees 24 minutes 26 seconds West along the south line of said Government Lot 1, a distance of 184.42 feet to the point of beginning of the line to be described thence North 00 degrees 31 minutes 54 seconds West a distance of 1233.15 feet to the south line of the north 66.00 feet of said Government Lot 1; thence easterly along said south line of the north 66.00 feet a distance of 49.34 feet to the west line of the east 132.00 feet of said Government Lot 1; thence northerly along the west line of said east 132.00 feet to the north line of said Government Lot 1, and there terminating.

Together with that part of Government Lot 4, Section 32, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota and that part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

A strip of land 66.00 feet in width the easterly and southeasterly line of which is described as follows: Beginning at the southwest corner of the east 132.00 feet of said Government Lot 4; thence North 01 degree 32 minutes 24 seconds West along the west line of said east 132.00 feet a distance of 751.74 feet; thence North 43 degrees 24 minutes 42 seconds East a distance of 717.22 feet to the centerline of County Road No. 81, and there terminating. The side line of said tract shall be extended or shortened as required to provide a full 66.00 feet width from the south line of Government Lot 4, to and along the centerline of County Road No. 81.

Abstract Property.

MENDEN2 Parcel K

The part of the Northwest Quarter of the Northwest Quarter of Section 4, Township 114 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

Commencing at the southeast corner of said Northwest Quarter of the Northwest Quarter; thence South 88 degrees 57 minutes 29 seconds West along the south line of said Northwest Quarter of the Northwest Quarter a distance of 398.94 feet to the point of beginning of the land to be described; thence North 00 degrees 16 minutes 39 seconds West a distance of 721.64 feet; thence North 35 degrees 58 minutes 57 seconds East a distance of 554.13 feet to the west line of the east 66.00 feet of said Northwest Quarter of the Northwest Quarter; thence northerly along said west line of the east 66.00 feet a distance of 129.99 feet to the north line of said Northwest Quarter of the Northwest Quarter; thence westerly along said north line a distance of 66.00 feet to the west line of the east 132.00 feet of said northwest Quarter of the Northwest Quarter; thence southerly along said west line of the east 132.00 feet a distance of 66.00 feet to the south line of the north 66.00 feet of said Northwest Quarter of the Northwest Quarter; thence South 89 degrees 12 minutes 12 seconds West along said south line of the north 66.00 feet a distance of 476.74 feet; thence South 00 degrees 31 minutes 54 seconds East a distance of 320.00 feet; thence South 4 degrees 06 minutes 06 seconds west a distance of 913.98 feet to the south line of said Northwest Quarter of the Northwest Quarter; thence North 88 degrees 57 minutes 29 seconds East along said south line a distance of 283.66 feet to the point of beginning. Together with that part of the west 66.00 feet of the east 132.00 feet of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota lying southerly of the centerline of County Road No. 81.

Abstract Property.

MENDEN2 Parcel L

That part of Government Lot 4, Section 32, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota lying south and east of the following described line:

Beginning at a point on the east line of said Government Lot 4, distant 323.60 feet southerly of the northeast corner of said Lot 4; thence deflecting to the right (as measured south to west) at an angle of 98 degrees 44 minutes 00 seconds a distance of 380.43 feet; thence in a southwesterly direction a distance of 234 7.11 feet to a point on the westerly extension of the south line of Government Lot 1, a distance of 544.40 feet west of the southeast corner thereof and there terminating, and westerly and northwesterly of the following described line: Beginning at the southwest corner of the east 198.00 feet of said Government Lot 4; thence North 01 degree 32 minutes 24 seconds West along the west line of said east 198.00 feet a distance of 779.22 feet; thence North 43 degrees 24 minutes 42 seconds East a distance of 280.25 feet to the east line of said Government Lot 4, and there terminating.

Together with: An easement for driveway purposes over and across that part of Government Lot 4, Section 32, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota and that part of the Southwest Quarter of the Southwest Quarter of Section 33, Township 115 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota described as follows:

A strip of land 60.00 feet in width, the centerline of which is described as follows: Commencing at the southwest corner of the east 198.00 feet of said Government Lot 4; thence North 1 degree 32 minutes 24 seconds West along the west line of said east 198.00 feet a distance of 775.00 feet; thence South 61 degrees 27 minutes 00 seconds West a distance of 10.00 feet to the point of beginning of the line to be described; thence North 61 degrees 27 minutes 00 seconds East a distance of 448.00 feet, thence North 51 degrees 27 minutes 00 seconds East a distance of 351 feet, more or less, to the centerline of County Road No. 81, and there terminating.

Abstract Property.

The above described lands contain a total of 218.65 acres, more or less, which are subject to all valid rights,

reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–14483 Filed 7–6–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 3.98 acres, more or less, an addition to the reservation of the Shakopee Mdewakanton Sioux Community on June 12, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road, NE, Box #44, Albuquerque, New Mexico 87111, 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.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 5110) for the lands described below. The land was proclaimed to be the Shakopee Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota, Scott County, and State of Minnesota.

Shakopee Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

1 Parcel

Fifth Principal Meridian, Scott County, Minnesota

Legal Descriptions Containing 3.98 Acres, More or Less

Whipps 2 Parcel, 411 T 1023

All that part of the Northeast Quarter of the Northwest Quarter of Section 22, Township 115 North, Range 22 West of the Fifth Principal Meridian, located in Scott County, Minnesota, described as follows:

Commencing at the Northeast corner of the Northeast Quarter of the Northwest Quarter of Section 22; thence South 01 degrees 08 minutes 57 seconds West, along the east line of said Northeast Quarter of the Northwest Quarter, a distance of 621.16 feet to the point of beginning; thence continuing South 01 degrees 08 minutes 57 seconds West, along said east line, a distance of 349.75 feet; thence North 88 degrees 39 minutes 13 seconds West, a distance of 501.20 feet; thence North 03 degrees 09 minutes 13 seconds West, a distance of 326.00 feet; thence North 88 degrees 39 minutes 00 seconds East, a distance of 526.16 feet to the point of beginning.

The above described lands contain a total of 3.98 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–14485 Filed 7–6–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–30496; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before June 20, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by July 22, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 20, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

COLORADO

Denver County

Colburn Hotel, 980 Grant St., Denver, SG100005391

FLORIDA

Hernando County

Sinclair Service Station, 5299 Commercial Way, Spring Hill, SG100005385

Lake County

William Alfred Suggs Veterans of Foreign Wars Post 5277, 855 West Desoto St., Clermont, SG100005386

Liberty County

Hosford School and Gymnasium, (Florida's New Deal Resources MPS), 16827 NE FL 65, Hosford, MP100005392

Sarasota County

Sarasota County Chamber of Commerce Building, (Sarasota School of Architecture MPS), 655 North Tamiami Trail, Sarasota, MP100005395

MAINE

Cumberland County

Sagamore Village Historic District, Cabot, Purchase, Popham, Godfrey, and Josselyn Sts., and portions of Taft and Brighton Aves., Portland, SG100005397

MINNESOTA

Hennepin County

Studio 80 (Prince, 1958–1987 MPS), 2709 East 25th St., Minneapolis, MP100005399

MONTANA

Missoula County

Stark House, Address Restricted, Condon vicinity, SG100005393

Petroleum County

Howard Lepper Memorial Hall, Just west of Flatwillow Rd., Flatwillow vicinity, SG100005396

Yellowstone County

Kate Fratt Memorial Parochial School, 205 North 32nd St., Billings, SG100005389

TENNESSEE

Hamilton County

Downtown Chattanooga Historic District, Roughly bounded by Martin Luther King Jr. Blvd., Georgia Ave., East 5th., Walnut, East 6th, and Chestnut Sts., Chattanooga, SG100005387

Shelby County

Anshei Sphard-Beth El Emeth Synagogue, 120 East Yates Road North, Memphis, SG100005388

TEXAS

Bexar County

Specht's Store and Schmidt's Gin, 106 Specht Rd., Bulverde vicinity, SG100005384

Additional documentation has been received for the following resource:

MINNESOTA

Wright County

Rand, Rufus, Summer House and Carriage Barn (Additional Documentation), (Wright County MRA), 506 Old Territorial Rd. and 602 Fallon Ave. NE, Monticello, AD79001275

Authority: Section 60.13 of 36 CFR part 60

Dated: June 23, 2020.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2020–14506 Filed 7–6–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2019–0011; EEEE500000 20XE1700DX EX1SF0000.EAQ000; OMB Control Number 1014–0011]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Platforms and Structures

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 6, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Kye Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov.* Please reference OMB Control Number 1014–0011 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kye Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 10, 2020 (85 FR 7586). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR part 250, subpart I, concern platforms and structures regulatory requirements of oil, gas, and sulfur operations in the Outer Continental Shelf (OCS) (including the associated forms) and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information submitted under Subpart I to determine the structural integrity of all OCS platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are

structurally sound and safe for their intended use to ensure safety of personnel and prevent pollution. More specifically, we use the information to:

- Review data concerning damage to a platform to assess the adequacy of proposed repairs.
- Review applications for platform construction (construction is divided into three phases–design, fabrication, and installation) to ensure the structural integrity of the platform.
- Review verification plans and third-party reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the platform design, fabrication, and installation.
- Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved applications.
- Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

Title of Collection: 30 CFR 250, Subpart I, *Platforms and Structures.*

OMB Control Number: 1014–0011.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents are comprised of Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 362.

Estimated Completion Time per Response: Varies from 5 hours to 280 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 92,786.

Respondent's Obligation: Responses are mandatory, while others are required to obtain or retain benefits.

Frequency of Collection: Generally, on occasion and annually, varies by section.

Total Estimated Annual Nonhour Burden Cost: $988,210.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Amy White,

Acting Chief, Regulations and Standards Branch.

[FR Doc. 2020–14522 Filed 7–6–20; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2019–0013; EEEE500000 20XE1700DX EX1SF0000.EAQ000; OMB Control Number 1014–0026]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Application for Permit To Modify and Supporting Documentation

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before August 6, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Kye Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov.* Please reference OMB Control Number 1014–0026 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kye Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 18, 2020 (85 FR 8890). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed information collection request (ICR) that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Throughout the regulations at 30 CFR part 250, BSEE requires the submission of Applications for Permit to Modify (APM), and all supporting documentation on form BSEE–0124 that pertain to regulatory requirements of oil, gas, and sulfur operations in the Outer Continental Shelf (OCS) (including the associated forms), and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

In this information collection request, we are updating/revising form BSEE–0124 to follow eWell. Specifically, No. 16 in order to provide consistency in both district engineer and inspection

coding, No. 18 to add § 250.730(a) to the list of citations, No. 20 to add text to reflect § 250.730(a), and No. 36 to revise/edit text in (J) to be more general and (M) to be more clear on what we are requesting.

The BSEE uses the information to ensure safe well control, completion, workover, and decommissioning operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The well control, completion, workover, and decommissioning unit (drilling/well operations) is fit for the intended purpose; equipment is maintained in a state of readiness and meets safety standards; each drilling/well operation crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether the operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

Title of Collection: 30 CFR part 250, Application for Permit to Modify (APM) and supporting documentation.

OMB Control Number: 1014–0026.

Form Number: BSEE–0124.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Potential respondents are comprised of Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Not all the potential respondents will submit information at any given time, and some may submit multiple times.

Total Estimated Number of Annual Responses: 12,202.

Estimated Completion Time per Response: Varies from 10 minutes to 154 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 17,311.

Respondent's Obligation: Responses are mandatory.

Frequency of Collection: On occasion and varies by section.

Total Estimated Annual Nonhour Burden Cost: $6,451,500.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Amy White,

Acting Chief, Regulations and Standards Branch.

[FR Doc. 2020–14521 Filed 7–6–20; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2019–0012; EEEE500000 20XE1700DX EX1SF0000.EAQ000; OMB Control Number 1014–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 6, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Kye Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov.* Please reference OMB Control Number 1014–0012 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kye Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 10, 2020 (85 FR 7587). BSEE received one comment in response to this notice; however, it was not germane to the collection.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR part 291 concern the Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act (including the associated forms) and are

the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the submitted information to initiate a more detailed review into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged offending party. Alternative dispute resolution may be used either before or after a complaint has been filed to informally resolve the dispute. The BSEE may request additional information upon completion of the initial review.

Title of Collection: 30 CFR part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

OMB Control Number: 1014–0012.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents are comprised of Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: Varies from 1 hour to 50 hours.

Total Estimated Number of Annual Burden Hours: 51.

Respondent's Obligation: Responses are voluntary but are required to obtain or retain benefits.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $7,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Amy White,

Acting Chief, Regulations and Standards Branch.

[FR Doc. 2020–14523 Filed 7–6–20; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2020–0005; EEEE500000 20XE1700DX EX1SF0000.EAQ000; OMB Control Number 1014–0022]

Agency Information Collection Activities; General

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 8, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2020–0005 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0022 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BSEE uses the information collected under the Subpart A regulations to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

- Review records of formal crane operator and rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees/operators perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. The BSEE also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform

methods are employed by lessees for load testing of cranes.

• Review welding plans, procedures, and records to ensure that welding is conducted in a safe and workmanlike manner by trained and experienced personnel.

• Provide lessees/operators greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.

• Ensure that injection of gas promotes conservation of natural resources and prevents waste.

• Record the agent and local agent empowered to receive notices and comply with regulatory orders issued.

• Provide for orderly development of leases through the use of information to determine the appropriateness of lessee/operator requests for suspension of operations, including production.

• Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.

• Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion of the last production. The BSEE will use this information to efficiently maintain the lessee/operator lease status.

• Allow lessees/operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify a lessee/operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). The Subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136; however, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.

The BSEE forms use and information consists of the following:

Form BSEE–0132, Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics (GOMR)

• Be informed when there could be a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes, to advise the U.S. Coast Guard (USCG) in case of the need to rescue offshore workers in distress, to monitor damage to offshore platforms and drilling rigs, and to advise the news media and interested public entities when production is shut-in and when resumed. The Gulf of Mexico OCS Region (GOMR) uses Form BSEE–0132, Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics, for respondents to report evacuation statistics when necessary. This form requires the respondent to submit general information such as company name, contact, date, time, telephone number, as well as number of platforms and drilling rigs evacuated and not evacuated. We also require production shut-in statistics for oil (BOPD) and gas (MMSCFD).

Form BSEE–0143, Facility/Equipment Damage Report

• Assists lessees, lease operators, and pipeline right-of-way holders when reporting damage by a hurricane, earthquake, or other natural phenomenon. They are required to submit an initial damage report to the Regional Supervisor within 48 hours after completing the initial evaluation of the damage and then, subsequent reports, monthly and immediately, whenever information changes until the damaged structure or equipment is returned to service. Information on the form includes—instructions, general information, a description of the damage, an initial damage assessment, production rate at time of shut-in (BPD and/or MMCFPD), cumulative production shut-in (BPD and/or MMCFPD), and estimated time to return to service (in days).

Form BSEE–1832, Notification of Incident(s) of Noncompliance

• Determine that respondents have corrected all Incident(s) of Noncompliance (INCs), identified during inspections. Everything on the INC form is filled out by a BSEE inspector/representative. The only thing industry does with this form is sign the document upon receipt and respond to BSEE when each INC has been corrected, no later than 14 days from the date of issuance.

Title of Collection: 30 CFR part 250, subpart A, *General.*

OMB Control Number: 1014–0022.

Form Numbers: BSEE–0132, BSEE–0143, BSEE–1832.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 21,776.

Estimated Completion Time per Response: .5 hour to 106 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 99,866.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits, or voluntary.

Frequency of Collection: Submissions are generally on occasion, daily, monthly, and vary by section.

Total Estimated Annual Nonhour Burden Cost: $222,915.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Amy White,

Acting Chief, Regulations and Standards Branch.

[FR Doc. 2020–14520 Filed 7–6–20; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2020–0004; EEEE500000 20XE1700DX EX1SF0000.EAQ000; OMB Control Number 1014–0015]

Agency Information Collection Activities; Unitization

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 8, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

• Electronically go to *http://www.regulations.gov.* In the Search box,

enter BSEE–2020–0004 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

• Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0015 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: BSEE must approve any lessee's proposal to enter an agreement to unitize operations under two or more leases and for modifications when warranted. We use the information to ensure that operations under the proposed unit agreement will result in preventing waste, conserving natural resources, and protecting correlative rights including the government's interests.

Title of Collection: 30 CFR 250, Subpart M, Unitization.

OMB Control Number: 1014–0015.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 93.

Estimated Completion Time per Response: 1 hour to 520 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 7,800

Respondent's Obligation: Voluntary and some are required to obtain or retain a benefit.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: $195,757.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Amy White,

Acting Chief, Regulations and Standards Branch.

[FR Doc. 2020–14519 Filed 7–6–20; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1528 (Preliminary)]

Seamless Refined Copper Pipe and Tube From Vietnam; Institution of an Anti-Dumping Duty Investigation and Scheduling of Preliminary Phase Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1528 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of seamless refined copper pipe and tube from Vietnam, provided for in subheading 7411.10.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by August 14, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 21, 2020.

DATES: June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman ((202) 205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section

733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on June 30, 2020, by the American Copper Tube Coalition, consisting of Mueller Group, Collierville, Tennessee, and Cerro Flow Products, LLC, Sauget, Illinois.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting its Title VII (antidumping and countervailing duty) preliminary phase staff conferences through submissions of written opening remarks and written testimony, staff questions and written responses to those questions, and postconference briefs. Requests to participate in these written proceedings should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before July 17, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement. Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written opening remarks and testimony to the Commission on or before July 17, 2020. Staff questions will be provided to the parties on July 21, 2020, and written responses should be submitted to the Commission on or before July 24, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14541 Filed 7–6–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–653 and 731–TA–1527 (Preliminary)]

Standard Steel Welded Wire Mesh From Mexico; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–653 and 731–TA–1527 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of standard steel welded wire mesh from Mexico, provided for in subheadings 7314.20.00 and 7314.39.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Mexico. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 14, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 21, 2020.

DATES: June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202) 708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on June 30, 2020, by Insteel Industries Inc., Mount Airy, North Carolina; Mid South Wire Company, Nashville, Tennessee; National Wire LLC, Conroe, Texas; Oklahoma Steel & Wire Co., Madill, Oklahoma; and Wire Mesh Corp., Houston, Texas.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting its Title VII (antidumping and countervailing duty) preliminary phase staff conferences through submissions of written opening remarks and written testimony, staff questions and written responses to those questions, and postconference briefs. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before July 17, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement. Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written opening remarks and testimony to the Commission on or before July 17, 2020. Staff questions will be provided to the parties on July 21, 2020, and written responses should be submitted to the Commission on or before July 24, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on Filing Procedures, available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.
Issued: July 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14537 Filed 7–6–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1192]

Certain Nicotine Pouches and Components Thereof and Methods of Making the Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 9) of

the presiding administrative law judge (''ALJ'') granting complainants' unopposed motion to terminate the investigation in its entirety based on withdrawal of the complaint. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. 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: On March 12, 2020, the Commission instituted Inv. No. 337–TA–1192, *Certain Nicotine Pouches and Components Thereof and Methods of Making the Same,* under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by NYZ AB of Stockholm, Sweden; Swedish Match North America, LLC of Richmond, Virginia; Pinkerton Tobacco Co., LP of Owensboro, Kentucky; and wm17 holding GmbH of Switzerland (collectively, ''Complainants''). 85 FR 14505–06 (Mar. 12, 2020). A supplement to the complaint was filed on February 21, 2020. The complaint alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain nicotine pouches and components thereof and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 9,161,908 (''the '908 patent''). *Id.* at 14505. The Commission's notice of investigation names as respondents The Art Factory AB of Helsingborg, Sweden; Kretek International, Inc. of Moorpark, California; and DRYFT Sciences, LLC of Moorpark, California (collectively, ''Respondents''). *Id.* at 14506. The Commission's Office of Unfair Import Investigations also was named as a party. *Id.* Subsequently, the investigation was terminated as to claims 18 and 20 of the '908 patent. Order No. 7 (May 15, 2020), *non-reviewed* in relevant part by Commission Notice (June 15, 2020).

On May 29, 2020, Complainants filed an unopposed motion seeking to terminate this investigation in its entirety based on withdrawal of the complaint.

On June 11, 2020, the presiding ALJ issued the subject ID granting Complainants' motion. The ALJ found that the motion complies with the Commission Rules, and that there are no extraordinary circumstances that warrant denying the motion. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The investigation is terminated.

The Commission vote for this determination took place on June 30, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 30, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14467 Filed 7–6–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1155]

Certain Luxury Vinyl Tile and Components Thereof; Commission Determination To Review in Part and, on Review, To Affirm an Initial Determination Granting Summary Determination of Violation by Defaulting Respondents; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part and, on review, to affirm an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting summary determination of violation of section 337 by certain defaulting respondents. The Commission requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. 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: On May 16, 2019, the Commission instituted this investigation based on a complaint filed by Mohawk Industries, Inc. of Calhoun, Georgia; Flooring Industries Ltd. Sarl of Bertrange, Luxembourg; and IVC US Inc. of Dalton, Georgia (collectively, ''Complainants''). 84 FR 22161 (May 16, 2019). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain luxury vinyl tiles by reason of infringement of certain claims of U.S. Patent Nos. 9,200,460 (''the '460 patent''); 10,208,490 (''the '490 patent''); and 10,233,655 (''the '655 patent'') (collectively, ''the Asserted Patents''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation names forty-five respondents, including: ABK Trading Corp. of Katy, Texas (''ABK''); Aurora Flooring LLC of Kennesaw, Georgia (''Aurora''); Changzhou Runchang Wood Co., Ltd. of Jiangsu, China (''Runchang''); Go-Higher Trading (Jiangsu) Co., Ltd. of Jiangsu, China (''Go-Higher''); Jiangsu Divine Building Technology Development Co., Ltd. Jiangsu, China (''Divine''); Jiangsu Lejia Plastic Co. Ltd. of Jiangsu, China (''Lejia''); JiangSu Licheer Wood Co., Ltd. of Jiangsu, China (''Licheer''); Maxwell Flooring Distribution LLC of Houston, Texas (''Maxwell Flooring''); Mr. Hardwood Inc. of Acworth, Georgia (''Mr. Hardwood''); and Sam Houston Hardwood Inc. of Houston, Texas (''Sam Houston'') (collectively, ''Defaulting Respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') is also participating in the investigation. *Id.*

The Commission previously terminated the investigation as to thirty-

five respondents based on settlement, consent order, or partial withdrawal of the complaint. *See* Order No. 14 (Sept. 26, 2019), *not rev'd,* Notice (Oct. 17, 2019); Order Nos. 15–21 (Sept. 27, 2019 for all), *not rev'd,* Notice (Oct. 17, 2019); Order Nos. 23–25 (Oct. 2, 2019 for all), *not rev'd,* Notice (Oct. 23, 2019); Order No. 27 (Oct. 9, 2019), *not rev'd,* Notice (Nov. 6, 2019); Order No. 26 (Oct. 9, 2019)), *not rev'd,* Notice (Nov. 8, 2019); Order No. 30 (Oct. 25, 2019), *not rev'd,* Notice (Nov. 21, 2019); Order No. 34 (Nov. 7, 2019), *not rev'd,* Notice (Dec. 11, 2019); Order No. 35 (Jan. 24, 2020), *not rev'd,* Notice (Feb. 25, 2020).

On November 21, 2019, the Commission found respondent Go-Higher in default. *See* Order No. 31 (Oct. 25, 2019), *not rev'd,* Notice (Nov. 21, 2019). On November 22, 2019, the Commission found an additional eight respondents in default: ABK; Aurora; Divine; Lejia; Licheer; Maxwell Flooring; Mr. Hardwood; and Sam Houston. *See* Order No. 32 (Oct. 30, 2019), *not rev'd,* Notice (Nov. 22, 2019). On November 25, 2019, the Commission found respondent Runchang in default. *See* Order No. 33 (Oct. 30, 2019), *not rev'd,* Notice (Nov. 25, 2019).

On January 15, 2020, Complainants filed a motion for summary determination of domestic industry and violation of section 337 by the Defaulting Respondents. Complainants filed supplements to their summary determination motion on January 23, 2020, February 11, 2020, and February 19, 2020.

On February 12, 2020, OUII filed a response to Complainants' motion. On May 14, 2020, OUII filed a supplemental response.

On May 15, 2020, the ALJ issued the subject ID (Order No. 36) granting the motion for summary determination and finding a violation of section 337 by the Defaulting Respondents. The ALJ recommended that the Commission issue a GEO and CDOs against the five domestic respondents: ABK, Aurora, Maxwell Flooring, Mr. Hardwood, and Sam Houston. The ALJ also recommended setting a bond of $0.08 per square foot of luxury vinyl tile product and components thereof imported during the period of Presidential review. *Id.* No party petitioned for review of the subject ID.

Having reviewed the record of the investigation, the Commission has determined to review the subject ID in part, and on review, to affirm the ID's finding of violation. Specifically, the Commission has determined to review and, on review, to take no position on the ID's findings regarding the economic prong under subsection 337(a)(3)(B) with respect to the '460 patent. The Commission has also determined to review the ID's findings regarding a domestic industry ''in the process of being established'' with respect to the '490 and '655 patents and affirms those findings but with the following clarifications: The ID addresses the issue of domestic industry for the '490 and '655 patents under the theory of whether the industry is ''in the process of being established'' since that is the theory advanced by Complainants. In affirming the ID's findings, the Commission does not intend to imply that the investments already made with respect to the '490 and '655 patents are not substantial or could not be used to show the existence of a domestic industry under section 337(a)(3). Further, although the ''IVC Foamed Rigid LVT'' product asserted by the Complainants is not yet commercially manufactured, under Commission precedent there is no requirement that there be a commercial domestic industry product in order to establish an existing domestic industry. *See Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II,* Inv. No. 337–TA–1073, Comm'n Op. at 9 (Aug. 12, 2019) (public version). The Commission has also determined to review the ID's findings with respect to the two products from non-parties, the Quickstyle and Uniflor Aqua products.

The Commission has determined not to review the remainder of the ID, including the findings that Complainants have satisfied the domestic industry requirement under subsection 337(a)(3)(A) with respect to the '460 patent. Accordingly, the Commission affirms the ID's finding of a violation of section 337 by the Defaulting Respondents' importation of luxury vinyl tiles and components thereof that infringe one or more of claims 7–8, 13, 15–17, 20–23, and 30 of the '460 patent, claims 1–6, 8, 10–11, 13–16, and 18 of the '490 patent, and claims 1–4, 6–16, 18, and 20–26 of the '655 patent.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor,* Inv. No. 337–TA–977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainants seek a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

3. Please discuss any other basis upon which the Commission could enter a cease and desist order.

4. To the extent Complainants seek a cease and desist order against defaulting respondent Runchang, please address whether the requirements of section 337(g)(1)(A)–(E) are satisfied with respect to Runchang.

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order would have on: (1) The public health and welfare, (2) competitive conditions in the U.S.

economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submission, Complainants are also requested to identify the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to state the dates that the Asserted Patents expire, the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on July 15, 2020. Reply submissions must be filed no later than the close of business on July 22, 2020. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1155) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on June 30, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 30, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14500 Filed 7–6–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1204]

Certain Chemical Mechanical Planarization Slurries and Components Thereof: Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 1, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Cabot Microelectronics Corporation of Aurora, Illinois. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain chemical mechanical planarization (''CMP'') slurries and components thereof by reason of infringement of U.S. Patent No. 9,499,721 (''the '721 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S.

International Trade Commission, on June 30, 2020, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 3–6, 10, 11, 13, 14, 18–20, 24, 26–29, 31, 35–37, and 39–44 of the '721 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''chemical mechanical planarization (''CMP'') slurries and components thereof, including colloidal silica'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Cabot Microelectronics Corporation, 870 N. Commons Drive, Aurora, IL 60504, P.O. Box 2026, Aurora, IL 60507

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

DuPont de Nemours, Inc., 974 Centre Road, Building 730, Wilmington, DE 19805–1269

Rohm and Haas Electronic Materials CMP Inc., 451 Bellevue Road, Newark, DE 19713–3431

Rohm and Haas Electronic Materials CMP Asia Inc. (d/b/a Rohm and Haas Electronic Materials CMP Asia Inc., Taiwan Branch (U.S.A.)), 4F., NO.6, LN. 280, Zhongshan N Rd., Dayuan Dist., Taoyuan City, 337017 Taiwan

Rohm and Haas Electronic Materials Asia-Pacific Co., Ltd., 6, Kesi 2nd Rd., Chunan, Miaoli, 350401 Taiwan

Rohm and Haas Electronic Materials K.K., Sanno Park Tower, 2–11–1, Nagata-cho, Chiyoda-ku, Tokyo 100–0014 Japan

Rohm and Haas Electronic Materials LLC, 455 Forest Street, Marlborough, MA 01752–3001

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14538 Filed 7–6–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1205]

Certain Completion Drill Bits and Products Containing the Same Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 4, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Varel International Industries, LLC of Carrollton, Texas. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain completion drill bits and products containing the same by reason of infringement of certain claims of U.S. Patent No. 10,538,970 (''the '970 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation issue a limited exclusion order and cease and desist orders.

Addresses: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION: *Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 30, 2020, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 5–10, 12, 16, and 18–20 of the '970 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused

products, which defines the scope of the investigation, is ''drill bits for drilling frack plugs to complete a well'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Varel International Industries, LLC, 1625 West Crosby Rd., Suite 124, Carrollton, Texas 75006.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Kingdream Public Ltd. Co., No. 80 Miaoshan Rd., Wuhan City, Hubei China Hubei 430223 CN.

Taurex Drill Bits, LLC, 2651 Venture Drive, Norman, OK 73069.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The office of Unfair Import Investigations will not be named as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14573 Filed 7–6–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–672]

Importer of Controlled Substances Application: Lipomed

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 6, 2020. Such persons may also file a written request for a hearing on the application on or before August 6, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 4, 2020, Lipomed, 150 Cambridgepark Drive, Suite 705, Cambridge, Massachusetts 02140, applied to be registered as an importer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido) 3,3-dimethylbutanoate)	7036	I
N-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide)	7047	I
1-(5-Fluoropentyl)-1H-indazole-3-carboxamide	7083	I
4-methyl-alpha-ethylaminopentiophenone (4-MEAP)	7245	I
N-ethylhexedrone	7246	I
4-chloro-alpha-pyrrolidinovalerophenone (4-chloro-a-PVP)	7443	I
α-PHP, alpha-Pyrrolidinohexanophenone	7544	I
PV8, alpha-Pyrrolidinoheptaphenone	7548	I
Norfentanyl	8366	I

The company plans to import the above controlled substances as analytical reference standards for distribution to its customers for research and analytical purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized in 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration (FDA)-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–14605 Filed 7–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On June 30, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of New York in a lawsuit entitled *United States* v. *Chestnut Petroleum Distributors, Inc., et al.,* Civil Action No. 19 Civ. 3904 (PHM) (JCM).

In this action, the United States sought, as provided under Subtitle I of the Resource Conservation and Recovery Act and its related regulations (the ''Underground Storage Tank Regulations''), penalties and injunctive relief for the failure of defendants Chestnut Petroleum Distributors, Inc., CPD Energy Corp., CPD NY Energy Corp., Chestnut Mart of Gardiner, Inc., Chestnut Marts, Inc., Greenburgh Food Mart, Inc., Middletown Food Mart, Inc., and NJ Energy Corp. to comply with the Underground Storage Tank Regulations at twenty gas stations within the Southern District of New York and adjoining districts. The proposed Consent Decree resolves the United States' claims and requires defendants to pay a civil penalty of $187,500 and comply with various injunctive measures.

The publication of this notice opens the public comment period on the proposed Consent Decree. Comments should be addressed to Jeffrey Bossert Clark, Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Chestnut Petroleum Distributors, Inc., et al.,* Civil Action No. 19 Civ. 3904 (PHM) (JCM), D.J. Ref. 90–7–1–11162. All comments must be submitted no later than 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	Jeffrey Bossert Clark, Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide paper copies of the Consent Decree upon written request and payment of reproduction costs. Please email 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 $4.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–14568 Filed 7–6–20; 8:45 am]

BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Legal Services Corporation Financial Guide; Request for Comments

AGENCY: Legal Services Corporation.

ACTION: Request for comments.

SUMMARY: The Legal Services Corporation (''LSC'') has drafted revisions to its *Accounting Guide* and retitled it as the *Financial Guide.* LSC seeks comments on the draft *Financial Guide.*

DATES: All comments must be received on or before the close of business on October 15, 2020.

ADDRESSES: You may submit comments by any of the following methods.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC may not consider written comments sent via any other method or received after the end of the comment period.

Email: financialguide@lsc.gov. Please include ''Financial Guide Comment'' in the subject line of the message.

Fax, U.S. Mail, Hand Delivery, or Courier: Please call 202–295–1623 for instructions if you need to send materials by one of these methods.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Associate General Counsel, (202) 295–1623 or *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) has conducted a comprehensive review of the *Accounting Guide for LSC Recipients, 2010 Edition.* Based on input from LSC grantees and LSC fiscal compliance analysis staff, LSC believes that the format of the Accounting Guide no longer best serves grantees or LSC. LSC has restructured the document and renamed it the *Financial Guide.* The new draft *Financial Guide* removes outdated or inapplicable materials, improves materials directly related to LSC-specific issues, and adds clarity about both required and recommended financial practices. The draft *Financial Guide* also addresses areas that were previously identified as problematic, such as Cost Allocation, and assists grantees in the financial management of LSC grants.

LSC has removed sections that provided general accounting and financial guidance, because neither LSC nor grantees found these sections useful. The Financial Accounting Standards Board (FASB) establishes and updates the generally accepted accounting principles (GAAP) that provide the applicable accounting methods and practices. The draft *Financial Guide* references GAAP requirements rather than restating them.

Overall, the draft *Financial Guide* conforms to existing LSC and grantee practices and requirements. Additionally, in some places, the draft *Financial Guide* sets out requirements that have not previously been published for comment.

LSC has published on the *Matters for Comment* web page on *www.lsc.gov* the draft *Financial Guide* for comment and a reference guide to the draft updates and new requirements. LSC seeks comments on the entire draft *Financial Guide,* particularly the sections with significant changes. LSC will review the comments and, if possible, implement the *Financial Guide* with any appropriate revisions before January 1, 2021.

LSC also seeks comment on the following question:

Should LSC implement the new Financial Guide as of a single date for all grantees (*e.g.,* January 1, 2021) or by applying it to each grantee with the start of the grantee's new fiscal year.

Dated: July 1, 2020.

Mark Freedman,

Senior Associate General Counsel.

[FR Doc. 2020–14580 Filed 7–6–20; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–061)]

Planetary Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Advisory Committee. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, August 17, 2020, 10:00 a.m. to 6:00 p.m.; and Tuesday, August 18, 2020, 10:00 a.m. to 6:00 p.m.; Eastern Time.

ADDRESSES: Virtual meeting via dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Ms. Karshelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@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 call the USA toll free conference call number 1–800–779–9966 or toll number 1–517–645–6359, passcode 5255996, on both days, to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number is 901 917 366 and the password is PAC@Aug17+18 (case sensitive) on both days. The agenda for the meeting includes the following topics:

—Planetary Science Division Update
—Planetary Science Division Research and Analysis Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–14465 Filed 7–6–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SECURITY COMMISSION ON ARTIFICIAL INTELLIGENCE

[Docket No.: 07–2020–01]

National Security Commission on Artificial Intelligence; Notice of Federal Advisory Committee Meeting

AGENCY: National Security Commission on Artificial Intelligence.

ACTION: Notice of Federal Advisory Committee virtual public meeting.

SUMMARY: The National Security Commission on Artificial Intelligence (the ''Commission'') is publishing this notice to announce that the following Federal Advisory Committee virtual public meeting will take place.

DATES: Monday, July 20, 2020, 1:30 p.m. to 4:00 p.m. Eastern Standard Time (EST).

FOR FURTHER INFORMATION CONTACT: Ms. Angela Ponmakha, 703–614–6379 (Voice), *nscai-dfo@nscai.gov. Mailing address:* Designated Federal Officer, National Security Commission on Artificial Intelligence, 2530 Crystal Drive, Box 45, Arlington, VA 22202. *website: https://www.nscai.gov.* The most up-to-date information about the meeting and the Commission can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA), Sec. 1051, Public Law 115–232, 132 Stat. 1636, 1962–65 (2018), created the Commission to ''consider the methods and means necessary to advance the development of artificial intelligence, machine learning, and associated technologies by the United States to comprehensively address the national security and defense needs of the United States.'' The Commission will consider potential recommendations to Congress and the Executive Branch.

Agenda: The meeting will begin on July 20, 2020 at 1:30 p.m. EST with opening remarks by the Designated Federal Officer, Ms. Angela Ponmakha; the Executive Director, Mr. Yll Bajraktari; and the Commission Chair, Dr. Eric Schmidt. Chairs of the working groups studying each of the Commission's lines of effort (LOEs) will present the recommendations from their respective LOEs for consideration by the entire Commission. The Commission's LOEs: LOE 1—Invest in AI Research & Development and Software; LOE 2—Apply AI to National Security Missions; LOE 3—Train and Recruit AI Talent; LOE 4—Protect and Build Upon U.S. Technological Advantages & Hardware; LOE 5—Marshal Global AI Cooperation; and LOE 6—Ethics and Responsible AI.

The Commission will deliberate on the presented recommendations and vote on their inclusion in the Commission's second quarterly memorandum to Congress and the Administration. The meeting will adjourn at 4:00 p.m. EST.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the virtual meeting is open to the public from 1:30 p.m. to 4:00 p.m. EST. Members of the public wishing to receive a link to the live stream webcast for viewing and audio access to the virtual meeting should register on the Commission's website, *https://www.nscai.gov.* Registration will be available from July 8, 2020 through July 15, 2020. Members of the media should RSVP to the Commission's press office at *press@nscai.gov.*

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the DFO, see the **FOR FURTHER INFORMATION CONTACT** section for contact information, no later than July 15, 2020, so that appropriate arrangements can be made.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may inspect the meeting materials for the July 20, 2020 virtual meeting on the Commission's website at *https://www.nscai.gov* three business days prior to July 20, 2020.

Written Statements: Written comments may be submitted to the DFO via email to: *nscai-dfo@nscai.gov* in either Adobe Acrobat or Microsoft Word format. The DFO will compile all written submissions and provide them to the Commissioners for consideration. Please note that all submitted comments will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Commission's website.

Dated: July 1, 2020.

Michael Gable,

Chief of Staff.

[FR Doc. 2020–14587 Filed 7–6–20; 8:45 am]

BILLING CODE 3610–Y8–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0135]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is

considering approval of one amendment request. The amendment request is for Salem Nuclear Generating Station, Unit Nos. 1 and 2. For the amendment request, the NRC proposes to determine that it involves no significant hazards consideration. Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by August 6, 2020. A request for a hearing or petitions for leave to intervene must be filed by September 8, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by July 17, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0135. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail Comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0135, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0135.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

B. Submitting Comments

Please include Docket ID NRC–2020–0135, facility name, unit number(s), docket number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes a notice of amendment containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for the amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request

for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its

counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

PSEG Nuclear LLC, and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 24, 2020. A publicly-available version is in ADAMS under Accession No. ML20115E374.

Description of amendment request: This amendment request contains SUNSI. The amendments would use the leak-before-break methodology to eliminate the dynamic effects of postulated pipe ruptures in specific portions of systems attached to the reactor coolant system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change requests plant-specific approval of a previously approved Leak-Before-Break (LBB) evaluation methodology, in accordance with 10 CFR 50, Appendix A, General Design Criterion (GDC) 4. The LBB evaluations demonstrate that the probability of a rupture of the piping in the scope of the request is extremely low under design basis conditions, such that the dynamic effects of postulated pipe ruptures may be removed from the design basis of Salem Generating Station (Salem) Units 1 and 2.

The proposed change does not adversely affect accident initiators or precursors. Overall protection system performance will remain within the bounds of the previously performed accident analyses. The design of the protection systems will be unaffected. The Reactor Protection System (RPS) and Emergency Core Cooling System (ECCS) will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request will remain applicable. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed amendment will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Salem Updated Final Safety Analysis Report (UFSAR).

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change requests NRC approval of LBB methodology to demonstrate an extremely low probability of pipe rupture. It does not introduce any new accident scenarios, failure mechanisms, or single failures. All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function. The proposed change has no adverse effects on

any safety related systems or components and does not challenge the performance or integrity of any safety related system. Further, there are no changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of power operation or change any operating parameters.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not adversely affect the ability of the fuel cladding, reactor coolant pressure boundary, or containment to perform their design basis functions as fission product barriers. The proposed change uses previously accepted analytical methods to demonstrate that the probability of a fluid system rupture is extremely low. It has no effect on the manner in which safety limits or limiting safety system settings are determined and it does not adversely affect any plant systems necessary to assure the accomplishment of protection functions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07101.

NRC Branch Chief: James G. Danna.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

PSEG Nuclear LLC, and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2]setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: June 6, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2020–12624 Filed 7–6–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of July 6, 13, 20, 27, August 3, 10, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of July 6, 2020

There are no meetings scheduled for the week of July 6, 2020.

Week of July 13, 2020—Tentative

There are no meetings scheduled for the week of July 13, 2020.

Week of July 20, 2020—Tentative

There are no meetings scheduled for the week of July 20, 2020.

Week of July 27, 2020—Tentative

There are no meetings scheduled for the week of July 27, 2020.

Week of August 3, 2020—Tentative

There are no meetings scheduled for the week of August 3, 2020.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Week of August 10, 2020—Tentative

There are no meetings scheduled for the week of August 10, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 2, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–14659 Filed 7–2–20; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7022; NRC–2020–0116]

Passport Systems, Inc.; North Billerica, MA

AGENCY: Nuclear Regulatory Commission.

ACTION: License termination; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing public notice of the termination of Special Nuclear Materials (SNM) License No. SNM–2016. The NRC has terminated the license held by Passport Systems, Inc. (Passport), to possess and use SNM for developing new technologies to detect special nuclear materials in cargo containers for the U.S. Department of Homeland Security (DHS), Domestic Nuclear Detection Office. The license was terminated at Passport's request since it no longer needed the sources for development of their cargo inspection system.

DATES: The license termination for SNM–2016 was issued on May 4, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0116 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0116. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

FOR FURTHER INFORMATION CONTACT: Osiris Siurano-Perez, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7827, email: *Osiris.Siurano-Perez@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has terminated License No. SNM–2016, held by Passport Systems, Inc., for possession and use of SNM at its facilities at 76 Treble Cove Road, in North Billerica, and at 700 Summer St., Conley Terminal in the Port of Boston. Passport was contracted by the DHS to develop new technologies to detect special nuclear materials in cargo containers. The program included utilizing SNM placed inside fully loaded cargo containers and other concealments during testing of proprietary equipment to determine if it can locate SNM sources placed inside containers when surrounded by the cargo. The materials used consisted of Low Enriched Uranium and High Enriched Uranium constructed for DHS. The SNM consisted of SNM produced by Pacific Northwest National Laboratory, a highly enriched uranium metal source, low enriched uranium metal sources, and uranium oxides (U02 and U308). The sources used under this license were constructed by and owned by the Department of Energy, who retains ownership.

The initial application for this license was received on November 5, 2010. The NRC issued Passport's SNM license on December 12, 2011. Prior to submitting its request for license termination on October 16, 2019, during NRC staff inspections of Passport's main office in North Billerica, MA, and its field office in the Port of Boston on August 29–30, 2018, and March 19, 2019, respectively, Passport stated that it had discussed its intention to terminate their SNM–2016 license since it no longer needed the sources for development of their cargo inspection system. Passport's use of the licensed materials was for testing newly developed detection equipment. Therefore, consistent section 51.22(c)(14)(v) of title 10 of the *Code of Federal Regulations* (10 CFR), the initial licensing action was categorically excluded from the need to prepare an Environmental Assessment or an Environmental Impact Statement. The NRC staff prepared a safety evaluation report for the termination of SNM–2018. This license termination complies with 10 CFR 70.38, the standards and requirements of the Atomic Energy Act of 1954, as amended, and the NRC's rules and regulations as set forth in 10 CFR Chapter I. Accordingly, this license termination was issued on May 4, 2020.

II. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document	ADAMS Accession No.
Passport Systems, Inc. License Application	ML110110650.
Letter to Paul H. Johnson, Passport Systems, Inc., Issuance of Special Nuclear Material License SNM–2016	ML112760702 (package).

Document	ADAMS Accession No.
Enclosure 2: Passport Systems Materials License SNM–2016 Docket No. 70–7022 (Public Version)	ML113430777.
License Amendment Request to Terminate Special Nuclear Materials License No. SNM–2016	ML19290E196 (package).
Approval of Amendment to Terminate Special Nuclear Material License Number 2016	ML20009E807.
Safety Evaluation Report: Termination of Special Nuclear Materials License	ML20009E809.
Amendment 4 of SNM–2016	ML20009E810.

Dated: June 30, 2020.

For the Nuclear Regulatory Commission.

Kevin M. Ramsey,

Acting Chief, Fuel Facility Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–14481 Filed 7–6–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0086]

Guidance for Implementation of Changes, Tests, and Experiments

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance and post-promulgation comment period.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 1.187. This RG provides licensees with a method that the NRC considers acceptable for use in complying with the Commission's regulations on the process by which licensees, under certain conditions, may make changes to their facilities and procedures as described in the final safety analysis report (FSAR) (as updated) (also referred to as the updated final safety analysis report (UFSAR)), and conduct tests or experiments not described in the FSAR (as updated), without obtaining a license amendment pursuant to NRC requirements. This RG is effective immediately with a 30-day post-promulgation comment period.

DATES: Revision 2 to RG 1.187 takes effect on July 7, 2020. Post-promulgation comments must be received by August 6, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments on RG 1.187, Revision 2, by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0086. Address questions about NRC docket IDs in *regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7A06, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Philip McKenna, Office of Nuclear Reactor Regulation, telephone: 301–415–0037, email: *Philip.McKenna@nrc.gov* and Robert Roche-Rivera, Office of Nuclear Regulatory Research, telephone: 301–415–8113, email: *Robert.Roche-Rivera@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0086 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0086.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Revision 2 to RG 1.187, ''Guidance for Implementation of 10 CFR 50.59, 'Changes, Tests, and Experiments' '' is available in ADAMS under Accession No. ML20125A730. The regulatory analysis and staff responses to the public comments on DG–1356 may be found in ADAMS Accession Nos. ML19045A432 and ML20125A729, respectively.

B. Submitting Comments

Please include Docket ID NRC–2019–0086 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

RG 1.187, Revision 1, entitled, ''Guidance for Implementation of 10 CFR 50.59, 'Changes, Tests, and Experiments' '' (ADAMS Accession No. ML17195A655), endorsed, with clarifications, the guidance in Nuclear Energy Institute (NEI) 96–07,

''Guidelines for 10 CFR 50.59 Evaluations,'' Revision 1 (November 2000). NEI 96–07, Revision 1, provides licensees with a method that the staff considers acceptable for use in complying with the Commission's regulations on the process by which licensees, under certain conditions, may make changes to their facilities and procedures as described in the FSAR (as updated) and conduct tests or experiments not described in the FSAR (as updated) without obtaining a license amendment pursuant to 10 CFR 50.90.

RG 1.187, Revision 2, provides guidance on complying with the requirements of 10 CFR 50.59 when performing a digital instrumentation and control (I&C) modification. Specifically, it endorses, with clarifications, NEI 96–07, Appendix D, Revision 1, ''Supplemental Guidance for Application of 10 CFR 50.59 to Digital Modifications'' (ADAMS Accession No. ML20135H168). The NRC staff published Draft Guide (DG)–1356 for public comment on May 30, 2019 (84 FR 25077), which proposed to endorse NEI 96–07, Appendix D, in RG 1.187, Revision 2, with certain exceptions and additions.

The staff revised the RG in response to NEI's revisions to NEI 96–07, Appendix D; public comments on DG–1356; and two public meetings (ADAMS Accession Nos. ML19297G592 and ML20135H231). Based on the revised Appendix D, the staff removed the exception in the proposed Revision 2 of RG 1.187. The staff recognizes that the changes to RG 1.187, Revision 2, may be significant changes, beyond what a member of the public might have anticipated from these documents and public interactions. Therefore, the staff is providing an opportunity to submit additional, post-promulgation comments in accordance with Sections I and VII of this document. Consequently, the NRC will evaluate any significant comments received on this RG and will consider revising the RG as a result of the comments and evaluation.

III. Additional Information

Proposed Revision 2 of RG 1.187 was issued with a temporary identification of Draft Regulatory Guide (DG)–1356. The NRC published a notice of the availability of DG–1356 in the **Federal Register** on May 30, 2019 (84 FR 25077) for a 45-day public comment period. The public comment period closed on July 15, 2019. Public comments on DG–1356 and the staff responses to the public comments are available in ADAMS under Accession No. ML20125A729.

IV. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs to address new issues. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.*

VI. Backfitting, Forward Fitting, and Issue Finality

Revision 2 of RG 1.187 endorses, with clarifications, NEI 96–07, Appendix D, Revision 1, which provides guidance on the application of the requirements of 10 CFR 50.59 to proposed digital modifications to nuclear power plant I&C systems. As explained in RG 1.187, Revision 2, licensees are not required to comply with the positions set forth in this regulatory guide. Therefore, RG 1.187, Revision 2, does not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.'' If, in the future, the NRC were to impose a position in this RG 1.187, Revision 2, in a manner that would constitute backfitting or forward fitting or affect the issue finality for a part 52 approval, then the NRC would address the backfitting provision in 10 CFR 50.109, the forward fitting provision of MD 8.4, or the applicable issue finality provision in part 52, respectively.

VII. Request for Post-Promulgation Comment

The NRC is requesting post-promulgation comments on this RG. Comments on Revision 2 to RG 1.187 must be received by August 6, 2020. The NRC will publish a document in the **Federal Register** containing an evaluation of the significant comments and any revisions made to this RG as a result of the comments received.

Dated: July 1, 2020.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020–14564 Filed 7–6–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–211; Order No. 5575]

Inbound Competitive Multi-Service Agreements With Foreign Postal Operators

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service that it has entered into the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 9, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Commission Action
III. Ordering Paragraphs

I. Introduction

On June 30, 2020, the Postal Service (USPS) filed a notice with the Commission pursuant to 39 CFR 3035.105 and Order No. 546,[1] giving notice that it has entered into an Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (FPO). The Notice concerns the inbound portions of the competitive multi-product agreement entered into by the Postal Service and a FPO, referred

[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY20–3, June 30, 2020 (Notice). Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Service Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

to as ''FPO–USPS Agreement FY20–3.'' Notice at 1. The Postal Service seeks to include the FPO–USPS Agreement FY20–3 within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010–34) product. *Id.*

The Postal Service asserts that FPO–USPS Agreement FY20–3 ''is functionally equivalent to the baseline agreement filed in Docket No. MC2010–34 because the terms of this agreement are similar in scope and purpose to the terms of the CP2010–95 Agreement.'' *Id.* at 3. Concurrent with the Notice, the Postal Service filed supporting financial documentation and the following documents:

- Attachment 1—an application for non-public treatment;
- Attachment 2—the FPO–USPS Agreement FY20–3;
- Attachment 3—Governors' Decision No. 19–1;
- Attachment 4—a certified statement required by 39 CFR 3035.105(c)(2).

Id. at 5.

The Postal Service states it intends for FPO–USPS Agreement FY20–3 to take effect on July 1, 2020. *Id.* at 1, 2, 6. The Postal Service ''acknowledges that, despite the best efforts of the counterparties . . ., this Notice is not being filed at least 15 days prior to the rates' intended effective date.'' [2] It maintains that because ''settlement would not occur until well after th[e] intended effective date,'' the Commission could timely review FPO–USPS Agreement FY20–3 and allow parties to implement rates on July 1, 2020. *Id.* The Postal Service contends that a later implementation date ''could lead to complexities in accounting for the time period between July 1 and the date that [FPO–USPS Agreement FY20–3] would become effective.'' *Id.*

The Postal Service notes that FPO–USPS Agreement FY20–3 provides rates for inbound tracked packets. *Id.* at 6. The Postal Service states that FPO–USPS Agreement FY20–3 is in compliance with 39 U.S.C. 3633 and is functionally equivalent to the inbound competitive portions of the CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 9. For these reasons, the Postal Service states that, ''FPO–USPS Agreement FY20–3 should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 [ ] product with effect from July 1, 2020.'' *Id.*

[2] *Id.* at 2. The Postal Service's Notice was filed 1 day prior to the FPO–USPS Agreement FY20–3 intended effective date. *See generally* Notice.

II. Commission Action

The Commission establishes Docket No. CP2020–211 to consider the Notice. Interested persons may submit comments on whether FPO–USPS Agreement FY20–3 is consistent with 39 U.S.C. 3633 and 39 CFR 3035.105 and whether it is functionally equivalent to the inbound competitive portions of the Docket No. CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Comments are due by July 9, 2020.

The Notice and related filings are available on the Commission's website (*http://www.prc.gov*). The Commission encourages interested persons to review the Notice for further details.

The Commission appoints Christopher C. Mohr to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2020–211 for consideration of the matters raised by the Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY20–3, filed on June 30, 2020.
2. Pursuant to 39 U.S.C. 505, Christopher C. Mohr is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons are due by July 9, 2020.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–14606 Filed 7–6–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–187 and CP2020–212]

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:* July 9, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable

[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).

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).:* MC2020–187 and CP2020–212; *Filing Title:* USPS Request to Add Priority Mail Contract 632 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 30, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 9, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–14518 Filed 7–6–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89192; File No. SR–NYSEArca–2019–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, To List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust Under NYSE Arca Rule 8.601–E

June 30, 2020.

I. Introduction

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares): American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF (''Funds'').[3] The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[4]

On February 13, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 31, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[7] On April 1, 2020, the Commission published Amendment No. 2 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change.[9] On May 20, 2020, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 2.[10] On June 15, 2020, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 3.[11] On June 19, 2020, the Exchange filed Amendment No. 5 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 4.[12] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 5, from interested persons and is approving the proposed rule change, as modified by Amendment No. 5, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 5

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 has proposed to add new NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[13] Proposed Commentary .01

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[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally proposed to adopt NYSE Arca Rule 8.602–E to permit the Exchange to list and trade Actively Managed Solution Shares, and to list and trade Shares of the Funds under proposed Exchange Rule 8.602–E. In Amendment No. 2, the Exchange removed the proposal to adopt proposed NYSE Arca Rule 8.602–E and revised the proposal to seek to list and trade Shares of the Funds under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares). *See* Amendment No. 2, *infra* note 7. *See also* Amendment No. 6 to SR–NYSEArca–2019–95 (proposing to adopt NYSE Arca Rule 8.601–E to list and trade Active Proxy Portfolio Shares, available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7329866-218548.pdf.* The Commission recently approved the Exchange's proposed rule change to adopt NYSE Arca Rule 8.601–E to permit the listing and trading of Active Proxy Portfolio Shares. *See* Securities Exchange Act Release No. 89185 (June 29, 2020) (SR–NYSEArca–2019–95) (''Active Proxy Portfolio Shares Order'').

[4] *See* Securities Exchange Act Release No. 87867 (Dec. 30, 2019), 85 FR 394.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 88198, 85 FR 9833 (Feb. 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] Amendment No. 1 to the proposed rule change was filed on March 30, 2020 and subsequently withdrawn on March 31, 2020. Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-96/srnysearca201996-7015541-214976.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 88534, 85 FR 19519 (April 7, 2020).

[10] Amendment No. 3 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-96/srnysearca201996-7220746-216947.pdf.*

[11] Amendment No. 4 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-96/srnysearca201996-7316464-218309.pdf.*

[12] Amendment No. 5 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-96/srnysearca201996-7329865-218547.pdf.*

[13] *See* Amendment 6 to SR–NYSEArca–2019–95, filed on June 19, 2020. *See also,* Securities Exchange Act Release No. 87866 (December 30, 2019), 85 FR 357 (January 3, 2020) (SR–NYSEArca–2019–95). Proposed Rule 8.601–E(c)(1) provides that ''[t]he term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's

Continued

to Rule 8.601–E would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') of Active Proxy Portfolio Shares of the American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF (each a ''Fund'' and, collectively, the ''Funds'') under proposed Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E [14] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[15] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.[16] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV.

A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

In this regard, with respect to the Funds, the Funds will utilize a proxy portfolio methodology—the ''NYSE Proxy Portfolio Methodology''—that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.[17] The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.

The Exchange, after consulting with various Lead Market Makers (''LMMs'') that trade exchange-traded funds (''ETFs'') on the Exchange,[18] believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[19] For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest

request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.'' Proposed Rule 8.601–E(c)(2) provides that ''[t]he term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.'' Proposed Rule 8.601–E(c)(3) provides that ''[t□he term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.''

[14] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016 (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[15] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[16] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information (''SAI''), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[17] The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Funds. NYSE Group, Inc. is not affiliated with the Funds, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

[18] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

[19] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Active Proxy Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Funds and the Trust

The Funds will be series of the American Century ETF Trust (''Trust''), which will be registered with the Commission as an open-end management investment company.[20]

American Century Investment Management, Inc. (''Adviser'') will be the investment adviser to the Funds. Foreside Fund Services, LLC will act as the distributor and principal underwriter (''Distributor'') for the Funds. State Street Bank and Trust Company will serve as transfer agent (''Transfer Agent'') for the Funds.

Proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio.[21] Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, proposed Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[22] Proposed Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, proposed Commentary.05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's Actual Portfolio or Proxy Portfolio.

In the event (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser or a Fund who makes decisions pertaining to the Fund's Actual Portfolio and/or the Proxy Portfolio or has access to non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for a Fund, who has access to non-public

[20] The Trust is registered under the 1940 Act. On April 6, 2020, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act for the Funds (File Nos. 333–221045 and 811–23305) (''Registration Statement''). The Trust also filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15082), dated December 11, 2019 (''American Century Application'' or ''Application''). On May 12, 2020, the Commission issued an order granting the exemptions requested in the Application (Investment Company Act Release No. 33862 (May 12, 2020) (''American Century Exemptive Order'' or ''Exemptive Order''). The American Century Application states that the exemptive relief requested by the Trust will apply to funds of the Trust that comply with the terms and conditions of the American Century Exemptive Order and the order issued to Natixis ETF Trust II. With respect to the Natixis ETF Trust II, *see* Seventh Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14870) (October 21, 2019 (''Natixis Application''); the Commission notice regarding the Natixis Application (Investment Company Release No. 33684 (File No. 812–14870) November 14, 2019); and the Commission order under the 1940 Act granting the exemptions requested in the Natixis Application (Investment Company Act Release No. 33711 (December 10, 2019)) (''Natixis Exemptive Order''). The American Century Application incorporates the Natixis Exemptive Order by reference. Investments made by the Funds will comply with the conditions set forth in the American Century Application, American Century Exemptive Order and Natixis Exemptive Order. The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement and the American Century Application.

[21] The text of proposed Commentary .04 to NYSE Arca Rule 8.601–E is included in Amendment 6 to SR–NYSEArca–2019–95. *See* note 13, *supra.*

[22] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

information regarding a Fund's Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio.

The Funds

According to the Application, the Adviser believes a Fund would allow for efficient trading of Shares through an effective Fund portfolio transparency substitute and publication of related information metrics, while still shielding the identity of the full Fund portfolio contents to protect a Fund's performance-seeking strategies. Even though a Fund would not publish its full portfolio contents daily, the Adviser believes that the NYSE Proxy Portfolio Methodology would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio. As a result, the Adviser believes that investors would be able to purchase and sell Shares in the secondary market at prices that are close to their NAV.

In this regard, the Funds will utilize a proxy portfolio methodology—the ''NYSE Proxy Portfolio Methodology''—that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares of a Fund by investors in the secondary market at prices that do not vary materially from their NAV.[23] The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.

Each Fund's holdings will conform to the permissible investments as set forth in the American Century Application and American Century Exemptive Order and the holdings will be consistent with all requirements in the American Century Application and American Century Exemptive Order.[24] Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

American Century Mid Cap Growth Impact ETF

According to the Registration Statement, the Fund will seek long-term capital growth. The Fund, under normal market conditions,[25] will invest principally in exchange-traded common stocks and will invest at least 80% of its assets in securities of medium capitalization companies.

American Century Sustainable Equity ETF

According to the Registration Statement, the Fund will seek long-term capital growth. The Fund, under normal market conditions, will invest at least 80% of its assets in equity securities. The Fund will invest principally in exchange-traded common stocks.

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will offer, issue and sell Shares of the Funds to investors only in specified minimum size ''Creation Units'' through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of a Fund is expected to be determined as of 4:00 p.m. E.T. on each ''Business Day.''[26] The ''Creation Basket'' (as defined below) for a Fund will be based on the Proxy Portfolio, which is designed to approximate the value and performance of the Actual Portfolio. All Creation Basket instruments will be valued in the same manner as they are valued for purposes of calculating a Fund's NAV, and such valuation will be made in the same manner regardless of the identity of the purchaser or redeemer. Further, the total consideration paid for the purchase or redemption of a Creation Unit of Shares will be based on the NAV of such Fund, as calculated in accordance with the policies and procedures set forth in its Registration Statement.

The Trust will sell and redeem Creation Units of each Fund only on a Business Day. Creation Units of the Funds may be purchased and/or redeemed entirely for cash, as permissible under the procedures described below.

In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the ''Creation Basket'') will be the same as a Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.[27]

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

[23] The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Funds. NYSE Group, Inc. is not affiliated with the Funds, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

[24] Pursuant to the American Century Application and American Century Exemptive Order, the permissible investments for a Fund are only the following: ETFs traded on a U.S. exchange; exchange-traded notes (''ETNs'') traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (''foreign common stocks'') in the Exchange's Core Trading Session (normally 9:30 a.m. and 4:00 p.m. Eastern time (''E.T.'')); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (''ADRs''); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with a Fund's Shares. In addition, a Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, the Funds will not hold short positions or invest in derivatives other than U.S. exchange-traded futures will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

[25] The term ''normal market conditions'' is defined in proposed Rule 8.601–E(c)(6), which states as follows: The term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[26] A Business Day is any day on which the Exchange is open for business.

[27] The Adviser represents that, to the extent that a Fund allows creations and redemptions to be conducted in cash, such transactions will be effected in the same manner for all Authorized Participants transacting in cash.

Each Fund will adopt and implement policies and procedures regarding the composition of its Creation Baskets. The policies and procedures will set forth detailed parameters for the construction and acceptance of baskets in compliance with the terms and conditions of the American Century Exemptive Order and that are in the best interests of a Fund and its shareholders, including the process for any revisions to or deviations from those parameters.

A Fund that normally issues and redeems Creation Units in kind may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, a Fund will announce, before the open of trading in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., E.T.) on a given Business Day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash. Each Business Day, before the open of trading on the Exchange, a Fund will cause to be published through the National Securities Clearing Corporation (''NSCC'') the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is either: (1) A ''participating party'' (*i.e.,* a broker or other participant), in the Continuous Net Settlement (''CNS'') System of the NSCC, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (2) a DTC Participant, which in any case has executed a participant agreement with the Distributor and the Transfer Agent.

Timing and Transmission of Purchase Orders

All orders to purchase (or redeem) Creation Units, whether using the NSCC Process or the DTC Process, must be received by the Distributor no later than the NAV calculation time (''NAV Calculation Time''), generally 4:00 p.m. E.T. on the date the order is placed (''Transmittal Date'') in order for the purchaser (or redeemer) to receive the NAV determined on the Transmittal Date.

Daily Disclosures

With respect to the Funds, the following information will comprise the ''Proxy Portfolio Disclosures'' and, pursuant to the American Century Application and Exemptive Order, will be publicly available on the Funds' website (*www.americancenturyetfs.com*) before the commencement of trading in Shares on each Business Day:

- The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.
- The historical ''Tracking Error'' between a Fund's last published NAV per share and the value, on a per Share basis, of a Fund's Proxy Portfolio calculated as of the close of trading on the prior Business Day will be publicly available on the Funds' website before the commencement of trading in Shares each Business Day.
- The ''Proxy Overlap'' will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The Proxy Overlap is the percentage weight overlap between the Proxy Portfolio's holdings compared to the Actual Portfolio's holdings that formed the basis for a Fund's calculation of NAV at the end of the prior Business Day. The Proxy Overlap will be calculated by taking the lesser weight of each asset held in common between the Actual Portfolio and the Proxy Portfolio and adding the totals.

Availability of Information

The Funds' website (*www.americancenturyetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' website will include on a daily basis, per Share for each Fund, the prior Business Day's NAV and the ''Closing Price'' or ''Bid/Ask Price,'' [28] and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV. The Adviser has represented that the Funds' website will also provide: (1) Any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for a Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge. Each Fund's website also will disclose the information required under proposed Rule 8.601–E(c)(3).[29] The Proxy Portfolio holdings for each Fund (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Funds' Commission filings will be provided on the Funds' website on a current basis.[30] Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis within at least 60 days following the end of every fiscal quarter.

Investors can also obtain a Fund's prospectus, SAI, Shareholder Reports, Form N–CSR, N–PORT and Form N–CEN filed with the Commission. The prospectus, SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to its Exemptive Order, the issuer must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Updated price information for U.S. exchange-listed equity securities is available through major market data

[28] The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of a Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

[29] *See* note 13, *supra.* Proposed Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weighting of the holding in the portfolio.

[30] *See* note 16, *supra.*

vendors or securities exchanges trading such securities. Quotation and last sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks and ADRs will be available via the Consolidated Tape Association (''CTA'') high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Investment Restrictions

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 8.601–E. A Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and all requirements in the Application and Exemptive Order.[31]

Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[32]

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[33] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, proposed Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to proposed Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio for each Fund will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[34] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading the Shares and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35]

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Funds, upon request, in order to facilitate the performance of the surveillances referred to above.

[31] *See* note 24, *supra.*

[32] A Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following a Fund's first full calendar year of performance.

[33] *See* NYSE Arca Rule 7.12–E.

[34] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[35] For a list of the current members of ISG, *see www.isgportal.org.*

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with proposed Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of proposed Rule 8.601–E. In addition, the Exchange will require funds to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of proposed Rule 8.601–E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares, that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5) of the Act,[37] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in proposed NYSE Arca Rule 8.601–E.[38]

Each Fund's holdings will conform to the permissible investments as set forth in the American Century Application and the Exemptive Order and the holdings will be consistent with all requirements in the American Century Application and American Century Exemptive Order.[39] Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Each Fund's investments will be consistent with its investment objective. Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[40] For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

[39] *See* note 24, *supra.*

[40] *See* note 19, *supra.*

market makers gain more confidence in their real-time hedges.

The Funds will utilize the NYSE Proxy Portfolio Methodology that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

With respect to Active Proxy Portfolio Shares generally, the pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets [41] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Funds that the NAV per Share of a Fund will be calculated daily and that the NAV, Proxy Portfolio and Actual Portfolio for each Fund will be made available to all market participants at the same time. Investors can obtain a Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT and Form N–CEN. A Fund's SAI and shareholder reports will be available free upon request from a Fund, and those documents and the Form N–CSR, Form N–PORT and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to each Fund, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks and ADRs will be available via the CTA high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. The website for the Funds will include a form of the prospectus for each Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The Proxy Portfolio holdings for each Fund (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601–E.[42]

The Shares of the Funds will be subject to proposed Rule 8.601–E(d)(2)(D), which provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of a Fund, that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

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

[41] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

[42] *See* Amendment 6 to SR–NYSEArca–2019–95, referenced in note 13, *supra.*

necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

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. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 5, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.[43] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 5 is consistent with Section 6(b)(5) of the Act,[44] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that in a separate order, it approved the Exchange's proposed rule change to adopt NYSE Arca Rule 8.601–E to permit the listing and trading of Active Proxy Portfolio Shares.[45]

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for each Fund will be made available to all market participants at the same time.[46] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks, and ADRs will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. The Funds' website will include additional information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV, the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Portfolio compared to the Actual Portfolio holdings for the prior business day, and any other information regarding premiums and discounts and the bid/ask spread for a Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act. The Proxy Portfolio holdings for each Fund (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day and each Fund's website will disclose the information required under Rule 8.601–E(c)(3).[47] The website and information will be publicly available at no charge.

In addition, the Exchange states that intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services, and that intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The Commission also notes that the Exchange's rules regarding trading halts help to ensure the maintenance of fair and orderly markets for the Shares. Specifically, pursuant to its rules, the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Shares and will halt trading in the Shares under the conditions specified in NYSE Arca Rule 7.12–E. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[48] Trading in the Shares also will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth additional circumstances under which trading in the Shares will be halted.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. Specifically, the Exchange provides that:

- The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio;
- Any person related to the Adviser or a Fund who makes decisions pertaining to the Fund's Actual Portfolio and/or Proxy Portfolio or who has access to non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual

[43] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78f(b)(5).

[45] *See* note 3 *supra.*

[46] *See* NYSE Arca Rule 8.601–E(d)(1)(B).

[47] *See* Rule 8.601–E(c)(3), which requires that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) description of holding; (iv) quantity of each security or other asset held; and (v) percentage weighting of the holding in the portfolio.

[48] *See* NYSE Arca Rule 8.601–E(d)(2)(D)(i).

Portfolio and/or the Proxy Portfolio or changes thereto;

• In the event (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto; and

• Any person or entity, including any service provider for a Fund, who has access to non-public information regarding a Fund's Actual Portfolio or the Proxy Portfolio or changes thereto will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto, and if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio.

Finally, the Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange,[49] and that these surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange represents that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E.

(2) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

(3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act.[50]

(6) Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements set forth in the Application and Exemptive Order. Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

(7) With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

The Exchange also represents that all statements and representations made in the filing regarding: (1) The description of the portfolios or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares, that the Adviser will advise the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor[51] for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

IV. Solicitation of Comments on Amendment No. 5 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 5, is consistent with the Exchange 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–2019–96 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–2019–96. 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

[49] *See* NYSE Arca Rule 8.601–E, Commentary .03, which requires, as part of the surveillance procedures for Active Proxy Portfolio Shares, a Fund's investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of the Fund.

[50] *See* 17 CFR 240.10A–3.

[51] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

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–2019–96, and should be submitted on or before July 28, 2020.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 5

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 5, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 5 in the **Federal Register**. In Amendment No. 5, the Exchange modified the description of each Fund and conformed the description of NYSE Arca Rule 8.601–E to the final rule approved in the Active Proxy Portfolio Shares Order.[52] Amendment No. 5 also provides other clarifications and additional information related to the Funds.[53] The changes and additional information in Amendment No. 5 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[54] to approve the proposed rule change, as modified by Amendment No. 5, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [55] that the proposed rule change (SR–NYSEArc–2019–96), as modified by Amendment No. 5, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14490 Filed 7–6–20; 8:45 am]

BILLING CODE 8011–01–P

[52] *See supra* note 3.

[53] *See* Amendment No. 5, *supra* note 12.

[54] 15 U.S.C. 78s(b)(2).

[55] *Id.*

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89194; File No. SR–BOX–2020–22]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Establish Section I.C.2 (Strategy Order Facilitation and Solicitation Transactions)

June 30, 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 15, 2020, BOX Exchange LLC (''Exchange'') 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 the Fee Schedule for trading on BOX to establish Section I.C.2 (Strategy Order Facilitation and Solicitation Transactions). Specifically, the Exchange proposes to establish fees and rebates for Strategy Order Facilitation and Solicitation transactions which include the following strategies: Short stock interest strategies, merger strategies, reversal strategies, conversion strategies, jelly roll strategies, and box spread strategies.[5] The Strategy Order Facilitation and Solicitation transactions will be subject to the following fees:

Account type	Agency order		Facilitation order or solicitation order		Responses in the solicitation or facilitation auction mechanisms	
	Penny pilot classes	Non-penny pilot classes	Penny pilot classes	Non-penny pilot classes	Penny pilot classes	Non-penny pilot classes
Public Customer	$0.00	$0.00	$0.00	$0.00	$0.25	$0.40
Professional Customer	$0.10	$0.10	$0.10	$0.10	$0.25	$0.40
Broker Dealer	$0.25	$0.25	$0.25	$0.25	$0.25	$0.40
Market Maker	$0.25	$0.25	$0.25	$0.25	$0.25	$0.40

Further, the Exchange proposes that the fees for these transactions will be capped at $1,000 per day per customer. The Exchange proposes that on each trading day, Participants are eligible to receive a $500 rebate per customer for executing the Strategy Orders listed above through the Facilitation or Solicitation mechanisms. The rebate will be applied once the $1,000 fee cap per customer is met. Further, the rebate will be paid to the Participant that entered the order into the BOX system.[6] Additionally, the Exchange is proposing to add clarifying text to Section II.D. of the Fee Schedule (Strategy QOO Order Fee Cap and Rebate) to make clear that the daily cap and rebate is applied on a per customer basis. The proposed text does not substantively alter the manner in which fees are assessed or rebates are applied, the proposed text merely updates the Fee Schedule language to make clear how fees and rebates are calculated.

The Exchange notes that the proposed fee structure is similar to what is currently assessed for these Strategy Orders executed on the BOX Trading Floor. Under Section II (Manual Transactions) of the BOX Fee Schedule, Broker Dealers and Market Makers Strategy QOO Orders' are charged $0.25 for the Strategy QOO Orders and Professional Customers are charged $0.10 for their Strategy QOO Orders. These orders are capped at $1,000 on a daily basis and Floor Brokers are eligible for a $500 rebate for presenting these Strategy QOO Orders on the Trading Floor once the $1000 fee cap is met.[7]

The Exchange is now proposing a similar fee and rebate structure for Strategy Orders executed electronically through the Facilitation or Solicitation Auction Mechanisms.[8] With regard to the rebate, the Exchange notes that on the Trading Floor, Floor Brokers who present such transactions to the Trading Floor receive the $500 rebate once the $1,000 fee cap is hit. Here, the Exchange proposes that when Strategy Orders are executed electronically through the Facilitation and Solicitation mechanisms, the Participant who enters the order into the BOX system will receive the $500 rebate (once the $1,000 fee cap is hit).

The Exchange also proposes to amend Section III (Liquidity Fees and Credits). Specifically, the Exchange proposes to amend Section III.B to state that the transactions in proposed Section I.C.2 (Strategy Order Facilitation and Solicitation Transactions) are exempt from the fees and credits detailed in Section III.B.

Lastly, the Exchange proposes to renumber footnotes through the fee schedule in conjunction to the changes discussed herein.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between

[5] The Exchange notes that the following definitions for these strategies already exist in the BOX Fee Schedule. The Exchange is simply moving the definitions to the proposed section discussed above. A ''short stock interest strategy'' is defined as a transaction done to achieve a short stock interest arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class. A ''merger strategy'' is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. A ''reversal strategy'' is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A ''conversion strategy'' is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration. A ''jelly roll strategy'' is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. A ''box spread strategy'' is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. The Exchange notes that ''dividend strategies'' are not eligible for the proposed fees, fee cap and rebate in the Strategy Facilitation and Solicitation auction mechanism. Dividend strategies executed through the Facilitation or Solicitation auction mechanism will continue to be subject to the fees in Section I.C. of the BOX Fee Schedule and the rebate in Section I.C.1.

[6] The Exchange notes that with regard to the daily cap, fees assessed for Strategy QOO Orders executed on the BOX Trading Floor will be combined with the fees assessed electronically. For example, when Customer A sends certain Strategy QOO Orders to Floor Broker 1 on the Trading Floor, Customer A's fees for these orders will be capped at $1,000 per day. If Customer A reaches the $1,000 Fee Cap, Floor Broker 1, who entered these orders on behalf of Customer A into the BOX system, will receive the $500 rebate. Under this proposal, Floor Broker 1 may execute some or all of these orders electronically through the Facilitation and Solicitation mechanisms. If so, Customer A's fees for any orders executed through the Facilitation or Solicitation Mechanisms will be combined with any orders executed on the BOX Trading Floor with regard to the daily fee cap.

[7] The Exchange notes, as previously mentioned above, the daily cap and rebate are applied on a per customer basis.

[8] The Exchange notes that Participants are currently able to send these orders through the Facilitation and Solicitation mechanisms, however they are not eligible for the fee cap or rebate that is provided Strategy QOO Orders on the BOX Trading Floor. The Exchange believes that providing the daily fee cap and rebate to electronic market participants will result in increased order flow through the Facilitation and Solicitation mechanisms benefiting all market participants.

[9] 15 U.S.C. 78f(b)(4) and (5).

customers, issuers, brokers or dealers. The Exchange notes that it operates in a highly competitive market in which the Exchange must continually reassess its fees in order to maintain its competitiveness within the options exchange industry. The proposed changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

The Exchange believes establishing the fee structure for Strategy Order Facilitation and Solicitation Transactions is reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed fees are reasonable as they are in line with the fees currently assessed for Strategy QOO Orders on the BOX Trading Floor. As discussed herein, the Exchange is establishing similar fees to the fees assessed on the Trading Floor and making the daily fee cap and rebate for these orders available to market participants who wish to execute Strategy Orders electronically, or both electronically and on the BOX Trading Floor. The Exchange believes that the proposed fee structure will incentivize market participants to submit Strategy Orders through the Facilitation or Solicitation mechanisms resulting in increased liquidity on the Exchange benefitting all market participants.[10] The Exchange believes that the proposed fees for Strategy Orders executed through the Facilitation and Solicitation Mechanisms are reasonable and appropriate. As discussed above, the proposed fees are similar to the fees assessed for Strategy QOO Orders on the BOX Trading Floor. The Exchange is simply creating a similar fee structure for Participants who wish to submit Strategy Orders electronically through the Facilitation or Solicitation Auction Mechanism.

The Exchange believes that excluding dividend strategies from the proposed fees, fee cap and rebate is reasonable and appropriate. The Exchange notes that this type of order is best suited for execution on the BOX Trading Floor and the Exchange does not believe incentivizing electronic dividend strategies is necessary.

The Exchange believes the proposed $0.25 fees for Agency Orders and Facilitation or Solicitation Orders for Broker Dealers and Market Makers and the proposed $0.10 fee for Agency Order and Facilitation or Solicitation Orders for Professional Customers are reasonable and appropriate as these fees are currently assessed to Participants on the BOX Trading Floor for Strategy QOO Orders.[11] Further, the Exchange believes that charging Professional Customers and Broker Dealers and Market Makers more than Public Customers for Agency Orders and Facilitation and Solicitation Orders is reasonable, equitable and not unfairly discriminatory. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. The Exchange believes that charging no fees to Public Customers for Strategy Orders in the Facilitation and Solicitation auction mechanisms is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting Public Customer order flow. Further, the Exchange believes it is reasonable and appropriate to assess Professional Customers a lower fee than Broker Dealers and Market Makers because it is intended to attract a greater number of Professional Customer Strategy Orders to the Exchange. The Exchange believes the potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Lastly, the Exchange believes the proposed fees for Professional Customers is appropriate as the Exchange is mirroring the fees currently assessed for Strategy QOO transactions on the BOX Trading Floor.[12]

The Exchange also believes the proposed fees of $0.25 for Penny Pilot Classes and $0.40 for Non-Penny Pilot Classes for Responses in the Facilitation or Solicitation Auction Mechanisms are reasonable and equitable. The proposed fees are the same rates currently charged for each account type for Responses in BOX's Facilitation and Solicitation auction mechanisms for all other transactions. The Exchange believes it is reasonable to establish different fees for Strategy Order Facilitation and Solicitation transactions in Penny Pilot Classes compared to transactions in Non-Penny Pilot Classes. The Exchange makes this distinction throughout the BOX Fee Schedule, including the Exchange fees for PIP and COPIP Transactions. The Exchange believes it is reasonable to establish higher fees for Non-Penny Pilot Classes because these Classes are typically less actively traded and have wider spreads.

The Exchange believes the proposed $1000 fee cap is reasonable as it is in line with the fee cap that is currently applied to Strategy QOO Orders on the BOX Trading Floor. The proposed fee cap is designed to incentivize order flow in Strategy Orders, and the Exchange believes that the proposed fee cap, coupled with the other changes discussed herein, will result in increased participation in Strategy Orders on BOX. As such, the Exchange believes the increased order flow in Strategy Orders will result in increased liquidity on BOX to the benefit of all market participants. Further, the Exchange believes that the proposed fee cap is equitable and not unfairly discriminatory because all Participants are subject to the cap, regardless of account type.

The Exchange believes the proposed rebate is reasonable as it is similar in nature to the rebate that is currently applied to these types of orders on the BOX Trading Floor. As discussed herein, Floor Brokers receive the $500 (once the $1,000 fee cap is hit) for presenting Strategy QOO Orders on the Trading Floor. Here, the Exchange proposes that the Participant who enters Strategy Orders into the BOX system will receive the $500 rebate (once the $1,000 fee cap is hit). Further, the Exchange believes that offering the proposed rebate will result in increased order flow to these auction mechanisms which, in turn, will benefit all market participants. The Exchange also believes the proposed rebate is equitable and not unfairly discriminatory as the rebate is available to all Participants who submit such orders to BOX.

The Exchange believes that aggregating electronic Strategy Order fees and Strategy QOO Order fees on the BOX Trading Floor for purposes of calculating the proposed fee cap and rebate is reasonable, equitable and not unfairly discriminatory. With regard to the proposed daily fee cap and rebate, the Exchange believes combining the electronic transaction fees and manual transaction fees is not a novel concept.

[10] The Exchange notes that there is a larger responding community electronically versus on the BOX Trading Floor. The Exchange believes that establishing fees that are similar to the current floor fees (including the daily fee cap and rebate) will result in increased order flow to these mechanisms resulting in more responses and ultimately more executions on the Exchange. As discussed herein, the proposed rebate will be paid to the Participant who enters the Strategy Orders into the BOX system where the rebate on the BOX Trading Floor is paid to the Floor Broker who presented the Strategy QOO Orders on the Trading Floor.

[11] The Exchange notes that Public Customers will not be assessed a fee for Agency Orders or Facilitation Orders or Solicitation Orders in the proposed fee structure. The Exchange believes this is reasonable as Public Customers are not assessed fees for these types of transactions on the BOX Trading Floor and are not assessed fees in the current Facilitation and Solicitation auction mechanisms. Further, BOX notes that it recently filed a fee change to reduce the Professional Customer QOO Order fee. *See* SR–BOX–2020–18.

[12] *Id.*

On Nasdaq Phlx LLC (''Phlx''), a volume based rebate is paid for all qualifying executed Qualified Contingent Cross (''QCC'') Orders including both electronic and manual transactions.[13] Specifically, Phlx applies a tiered rebate structure ranging from $0.05 to $0.11 per contract for all QCC transaction volume—electronic and manual. Further, Phlx applies a Monthly Firm Fee Cap of $75,000 for all floor option transaction charges and QCC Transaction Fees (both electronic and manual).

The Exchange believes that combining the electronic and manual transaction fees as discussed herein will incentivize market participants to send these types of Complex Orders to the Exchange, either electronically and/or manually, to take advantage of the proposed fee cap and rebate. The Exchange believes the proposed cap and rebate will result in increased order flow which could result in more executions on the Exchange, benefitting all market participants. The Exchange believes this proposed change is equitable and not unfairly discriminatory as all Participants are subject to the proposed daily fee cap and rebate.[14]

The Exchange believes that the proposed non-substantive clarifying language in Section II.D. of the Fee Schedule is reasonable and equitable because the added text is intended to provide greater clarity to Participants with regard to how the Exchange assesses fees and provides rebates. The Exchange notes that the proposed non-substantive clarifying text does not amend any fee or rebate, nor alter the manner in which it assesses fees or calculates rebates.

Lastly, the Exchange believes that the proposed change to exempt the proposed Strategy Order Facilitation and Solicitation transactions from the liquidity fees and credits detailed in Section III.B of the BOX Fee Schedule is reasonable and appropriate as the proposed fees are intended to mirror the fees assessed to Strategy QOO Orders on the BOX Trading Floor. Further, Liquidity Fees and Credits are meant to promote order flow to BOX, which the Exchange believes is no longer necessary with the proposed changes above. Further, the Exchange believes that this proposed change is equitable and not unfairly discriminatory because all Strategy Orders executed through the Facilitation or Solicitation mechanism will be exempt from Liquidity Fees and Credits, regardless of account type.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed Complex Order Facilitation and Solicitation Transaction fees will not impose a burden on competition among various Exchange Participants. Rather, BOX believes that the changes will result in the Participants being charged appropriately for Strategy Order Facilitation and Solicitation Transactions and are designed to enhance competition in these auction mechanisms. Submitting an order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to the Exchange. Further, the Exchange does not believe that capping the fees for Strategy Orders will impose an undue burden on competition because all Participants are eligible for the fee cap. Lastly, the Exchange does not believe that offering a rebate to Participants will impose an undue burden on competition because all Participants are eligible to transact Strategy Orders on BOX and receive a rebate.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily send their order flow to competing venues, the degree to which fee changes in this market may impose any burden on competition is extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[15] and Rule 19b–4(f)(2) thereunder,[16] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BOX–2020–22 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–BOX–2020–22. 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

[13] *See* Phlx Fee Schedule Options 7, Section 4.

[14] Under this proposal, Participants will have the ability to execute Strategy QOO Orders on the Trading Floor (if they are an approved Floor Broker) or execute the same types of orders through the Complex Order Facilitation or Solicitation Orders electronically. The Exchange does not believe a Participant with a presence on the Trading Floor and on the electronic market has an unfair advantage as all market participants have the ability to become a Floor Participant and extend their presence on the electronic Exchange and the physical Trading Floor.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–22, and should be submitted on or before July 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14492 Filed 7–6–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89188; File No. SR–FINRA–2020–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Extend the Time To Complete Office Inspections Under FINRA Rule 3110 (Supervision)

June 30, 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 19, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt temporary Supplementary Material .16 (Temporary Extension of Time to Complete Office Inspections) under FINRA Rule 3110 (Supervision) that, in light of the operational challenges member firms are facing due to the outbreak of the coronavirus disease (COVID–19), would extend the time by which member firms must complete their calendar year 2020 inspection obligations under Rule 3110(c) (Internal Inspections) to March 31, 2021.[4]

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

* * * * *

3100. Supervisory Responsibilities

* * * * *

3110. Supervision

* * * * *

(a) through (f) No Change.

• • • **Supplementary Material:———**

.01 through .15 No Change.

.16 Temporary Extension of Time to Complete Office Inspections. Each member obligated to complete an inspection of an office of supervisory jurisdiction, branch office or non-branch location in calendar year 2020 pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 3110, shall be deemed to have satisfied such obligation if the applicable inspection is completed on or before March 31, 2021.

* * * * *

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

FINRA is closely monitoring the impact of the COVID–19 pandemic on member firms, investors, and other stakeholders. FINRA recognizes that firms are experiencing operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adhering to other social distancing guidelines consistent with the recommendations of public health officials.[5] FINRA believes that these ongoing extenuating circumstances warrant sensible and tailored accommodations for member firms to meet their inspection obligations under Rule 3110(c) for calendar year 2020.

Rule 3110(c) requires on-site inspections of offices of supervisory jurisdiction (''OSJs'') and supervisory branch offices at least annually (on a calendar-year basis), non-supervisory branch offices at least every three years, and non-branch locations on a regular periodic schedule, presumed to be every three years.[6] As a result of the compelling health and welfare concerns stemming from the COVID–19 pandemic, firms are facing potentially significant disruptions to their normal business operations that may include staff absenteeism, the increased use of remote offices or telework arrangements, travel or transportation limitations, and technology interruptions or slowdowns. These circumstances make it impracticable for firms in most cases to reach and conduct an on-site inspection of office locations. To provide firms an opportunity to better manage these operational challenges and the resources attendant to fulfilling these supervisory obligations during these pressing times, FINRA is proposing to adopt Rule 3110.16 that would extend the time by which inspections must be completed in accordance with Rule 3110(c) for calendar year 2020 to March 31, 2021.[7] FINRA emphasizes that this extension of time does not relieve firms from the

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The proposed rule change will automatically sunset on March 31, 2021. If FINRA seeks to provide additional temporary relief from the rule requirement identified in this proposal beyond March 31, 2021, FINRA will submit a separate rule filing to further extend the temporary extension of time.

[5] *See, e.g.,* Centers for Disease Control and Prevention, How to Protect Yourself & Others, *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html* (last visited June 17, 2020).

[6] *See* Rule 3110(c)(1)(A), (B), and (C). *See also* Rule 3110.13 (General Presumption of Three-Year Limit for Periodic Inspection Schedules).

[7] *See supra* note 4.

on-site inspection requirement of branch offices and non-branch locations currently prescribed by the rule. FINRA also notes that this proposed extension of time would create further efficiencies for firms by aligning with the Municipal Securities Rulemaking Board's (''MSRB'') temporary extension for meeting the inspection requirements of offices set forth under MSRB Rule G–27 (Supervision) to March 31, 2021.[8]

FINRA believes that this proposed extension of time is tailored to address the needs and constraints on a firm's operations during the COVID–19 pandemic, without significantly compromising critical investor protection. FINRA believes that potential risks that may arise from providing firms additional time to comply with their inspection obligations due in calendar year 2020 are mitigated by firms' ongoing supervisory obligations, off-site monitoring, and the temporary nature of the extension. FINRA will continue to monitor the situation and engage with member firms, other financial regulators, and governmental authorities to determine whether additional regulatory relief or guidance related to this rule may be appropriate. In particular, FINRA will consider whether additional relief may be warranted to address any backlog of 2020 inspections that may continue to exist in light of ongoing public health and safety concerns.

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,[9] 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. The proposed rule change is intended to provide firms additional time to comply with their Rule 3110(c) inspection obligations due in calendar year 2020 to March 31, 2021, and does not relieve firms from completing those obligations or from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID–19 pandemic, FINRA believes that the proposed rule change is a sensible accommodation that will afford firms the ability to observe the recommendations of public health officials to provide for the health and safety of its personnel, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended solely to provide temporary relief given the impacts of the COVID–19 pandemic crisis.[10] As a result of the temporary nature of the proposed relief, an abbreviated economic impact assessment is appropriate.

Economic Impact Assessment

A. Regulatory Objective

FINRA is proposing Rule 3110.16 to address an issue that has arisen due to the impacts of the coronavirus outbreak and restrictions related to health and safety concerns. In addition to social distancing requirements that have been implemented across the United States to benefit the health and welfare of the populace, firms are facing potentially significant business disruptions that may include staff absenteeism, increased use of remote offices or telework arrangements, travel or transportation limitations, and technology interruptions or slowdowns. These limitations pose significant challenges for firms to satisfy the on-site inspection component of Rule 3110(c), which requires travel to visit offices and non-branch locations. In recognition of these circumstances, the proposed rule change would provide temporary relief by extending the date by which firms must complete their 2020 inspections.

B. Economic Baseline

The Economic Baseline of the proposed temporary relief is the obligation under Rule 3110(c), as described above, and the current number and types of FINRA member locations that require inspections.

C. Economic Impact

Proposed Rule 3110.16 is intended solely to provide an accommodation from the timing requirements set forth under Rule 3110(c) (as applicable to year 2020) due to the current pandemic-related limitations in place across the United States to benefit the health and welfare of the populace. FINRA believes that the proposed rule change will not impose any new costs on member firms. Moreover, the proposed rule change would align with similar temporary relief provided by the MSRB (as discussed above), and such coordination among regulators will provide for greater clarity and the efficient use of resources by firms during this public health crisis.

FINRA notes that even in the current environment, member firms have an ongoing obligation to supervise the activities of their associated persons at their branch offices and non-branch locations in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Any risks that may arise from providing firms additional time to comply with their Rule 3110(c) inspection obligations due in calendar year 2020 are mitigated by firms' ongoing supervisory obligations, off-site monitoring, and the temporary nature of the extension. As noted above, the proposed rule change would be limited in time, and in place to March 31, 2021, or until the conclusion of any extension thereof.[11]

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

[8] *See* Securities Exchange Act Release No. 88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (Notice of Filing and Immediate Effectiveness of File No SR–MSRB–2020–01). *See also* MSRB Notice 2020–09 (MSRB Amends Certain Rules to Provide Regulatory Relief During COVID–19 Pandemic) (April 9, 2020).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See also* FINRA *Regulatory Notice* 20–08.

[11] *See supra* note 4.

19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

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. FINRA has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. FINRA has stated that the requested relief in this proposed rule change is in response to the potentially significant disruptions to normal business operations that may include staff absenteeism, the increased use of remote offices or telework arrangements, travel or transportation limitations, and technology interruptions or slowdowns. FINRA notes also that such circumstances make it impracticable for firms in most cases to reach and conduct an on-site inspection of office locations. FINRA states that the temporary relief provided for in the proposed rule change will provide firms an opportunity to better manage these operational challenges and the resources attendant to fulfilling these supervisory obligations. We note that this proposal provides only temporary relief from the time required to complete office inspections; as proposed, these changes would be in place through March 31, 2021. FINRA also stated that the amended rule will revert back to its original state at the conclusion of the temporary relief period and, if applicable, any extension thereof. 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.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–FINRA–2020–019 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–2020–019. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2020–019 and should be submitted on or before July 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14487 Filed 7–6–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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.

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89205; File No. SR–NYSE–2020–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rules 7.36 and 7.37

June 30, 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 24, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 7.36 and 7.37 relating to Setter Priority. 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,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 7.36 and 7.37 relating to Setter Priority.

Background

Rule 7.36(h) provides that Setter Priority will be assigned to an order ranked Priority 2—Display Orders [4] with a display quantity of at least a round lot if such order (i) establishes a new BBO and (ii) either establishes a new NBBO or joins an Away Market NBBO provided that such order will not be eligible for Setter Priority if there is an odd-lot sized order with Setter Priority at that price.[5] The Rule further provides that only one order is eligible for Setter Priority at each Price. Rules 7.36(h)(1)–(3) describe how an order is evaluated for Setter Priority, how it retains Setter Priority, and how it loses Setter Priority. Finally, Setter Priority is not available for any portion of an order that is ranked Priority 3—Non-Display Orders and is not available for allocations in an Auction.

Rule 7.37(b)(1) specifies how an Aggressing Order will be allocated against contra-side orders at each price.[6] After first trading with resting orders ranked Priority 1—Market Orders based on time, an Aggressing Order will next trade with an order with Setter Priority. As set forth in Rule 7.37(b)(1)(B), an order with Setter Priority that has a display price and a working price equal to the BBO will receive 15% of the remaining quantity of the Aggressing Order, rounded up to the next round lot size or the remaining displayed quantity of the order with Setter Priority, whichever is lower. That Rule further provides that an order with Setter Priority is eligible for allocation under this Rule if the BBO is no longer the same as the NBBO. Next, the Aggressing Order will be allocated against orders ranked Priority 2—Displayed Orders on parity by Participant. Any remaining quantity of an order with Setter Priority is eligible to participate in this parity allocation, consistent with the allocation wheel position of the Participant that entered the order with Setter Priority. Rules 7.37(b)(1)(C)–(I) describe how the remaining quantity of an Aggressing Order would be allocated.

Proposed Rule Change

The Exchange proposes two changes to Setter Priority. First, the Exchange proposes that only those orders that set the NBBO (which would also set the BBO) would be eligible for Setter Priority. Orders that set the BBO and join an existing NBBO would no longer be eligible for Setter Priority. Second, the Exchange proposes that when an order with Setter Priority is the Exchange's BBO, it would be eligible to trade in full with the contra-side Aggressing Order.

To effect these changes, the Exchange proposes to change the first sentence of Rule 7.36(h) to provide as follows (deleted text in brackets):

> Setter Priority will be assigned to an order ranked Priority 2—Display Orders with a display quantity of at least a round lot if such order [(i) establishes a new BBO and (ii) either] establishes a new NBBO [or joins an Away Market NBBO] provided that such order will not be eligible for Setter Priority if there is an odd-lot sized order with Setter Priority at that price.

With this proposed rule change, the only orders that would be eligible for Setter Priority would be displayed orders that establish a new NBBO. The Exchange does not believe that it needs to separately state that such an order also needs to establish a new BBO because if an order establishes a new NBBO, it also establishes a new BBO.[7]

The Exchange further proposes to change Rule 7.37(b)(1)(B) as follows (new text italicized, deleted text bracketed):

> Next, an order with Setter Priority that has a display price and working price equal to the BBO will *trade with* [receive 15% of] the remaining quantity of the Aggressing Order[, rounded up to the next round lot size or the remaining displayed quantity of the order with Setter Priority, whichever is lower]. *If the size of the Aggressing Order is equal to or larger than the size of the order with Setter Priority, the order with Setter Priority will trade in full. If the size of the Aggressing Order is smaller than the size of the order with Setter Priority, the order with Setter Priority will trade with the remaining quantity of the Aggressing Order.* An order with Setter Priority is eligible for allocation under this subparagraph if the BBO is no longer the same as the NBBO.

With this proposed change, after an Aggressing Order trades first with Market Orders, as described in Rule 7.37(b)(1)(A), the remaining quantity of the Aggressing Order would trade with an order with Setter Priority that has a display price and working price equal to the BBO. As with the current rule, an order with Setter Priority is eligible for this priority allocation only if such order is the BBO when it is trading with the Aggressing Order.

Under the proposal, instead of a 15% allocation (rounded up to the next round lot size, or the full quantity of the Aggressing Order), an order with Setter Priority would be eligible for up to 100% of the size of the Aggressing Order. Accordingly, with this proposed change, an order with Setter Priority would execute in the same manner that a top-of-book, resting, displayed order would trade on an exchange with a price-time priority model.[8]

If the size of the Aggressing Order is equal to or larger than the size of the order with Setter Priority, the order with Setter Priority would trade in full. For example, if the order with Setter Priority is 400 shares and the remaining quantity of the contra-side Aggressing Order is 400 shares or more, the order with Setter Priority would trade in full. If the size of the Aggressing Order is over 400 shares, the remaining quantity of the Aggressing Order would be allocated as described in Rules 7.37(b)(1)(C)–(I).

If the size of the Aggressing Order is smaller than the size of the order with Setter Priority, the order with Setter Priority would trade with the remaining

[4] Rule 7.36(e) defines the priority categories to which orders are assigned at each price point. Priority 1—Market Orders are defined as unexecuted Market Orders that have priority over all other same-side orders with the same working price (Rule 7.36(e)(1)). Priority 2—Display Orders are defined as non-marketable Limit Orders with a display price and have second priority (Rule 7.36(e)(2)). Priority 3—Non-Display Orders are defined as non-marketable Limit Orders for which the working price is not displayed, including reserve interest of Reserve Orders, and have third priority (Rule 7.36(e)(3)).

[5] The term ''BBO'' means the best bid or offer on the Exchange. *See* Rule 1.1(c). The term ''NBBO'' means the national best bid or offer. *See* Rule 1.1(q). An ''Away Market'' means any exchange, alternative trading system, or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange. Accordingly, an Away Market NBBO refers to an NBBO that does not include the Exchange's BBO.

[6] An ''Aggressing Order'' is defined as a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book. *See* Rule 7.36(a)(6).

[7] For example, if the BBO is $10.00 × $10.05 and the NBBO is $10.01 × $10.05, to be eligible for Setter Priority, a bid would need a limit price of $10.02 or higher (an order with a limit price of $10.05 or higher would either be routed pursuant to Rule 7.37(c)(1), be assigned a display price of $10.04 pursuant to Rule 7.31(e)(1) or (2), or be displayed at its limit price pursuant to Rule 7.31(e)(3)).

[8] For example, on NYSE Arca, Inc. (''NYSE Arca''), an incoming marketable order will be matched for execution against contra-side orders in the NYSE Arca Book according to the price-time priority ranking of the resting orders. *See* NYSE Arca Rule 7.37–E(a). Non-marketable Limit Orders with a displayed working price have second priority on NYSE Arca. *See* NYSE Arca Rule 7.37–E(e)(2).

quantity of the Aggressing Order. For example, if the order with Setter Priority is 400 shares and the remaining quantity of the contra-side Aggressing Order is 300 shares, the order with Setter Priority would trade with those 300 shares and the Aggressing Order would be fully executed. The remaining 100 shares of the order with Setter Priority would retain their Setter Priority and be eligible to interact with the next contra-side Aggressing Order.[9]

With this revised allocation proposal, if there is a remaining quantity of the Aggressing Order, there would not be any quantity left of the order with Setter Priority. Because there would not be any quantity of the order with Setter Priority to trade on parity with other displayed orders, the Exchange proposes to amend Rule 7.37(b)(1)(C) to delete the second sentence of that Rule in full.[10]

The Exchange believes that these proposed changes would provide an incentive for member organizations to improve the best bid or offer on the Exchange. Specifically, the Exchange believes that providing orders with Setter Priority an execution experience similar to that on price-time priority models, *i.e.,* that such orders would be eligible to trade in full with the contra-side Aggressing Order, would provide an incentive for member organizations to direct their liquidity-providing order flow to the Exchange.

This proposed rule change is also designed to operate seamlessly with the Exchange's parity allocation model. If there is no order with Setter Priority eligible to trade, an Aggressing Order would be allocated consistent with the existing allocation model, as described in Rule 7.37(b)(1)(C)–(I), without any changes. Likewise, after trading with an order with Setter Priority, any remaining quantity of an Aggressing Order would be allocated consistent with the existing allocation model, as described in Rule 7.37(b)(1)(C)–(I), without any changes.

Implementation

Subject to approval of this proposed rule change, the Exchange anticipates that it could implement the proposed changes to Setter Priority in August 2020. The Exchange would announce the implementation date of this proposed rule change by Trader Update.

[9] *See* Rule 7.36(h)(2)(A).

[10] The second sentence of Rule 7.37(b)(1)(C) currently provides: ''Any remaining quantity of an order with Setter Priority is eligible to participate in this parity allocation, consistent with the allocation wheel position of the Participant that entered the order with Setter Priority.''

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] 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.

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 is designed to create an incentive to improve the best displayed bid or offer on the Exchange. The Exchange already provides an increased allocation opportunity for orders with Setter Priority. The Exchange believes that both narrowing which orders are eligible for Setter Priority and increasing the execution opportunity for an order with Setter Priority would provide an incentive for member organizations to route orders to the Exchange that would set a new NBBO, which would benefit all market participants.

The Exchange further 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 is designed to provide an incentive for member organizations to route their price-forming liquidity-providing orders to the Exchange by providing such orders with an execution opportunity that is similar to how such orders would trade if they were the top-of-book, resting, displayed order on an exchange with a price-time priority model. Accordingly, the proposed allocation of an order with Setter Priority is not novel, as it is how such a resting, displayed order would trade if it were top of book on an exchange with a price-time priority model.

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 Exchange operates in a highly competitive market. Equity trading is currently dispersed across 13 exchanges,[13] 31 alternative trading systems,[14] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).[15] More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 13%. In this competitive market, Exchange member organizations are often members of multiple exchanges, and can direct liquidity-providing order flow to more than one exchange. The proposed rule change would promote inter-market competition because it would provide an additional incentive for member organizations to improve the best displayed bid or offer on the Exchange, which would benefit all market participants. The Exchange further believes that the proposed rule change would promote intra-market competition because Setter Priority would be available on equal terms to any member organization that sets a new NBBO on the Exchange.

[11] 15 U.S.C. 78f(b).

[12] 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

Within 45 days of the date of publication of this notice in the **Federal Register**, or 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.

[13] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[14] *See* FINRA ATS Transparency Data, available at *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.*

[15] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

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–2020–55 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–NYSE–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–NYSE–2020–55 and should be submitted on or before July 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14505 Filed 7–6–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89199; File No. SR–NYSE–2020–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Period for Specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C

June 30, 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 25, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material .20 to Rule 76; and temporary rule relief in Rule 36.30, to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material .20 to Rule 76; and temporary rule relief to Rule 36.30, to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2020. The current temporary period that these Rules are in effect ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020.

Background

To slow the spread of COVID–19 through social-distancing measures, 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 7.1(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19.[5] On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. The Exchange's current 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.*

[5] *See* Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

designed to prevent the spread of COVID–19.[6]

Proposed Rule Change

The Exchange has modified its rules to add Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material to Rule 76; and rule relief in Rule 36.30[7] that are in effect until the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020.[8]

The first and second phases of the reopening of the Trading Floor are subject to safety measures designed to prevent the spread of COVID–19. To meet these safety measures, Floor brokers and DMM units that have chosen to return to the Trading Floor are operating with reduced staff. The Exchange is therefore proposing to extend the following temporary rules until such time that there is a full reopening of the Trading Floor facilities to DMMs:

- Commentary .01 to Rule 7.35;[9]
- Commentaries .01, .02, .03, .04, .05, and .06 to Rule 7.35A;
- Commentaries .01 and .03 to Rule 7.35B;
- Commentaries .01, .02, .03, and .04 to Rule 7.35C;
- Supplementary Material .20 to Rule 76; and
- Amendments to Rule 36.30.

The Exchange is not proposing any substantive changes to these Rules.

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. On June 15, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning June 17, 2020, DMM units may choose to return a subset of staff to the Trading Floor.

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 the Trading Floor has not yet reopened in full to DMMs or Floor brokers. Accordingly, the Exchange believes that the temporary rule changes in effect pursuant to the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material .20 to Rule 76; and amendments to Rule 36.30, which are intended to be in effect during the temporary period while the Trading Floor has not yet opened in full to DMMs, should be extended until such time that there is a full reopening of the Trading Floor facilities to DMMs. The Exchange is not proposing any substantive changes to these Rules.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of a full reopening of the Trading Floor facilities to DMMs or the close of the Exchange on July 31, 2020, market participants will have advance notice of the temporary period during which the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material .20 to Rule 76, and amendments to Rule 36.30 will be in effect.

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 would extend the period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, .04, 05, and .06 to Rule 7.35A; Commentaries .01 and .03 to Rule 7.35B; Commentaries .01, .02, .03, and .04 to Rule 7.35C; Supplementary Material .20 to Rule 76; and amendments to Rule 36.30 will be in effect. These Commentaries are intended to be in effect during the temporary period while the Trading Floor has not yet been opened in full to DMMs and Floor brokers and currently expire on June 30, 2020. Because the Trading Floor has not been opened in full to DMMs, the Exchange proposes to extend the temporary period for these temporary rules to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2020.

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 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

[6] *See* Securities Exchange Act Release No. 89086 (June 17, 2020) (SR–NYSE–2020–52) (Notice of filing and immediate effectiveness of proposed rule change).

[7] *See* Securities Exchange Act Release Nos. 88413 (March 18, 2020), 85 FR 16713 (March 24, 2020) (SR–NYSE–2020–19) (amending Rule 7.35C to add Commentary .01); 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR–NYSE–2020–22) (amending Rules 7.35A to add Commentary .01, 7.35B to add Commentary .01, and 7.35C to add Commentary .02); 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR–NYSE–2020–23) (amending Rule 7.35A to add Commentary .02); 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR–NYSE–2020–28) (amending Rule 7.35A to add Commentary .03); 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR–NYSE–2020–29) (amending Rule 7.35C to add Commentary .03); 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR–NYSE–2020–35) (amending Rule 7.35A to add Commentary .04); 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR–NYSE–2020–37) (amending Rule 7.35 to add Commentary .01); 88950 (May 26, 2020), 85 FR 33252 (June 1, 2020) (SR–NYSE–2020–48) (amending Rule 7.35A to add Commentary .05); 89059 (June 12, 2020), 85 FR 36911 (June 18, 2020) (SR–NYSE–2020–50) (amending Rule 7.35C to add Commentary .04); and 89086 (June 17, 2020) (SR–NYSE–2020–52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material 20, and Supplementary Material .30 to Rule 36).

[8] *See* Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020).

[9] Because DMMs are not obligated to return to a Floor, an IPO Auction may still be conducted by a DMM remotely as provided for in Commentary .04 to Rule 7.35A. If a DMM chooses to conduct an IPO Auction remotely, Floor brokers on the Trading Floor will not have access to IPO Auction imbalance information.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

19(b)(3)(A)(iii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(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 take effect immediately. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the rules discussed above to remain in effect during the temporary period during which the Trading Floor has not yet been reopened in full to DMMs. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–56 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–2020–56. 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–2020–56 and should be submitted on or before July 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89197; File No. SR–NYSEArca–2020–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rules 5.2–E(j)(3), 5.2–E(j)(8), 5.5–E(g)(2), 8.600–E and 8.900–E

June 30, 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 18, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rules 5.2–E(j)(3) (Investment Company Units), 5.2–E(j)(8) (Exchange-Traded Fund Shares), 5.5–E(g)(2), 8.600–E (Managed Fund Shares) and 8.900–E (Managed Portfolio Shares) to (1) remove the listing requirement that, following the initial twelve-month period after commencement of trading of a series of Investment Company Units, Exchange-Traded Fund Shares, Managed Fund Shares, and Managed Portfolio Shares, respectively, on the Exchange that the applicable fund has at least 50 beneficial holders, and (2) require that a series of Investment Company Units, Exchange-Traded Fund Shares, Managed Fund Shares, and Managed Portfolio Shares, respectively, have at least one creation unit outstanding on an initial and continued listing basis. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rules 5.2–E(j)(3) (Investment Company Units), 5.5 E(g)(2), 5.2–E(j)(8) (Exchange-Traded Fund Shares),[4] 8.600–E (Managed Fund Shares) and 8.900–E (Managed Portfolio Shares) (collectively, ''Fund Shares'') to (1) remove the listing requirement that, following the initial twelve-month period after commencement of trading of a series of Investment Company Units, Exchange-Traded Fund Shares, Managed Fund Shares or Managed Portfolio Shares, respectively, on the Exchange, such series have at least 50 beneficial holders, and (2) require that a series of Fund Shares have at least one creation unit outstanding on an initial and continued listing basis.[5]

The Exchange believes that the requirement that a series of Fund Shares listed on the Exchange must have at least 50 beneficial shareholders is no longer necessary. Exchange-Traded Fund Shares are currently subject to the conditions of Rule 6c–11 under 1940 Act[6] and Investment Company Units and Managed Fund Shares will be required to operate in compliance with Rule 6c–11 by December 23, 2020.[7] The Exchange believes that the requirements of Rule 6c–11 and, in particular, the website disclosure requirements of Rule 6c–11(c), together with the existing creation and redemption process, serve to mitigate the risks of manipulation and lack of liquidity that the shareholder requirement was intended to address. The Exchange believes that requiring at least one creation unit to be outstanding at all times, together with the enhanced disclosure requirements of Rule 6c–11, will facilitate an effective arbitrage mechanism that, for Investment Company Units, Managed Fund Shares and Exchange-Traded Fund Shares, will provide investors with sufficient transparency into the holdings of the underlying portfolio and help ensure that the trading price in the secondary market remains in line with the value per share of a fund's portfolio.

For example, Rule 6c–11(c)(1)(vi), which requires additional disclosure if the premium or discount is in excess of 2% for more than seven consecutive days, as well as the related website disclosure and discussion requirements,[8] provides additional transparency to investors in the event that the trading value and the underlying portfolio deviate for an extended period of time, which could indicate an inefficient arbitrage mechanism.[9]

With respect to Managed Portfolio Shares, while these securities do not publicly disclose their portfolio holdings daily and are not eligible to rely on Rule 6c–11, the Commission, in approving exchange rules accommodating listing and trading of Managed Portfolio Shares, stated that the Verified Intraday Indicative Value (''VIIV'') and other information required to be disseminated in connection with such trading ensures transparency of key values and information for such securities.[10] The Exchange believes that such information is sufficient to support an effective arbitrage process, independent of any minimum shareholder requirement.

The Exchange notes that, as of June 9, 2020, the median creation unit size for a series of Fund Shares listed on the Exchange is 50,000 shares and the mean creation unit size is approximately 58,012 shares. As of June 9, 2020, of the approximately 1,368 series of Fund Shares listed on the Exchange, the median number of creation units outstanding is approximately 71, approximately 214 series have fewer than 10 creation units outstanding, and approximately 13 series have one creation unit outstanding.[11]

The arbitrage mechanism relies on the fact that Fund Shares can be created and redeemed and that Fund Shares are able to flow into the market when the price of a series of Fund Shares is lower than the net asset value per share of the portfolio. The resulting buying and selling of Fund Shares, as well as the underlying portfolio components, generally causes the market price and the net asset value per share to align. The functioning of the arbitrage mechanism helps to ensure that the trading price in the secondary market is at fair value.

The existence of the creation and redemption process, as well as the proposed requirement that at least one creation unit is always outstanding, would ensure that market participants are able to redeem Fund Shares and, thereby, allow the arbitrage mechanism to function properly. The Exchange believes, therefore, that such arbitrage mechanism would obviate the need for a minimum shareholder requirement to support a fair and orderly market in Fund Shares. In addition, the Exchange's surveillance procedures for Fund Shares and its ability to halt trading in Fund Shares in specified

[4] A series of Exchange-Traded Fund Shares listed pursuant to NYSE Arca Rule 5.2–E (j)(8) is required to be eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940, as amended (''1940 Act''). *See* NYSE Arca Rule 5.2–E (j)(8)(e)(1).

[5] The term creation unit would have the same meaning as defined in Rule 6c–11(a)(1) (*i.e.,* a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any).

[6] *See* Release No. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (''ETF Adopting Release'').

[7] As of December 23, 2020, the Commission is rescinding those portions of prior Commission ETF exemptive orders that grant relief related to the formation and operation of an ETF. *See* ETF Adopting Release, note 39 and accompanying text.

[8] Rule 6c–11(c)(1)(vi) provides that ''[i]f the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter.''

[9] The Commission discussed the importance of an effective and efficient arbitrage mechanism in the ETF Adopting Release at 84 FR 57165 and 57209–57211 (''Secondary Market Trading, Arbitrage and ETF Liquidity)''.

[10] *See* Securities Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047) (Notice of Filing of Amendment Nos. 4 and 5, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 4 and 5, to Adopt BZX Rule 14.11(k) to Permit the Listing and Trading of Managed Portfolio Shares). In that order, the Commission stated: ''Although the portfolio holdings of the Managed Portfolio Shares are not publicly disclosed on a daily basis, the Commission believes that the proposed continued listing standards and trading rules under proposed BZX Rule 14.11(k) are adequate to ensure transparency of key values and information regarding the securities. The Commission notes that, for continued listing of each series of Managed Portfolio Shares, the VIIV will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours, and will be disseminated to all market participants at the same time. Further, transactions in Managed Portfolio Shares would be permitted only during Regular Trading Hours, when one second VIIVs would be available. In addition, like all other registered management investment companies, each series of Managed Portfolio Shares would be required to publicly disclose its portfolio holdings information on a quarterly basis, within at least 60 days following the end of every fiscal quarter.'' [footnotes omitted]. *See also,* Securities Exchange Act Release No. 88648 (April 15, 2020) 85 FR 22200 (April 21, 2020) (SR–NYSEArca–2020–32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt NYSE Arca Rule 8.900–E).

[11] NYSE Arca internal data as of June 9, 2020.

circumstances provide for additional investor protections by further mitigating any abnormal trading that would affect the Fund Shares' prices.[12]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[13] in general and Section 6(b)(5) of the Act[14] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Exchange-Traded Fund Shares are currently subject to the conditions of Rule 6c–11 under 1940 Act[15] and Investment Company Units and Managed Fund Shares will be required to operate in compliance with Rule 6c–11 by December 23, 2020.[16] The Exchange believes that the requirements of Rule 6c–11 and in particular the website disclosure requirements of Rule 6c–11(c), together with the existing creation and redemption process and proposed requirement that at least one creation unit is always outstanding, would serve to mitigate the risks of manipulation and the lack of liquidity that the shareholder requirement was intended to address. More specifically, the Exchange believes that requiring at least one creation unit to be outstanding at all times, together with the enhanced disclosure requirements of Rule 6c–11, would facilitate an effective arbitrage mechanism that, for Investment Company Units, Managed Fund Shares and Exchange-Traded Fund Shares, would provide investors with sufficient transparency into the holdings of the underlying portfolio and help ensure that the trading price in the secondary market remains in line with the value per share of a fund's portfolio.

With respect to Managed Portfolio Shares, the Commission, in approving exchange rules accommodating listing and trading of Managed Portfolio Shares, stated that the VIIV and other information required to be disseminated in connection with such trading ensures transparency of key values and information for such securities.[17] The Exchange believes that such information is sufficient to support an effective arbitrage process, independent of any minimum shareholder requirement.

Reliance on the conditions of Rule 6c–11 (for Investment Company Units, Exchange-Traded Fund Shares and Managed Fund Shares) or the VIIV and other requirements applicable to Managed Portfolio Shares, together with the existing creation and redemption process, as well as the presence of at least one creation unit, would serve to work together to mitigate the risks of manipulation and the lack of liquidity that the shareholder requirement was intended to address. By further aligning the listing requirements with the operational relationship between investors, market participants and ETF issuers, the proposal facilitates greater transparency for investors and issuers resulting in a more efficient market and increased investor protections.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes that the proposed rule change will facilitate growth in development of new issues of Fund Shares, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Within 45 days of the date of publication of this notice in the **Federal Register** or 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–NYSEArca–2020–56 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–2020–56. 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–2020–56 and should be submitted on or before July 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14494 Filed 7–6–20; 8:45 am]

BILLING CODE 8011–01–P

[12] *See, e.g.,* NYSE Arca Rule 7.18–E(d)(2); NYSE Arca Rule 8.900–E(d)(2).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] *See* note 6, *supra.*

[16] *See* note 7, *supra.*

[17] *See* note 10, *supra.*

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89193; File No. SR–FICC–2020–006]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide for a Passive Acknowledgement Process and Make Other Changes

June 30, 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 19, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'') and the FICC Mortgage-Backed Securities Division (''MBSD'' and together with GSD, each, a ''Division'') Clearing Rules (''MSBD Rules,'' and together with the GSD Rules, ''Rules'') [3] in order to (i) provide for a passive acknowledgement process whereby any settling bank that does not timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figures (as defined below) with FICC (*i.e.,* acknowledge its intention to pay to or collect from FICC), or notify the Settlement Agent (as defined below) of its refusal to settle for one or more members [4] for which it is the designated Funds-Only Settling Bank or Cash Settling Bank (collectively, ''FICC Settling Banks'') and has not otherwise been in contact with the Settlement Agent, would be deemed to have acknowledged its Funds-Only (Cash) Settlement Figures, (ii) codify FICC's discretion to exclude a FICC Settling Bank's balance from the FRB's National Settlement Service (''NSS'') file in certain circumstances, and (iii) make certain technical and conforming changes.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to (i) provide for a passive acknowledgement process whereby any FICC Settling Bank that does not timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figures (as defined below) with FICC (*i.e.,* acknowledge its intention to pay to or collect from FICC), or notify the Settlement Agent (as defined below) of its refusal to settle for one or more members for which it is the designated FICC Settling Bank and has not otherwise been in contact with the Settlement Agent, would be deemed to have acknowledged its Funds-Only (Cash) Settlement Figures, (ii) codify FICC's discretion to exclude a FICC Settling Bank's balance from the NSS file in certain circumstances, and (iii) make certain conforming technical and conforming changes.

Background

Each Division provides a standardized, automated method for settling funds-only and cash settlement obligations, respectively, between each Division and its respective members' FICC Settling Banks. The funds-only settlement service of GSD and the cash settlement service of MBSD eliminate manual processing and reduce costs by aggregating, for GSD, the funds-only settlement payments and, for MSBD, the cash settlement payments due to or from a member, and then, automatically debiting or crediting such member's account at its FICC Settling Bank. Settlement is effected via the NSS.[5]

Current Process

Each member must designate a FICC Settling Bank to settle its funds-only (cash) obligations with FICC. Today, on each business day, as applicable, GSD and MBSD each calculates either a Funds-Only Settlement Amount or Cash Balance figure, respectively, for each member, and reports to its members and their respective FICC Settling Banks, a Net Funds-Only Settlement Figure [6] (for GSD) and either a Total Debit Cash Balance Figure [7] or a Total Credit Cash Balance Figure [8] (for MBSD) (collectively, ''Funds-Only (Cash) Settlement Figures'').[9] The Depository Trust Company (''DTC'') acts as Settlement Agent (''Settlement Agent'') [10] for FICC's funds-only (cash) settlement process. Once the FICC Settling Banks receive their Funds-Only (Cash) Settlement Figures from the Settlement Agent, the FICC Settling Banks must submit either their (1) acknowledgement that they will settle their Funds-Only (Cash) Settlement Figures with FICC or (2) refusal to settle such amounts on behalf of one or more of their respective members.[11] This

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[4] The use of ''members'' here refers to any participant that is required to appoint a Funds-Only Settling Bank or Cash Settling Bank, which includes GSD Netting Members, GSD CCIT Members, GSD Sponsoring Members, and MBSD Clearing Members. References hereinafter to the term ''members'' shall be used for ease of reference. *See* GSD Rule 13, Section 4(a) and MBSD Rule 3A, Section (a), *supra* note 3.

[5] GSD Rule 13, Section 5(i) and MBSD Rule 11, Section 9(i), *supra* note 3.

[6] Net Funds-Only Settlement Figure means the net amount of the Funds-Only Settlement Amounts of the Netting Members for which a Funds-Only Settling Bank Member is acting. GSD Rule 1, *supra* note 3.

[7] Total Debit Cash Balance Figure means the sum of the Cash Balances which are debits of the Members for which a Cash Settling Bank Member is acting. MSBD Rule 1, *supra* note 3.

[8] Total Credit Cash Balance Figures means the sum of the Cash Balances which are credits of the Members for which a Cash Settling Bank Member is acting. MSBD Rule 1, *supra* note 3.

[9] For GSD, Funds-Only Settlement Amounts reflect: (i) Changes in the value of securities when they are marked to market, (ii) cash adjustments related to securities trades, (iii) the pass-through of coupon payments for term repos or trade obligations that cross a coupon date, and (iv) other items, such as billing invoices. GSD Rule 13, Section 1, *supra* note 3. For MBSD, Cash Settlement amounts reflect: (i) the TBA Transaction Adjustment Payment, (ii) Net Pool Transaction Adjustment Payment, (iii) principal and interest payments for failing net pool settlement obligations (to the extent that they are not handled by the FedWire Securities Service Automated Claims Adjustment Process), and (iv) other items, such as Factor Update Adjustments and billing invoices. MBSD Rule 11, Section 7, *supra* note 3.

[10] DTC Settlement Operations act as the Settlement Agent for GSD and MBSD. ''Settlement Agent'' means the bank or trust company that FICC may, from time to time, designate to act as its agent for purposes of interfacing with NSS for funds-only settlement pursuant to GSD Rule 13 (for GSD) and for Cash Settlement pursuant to MBSD Rule 11. GSD Rule 1 and MBSD Rule 1, *supra* note 3.

[11] Currently, a FICC Settling Bank that settles only for itself may not refuse to settle for itself and, therefore, may opt out of the requirement to

Continued

acknowledgement or refusal submission occurs through a designated terminal system.[12] If all of the FICC Settling Banks submit acknowledgements of their intent to settle, then the Settlement Agent will submit the requisite file to the FRB for processing through the NSS.

If a FICC Settling Bank notifies the Settlement Agent that the FICC Settling Bank refuses to pay the Funds-Only (Cash) Settlement Figure for a member, then FICC will exclude that member's amount and the Settlement Agent will provide the FICC Settling Bank with a new Funds-Only (Cash) Settlement Figure that no longer includes the excluded member's amount. The FICC Settling Bank must then immediately send a message to the Settlement Agent acknowledging the new amount.[13] The Settlement Agent will then submit the requisite file to the FRB for processing through the NSS.

The deadline for FICC Settling Banks to acknowledge or refuse is 30 minutes prior to the time at which debits and credits are executed via the NSS.[14] If a FICC Settling Bank does not acknowledge or refuse by this time, the Settlement Agent will use the most recent contact information available to contact the FICC Settling Bank. If the Settlement Agent is unable to contact the FICC Settling Bank or does not receive a response from the FICC Settling Bank as to the acknowledgement or refusal, FICC needs to determine whether to request an NSS extension while also determining whether to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file.

Today, failure of a FICC Settling Bank to timely respond to the Settlement Agent after posting of final settlement figures creates uncertainty with respect to timely completion of settlement at FICC. This is because today, FICC is not permitted under the Rules to submit the NSS file (through the Settlement Agent) unless all FICC Settling Banks in the file have acknowledged. FICC must therefore determine whether it should remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file in order to allow the processing of the rest of the NSS file for the other FICC Settling Banks that are part of the NSS file. If FICC does not remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file, then the NSS file cannot be created and the funds-only (cash) settlement cannot be completed for the other FICC Settling Banks that are part of the NSS file. As such, today, FICC may need to remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file in order to submit the NSS file and complete the funds-only (cash) settlement for the other FICC Settling Banks that are part of the NSS file, thus potentially delaying settlement of the NSS file. Such potential delay would arise from the time needed to remove the figure of the unresponsive FICC Settling Bank and then re-establish the NSS file. Moreover, with respect to the members who were using the particular FICC Settling Bank, FICC would need to settle individually with those members via the Fedwire Funds Service, which also presents the possibility of a delay because of the time it might take to complete this process individually with each affected member. To date, FICC has not had to perform the process of removing a FICC Settling Bank from the NSS file.

The proposed passive acknowledgement process that is discussed in Item 3(a)(i) below is aimed at addressing the situation discussed above where a FICC Settling Bank is unresponsive and cannot be reached. This would allow FICC to submit the NSS file (through the Settlement Agent) for NSS processing more timely, and thereby allow the funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file.

Even with the implementation of the proposed passive acknowledgement process discussed in Item 3(a)(i) below, FICC must retain the discretion to remove the Funds-Only (Cash) Settlement Figure of a FICC Settling Bank from the NSS file.[15] In other words, currently, FICC may remove the FICC Settling Bank's figure from the NSS file in the situation where a FICC Settling Bank is unresponsive and cannot be reached. Under the proposal, the need for FICC to do so would arise in the event that a FICC Settling Bank advises the Settlement Agent that it cannot yet determine whether to acknowledge or refuse. In such a circumstance, passive acknowledgement would not apply (as described below); however, as it gets closer to the NSS processing time, FICC may need to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file in order to allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file and have affirmatively acknowledged their figure. FICC is proposing to codify its ability to remove the Funds-Only (Cash) Settlement Figure of the FICC Settling Bank from the NSS file. As FICC would be codifying this current practice with this proposed rule change, this proposed rule change would not change the current settlement process of FICC Settling Banks that are excluded from the NSS file. This proposed change is discussed in Item 3(a)(ii) below.

(i) Proposed Change To Introduce Passive Acknowledgement Process for FICC Settling Banks

Proposed Passive Acknowledgement Process

FICC proposes to establish an ''Acknowledgement Cutoff Time'' after which FICC would apply the passive acknowledgement process if it is unable to reach the FICC Settling Bank.

The Acknowledgement Cutoff Time would be defined as the later of: (i) 30 Minutes after the FICC Settling Banks have been notified that such payment is due or (ii) 30 minutes prior to the times established by FICC[16] for the execution of funds-only (cash) settlement debits and credits via NSS.

If a FICC Settling Bank does not submit either (1) an acknowledgement that it will settle the Funds-Only (Cash) Settlement Figure with FICC or (2) a refusal to pay the Funds-Only (Cash) Settlement Figure by the ''Acknowledgement Cutoff Time'' and has not been in contact with the Settlement Agent, then the Settlement Agent would attempt to contact the FICC Settling Bank. If the Settlement Agent is able to contact the FICC Settling Bank and it notifies the Settlement Agent that the FICC Settling Bank cannot, at that time, submit its acknowledgement or refusal to pay its Funds-Only (Cash) Settlement Figure and that it needs more time, then the FICC Settling Bank would not be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figure with FICC. However,

acknowledge its Funds-Only (Cash) Settlement Figures. GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9, *supra* note 3. The passive acknowledgement proposal, explained in Item 3(a)(i) below, would not apply to such FICC Settling Banks that have chosen to opt out, as further explained below.

[12] GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9(b), *supra* note 3.

[13] GSD Rule 13, Section 5(c) and MBSD Rule 11, Section 9(c), *supra* note 3.

[14] For GSD, the NSS execution times are 10:00 a.m. and 3:15 p.m.; for MBSD, these times are 10:00 a.m. and 2:45 p.m. GSD Schedule of Timeframes, *supra* note 3, and MBSD Processing Schedule and Timeframes, *available at http://www.dtcc.com/clearing-services/ficc-mbsd/ficc-mbsd-user-documentation.*

[15] This practice is currently not codified in the GSD Rules and MBSD Rules.

[16] These times are currently 10:00 a.m. and 3:15 p.m. for GSD, and 10:00 a.m. and 2:45 p.m. for MBSD.

if the FICC Settling Bank cannot be reached, then the FICC Settling Bank would be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figure with FICC.

The passive acknowledgement process described herein would also apply in situations where a FICC Settling Bank is provided with a new Funds-Only (Cash) Settlement Figure after such FICC Settling Bank's refusal to pay the Funds-Only (Cash) Settlement Figure for one or more members.

FICC would also revise the Rules to state that each FICC Settling Bank must ensure that it maintains accurate contact details with the Settlement Agent so that the Settlement Agent may contact the FICC Settling Bank regarding this settlement process and any settlement issues.

Proposed Changes to GSD Rule 13, Section 5 and MBSD Rule 11, Section 9

The proposed passive acknowledgement process will require changes to Section 5 of GSD Rule 13 and Section 9 of MBSD Rule 11. Specifically, FICC proposes to amend Section 5(b) of GSD Rule 13 to replace ''by the applicable deadline'' with ''By the Acknowledgement Cutoff Time,'' and move this phrase to the start of the first sentence. Section 5(b) would be further amended to add a sentence stating what the Acknowledgement Cutoff Time would be, that is the later of (i) 30 minutes after the Funds-Only Settling Bank has been notified that such payment is due, or (ii) 30 minutes prior to the payment deadlines established by FICC. FICC also proposes to add a phrase at the end of Section 5(b) that would apply to Funds-Only Settling Banks that settle solely for their own accounts to state that if they choose to opt out of having to acknowledge their Funds-Only Settlement Amounts, new subsections (k) and (l) (described below) would not apply to them.[17] The same changes would be made to Section 9(b) of MBSD Rule 11.

FICC proposes to amend Section 5(c) of GSD Rule 13 to delete the word ''immediately'' and to state that new subsection (k) would apply with respect to the new Net Funds-Only Settlement Figures of the Funds-Only Settling Bank that sent refusal messages. Similar changes would be made to Section 9(c) of MBSD Rule 11.

FICC proposes to amend Section 5 of GSD Rule 13 to add new subsection (i). Proposed subsection (i) would provide that the Settlement Agent uses the most recent contact information provided by the Funds-Only Settling Bank to the Settlement Agent. Proposed subsection (i) would also include a requirement that each Funds-Only Settling Bank maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis. A similar subsection (i) would be added to Section 9 of MBSD Rule 11.

FICC proposes to amend Section 5 of GSD Rule 13 to add new subsection (l). Proposed subsection (l) would provide that the Settlement Agent would attempt to contact the Funds-Only Settling Bank if no acknowledgement or notice of refusal to settle on behalf of one or more Netting Members for which it is designated as the Funds-Only Settling Bank is received by the Acknowledgement Cutoff Time. If (i) the Settlement Agent is able to contact the Funds-Only Settling Bank and (ii) the Funds-Only Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse their Net Funds-Only Settlement Figure, then the Funds-Only Settling Bank will not be deemed to have acknowledged its Net Funds-Only Settlement Figure. If the Funds-Only Settling Bank cannot be reached, the Funds-Only Settling Bank will be deemed to have acknowledged its Net Funds-Only Settlement Figure. FICC would also state that this proposed subsection (l) would not apply to a Funds-Only Settling Bank that settles solely for its own account and opts not to acknowledge its Net Funds-Only Settlement Figure. A similar subsection (l) would be added to Section 9 of MBSD Rule 11.

(ii) Proposed Change To Allow FICC To Exclude FICC Settling Bank Balance From NSS File

The proposed rule change would provide that if (1) passive acknowledgement does not apply because the FICC Settling Bank has notified the Settlement Agent that it cannot yet acknowledge or refuse its Funds-Only (Cash) Settlement Figure and (2) the payment deadline established by FICC is approaching, then FICC would have the ability to exclude the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file. This would allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file. As described above, as it gets closer to the payment deadline, FICC may need to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file in order to allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file. As FICC would be codifying its current practice with this proposed rule change, this proposed change would not change the current settlement process of FICC Settling Banks that are excluded from the NSS file.

This proposed change is reflected in the second paragraph of new subsections (l) of Section 5 of GSD Rule 13 and Section 9 of MBSD Rule 11.

(iii) Proposed Technical and Conforming Changes

FICC proposes to make certain technical changes. Specifically, to enhance clarity, FICC proposes to move current subsection (d) in GSD Rule 13, Section 5 to become proposed subsection (h) of GSD Rule 13, Section 5. In addition, FICC proposes to move current subsection (d) in MBSD Rule 11, Section 9 to become proposed subsection (h) of MBSD Rule 11, Section 9.

FICC also proposes to make certain conforming changes. For example, FICC proposes to revise the subsection numbers in GSD Rule 13, Section 5 and MSBD Rule 11, Section 9 because subsections were either proposed to be moved (as described in the preceding paragraph) or added. As another conforming change, FICC proposes to revise GSD Rule 1 and MBSD Rule 1 to add a new defined term (''Acknowledgement Cutoff Time'').

FICC proposes to replace the first two references to Corporation with Settlement Agent in GSD Rule 13, Section 5(c). Similarly, FICC proposes to replace the reference to Corporation with Settlement Agent in MBSD Rule 11, Section 9(c). FICC believes these proposed changes would enhance accuracy and clarity when describing who the FICC Settling Banks must sent a message to. In addition, in current subsection (j) (which is proposed to become subsection (m)) of Section 5 of GSD Rule 13, FICC would replace language regarding the ''Corporation's Operations area'' with the ''Settlement Agent'' and would use the newly defined term ''Acknowledgement Cutoff Time.'' Similar changes would be made to current subsection (j) (which is proposed to become subsection (m)) of Section 9 of MBSD Rule 11.

[17] Proposed subsections (k) and (l) describe the proposed passive acknowledgement process. As described above, if a FICC Settling Bank that settles solely for its own account opts to not to acknowledge its own Funds-Only Settlement Figure, the passive acknowledgement process would not apply to such FICC Settling Banks because such FICC Settling Banks cannot refuse to settle for their own accounts. For operational convenience, FICC Settling Banks may choose to not acknowledge their own Funds-Only Settlement Figure because they cannot refuse to settle for their own accounts. Therefore, proposed subsections (k) and (l) would not apply to such FICC Settling Banks.

FICC also proposes to change the reference from ''DTC'' to ''the Settlement Agent'' in GSD Rule 13, proposed Section 5(n) and MBSD Rule 11, proposed Section 9(n) for consistency and clarity.

2. Statutory Basis

FICC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes this proposal is consistent with Section 17A(b)(3)(F) of the Act.[18]

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[19] By way of background, the funds-only (cash) settlement process at FICC reflects debits and credits of payments (such as mark-to-market) that are associated with securities transactions that will ultimately be subject to securities settlement. FICC believes that failure by a FICC Settling Bank to timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figure with FICC or to refuse to pay its Funds-Only (Cash) Settlement Figure creates uncertainty with respect to the timely completion of funds-only (cash) settlement at FICC. FICC believes that the introduction of the proposed passive acknowledgement process described in Item 3(a)(i) above would help promote the prompt and accurate clearance and settlement of securities transactions in circumstances where a FICC Settling Bank has not responded by the Acknowledgement Cutoff Time and cannot be reached by the Settlement Agent. In such circumstances, as described above, FICC would deem that such FICC Settling Bank has acknowledged that it will settle its Funds-Only (Cash) Settlement Figures. This would enable FICC to submit the NSS file (through the Settlement Agent) as is for processing in a timely manner, and thereby enhance certainty with respect to the timely completion of settlement. Timely completion of such settlement at FICC for as many members as possible promotes the prompt and accurate clearance and settlement of securities transactions as a general matter, because the funds-only (cash) settlement process at FICC involves debits and credits, such as the mark-to-market on securities transactions that will ultimately be subject to securities settlement. As such, FICC believes the proposed change to introduce the passive acknowledgement process described in Item 3(a)(i) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[20]

FICC also believes that the proposal to codify FICC's ability to exclude a FICC Settling Bank's balance from the NSS file described in Item 3(a)(ii) above is designed the promote the prompt and accurate clearance and settlement of securities transactions.[21] If a FICC Settling Bank notifies the Settlement Agent that it cannot yet acknowledge or refuse, FICC would not be able to submit the NSS file (through the Settlement Agent) with that FICC Settling Bank's Funds-Only (Cash) Settlement Figure included. If the FICC Settling Bank does not ultimately respond with either an acknowledgement or refusal, then FICC must have the ability to exclude such FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file. In this way, funds-only (cash) settlement can be completed for all other members. Therefore, FICC believes the proposed changes described in Item 3(a)(ii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[22]

FICC also believes that the proposed rule changes to make the technical and conforming changes, as described in Item 3(a)(iii) above, are designed to promote the prompt and accurate clearance and settlement of securities transactions by ensuring that the Rules remain clear and accurate to members and that members understand the funds-only settlement service and cash settlement service. Having clear and accurate Rules would facilitate members' understanding of those rules and provide members with increased predictability and certainty regarding their obligations. As such, FICC believes these proposed changes would promote the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.[23]

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule changes described in Item 3(a)(i) above to introduce the passive acknowledgement process for FICC Settling Banks would have any impact on competition,[24] because the proposed passive acknowledgement process would not have an impact on the FICC Settling Banks' current ability to timely acknowledge their Funds-Only (Cash) Settlement Figures, as it is intended to address situations where a FICC Settling Bank is not responding and cannot be reached. Moreover, as described above, FICC would continue to maintain flexibility and allow a FICC Settling Bank to request extra time if the FICC Settling Bank cannot affirmatively submit its (1) acknowledgement that it will settle its Funds-Only (Cash) Settlement Figure with FICC or (2) refusal to pay its Funds-Only (Cash) Settlement Figure, as long as the Settlement Agent is notified at or before the Acknowledgement Cutoff Time. If a FICC Settling Bank notifies the Settlement Agent that the FICC Settling Bank cannot, at that time, submit its acknowledgement that it will settle its Funds-Only (Cash) Settlement Figures with FICC or its refusal to pay its Funds-Only (Cash) Settlement Figures, then the FICC Settling Bank would not be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figures with FICC. Therefore, FICC believes that the proposed passive acknowledgement process described in Item 3(a)(i) above would not have any impact on competition.

FICC also does not believe that the proposed changes to exclude a FICC Settling Bank's balance from the NSS file, as described in Item 3(a)(ii) above, would have any impact on competition[25] because this proposal, if invoked, would require the affected FICC Settling Bank to send payment to FICC by wire, which is an alternate form of payment already available to the FICC Settling Banks. FICC believes that ready availability of a reasonable payment alternative would result in the rights and obligations of the FICC Settling Banks not being adversely affected. As such, FICC does not believe that the proposed changes to exclude a FICC Settling Bank's balance from the NSS file, as described in Item 3(a)(ii) above, would have any impact on competition.

FICC also does not believe that the proposed rule changes to make the technical and conforming changes described in Item 3(a)(iii) above would have an impact on competition.[26] These changes would simply provide additional clarity within the Rules and not affect members' rights and obligations.

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] 15 U.S.C. 78q-1(b)(3)(I).

[25] *Id.*

[26] *Id.*

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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–FICC–2020–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2020–006 and should be submitted on or before July 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14491 Filed 7–6–20; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16495 and #16496; Michigan Disaster Number MI–00085]

Administrative Declaration of a Disaster for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 06/29/2020.

Incident: Severe Storms and Flooding.

Incident Period: 05/18/2020.

DATES: Issued on 06/29/2020.

Physical Loan Application Deadline Date: 08/28/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/29/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Muskegon

Contiguous Counties:

MICHIGAN Kent, Newaygo, Oceana, Ottawa.

	Percent
The Interest Rates are:	
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16495 6 and for economic injury is 16496 0.

The State which received an EIDL Declaration # is Michigan.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–14592 Filed 7–6–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16423 and #16424; Mississippi Disaster Number MS–00125]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of MISSISSIPPI (FEMA–4538–DR), dated 04/23/2020.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: 02/10/2020 through 02/18/2020.

DATES: Issued on 06/25/2020.

Physical Loan Application Deadline Date: 06/22/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 01/25/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MISSISSIPPI, dated 04/23/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Issaquena, Marion, Sharkey.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–14557 Filed 7–6–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16446 and #16447; North Carolina Disaster Number NC–00116]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of North Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4543–DR), dated 05/08/2020.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 02/06/2020 through 02/19/2020.

DATES: Issued on 06/26/2020.

Physical Loan Application Deadline Date: 07/07/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 02/08/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Carolina, dated 05/08/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Gaston.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–14560 Filed 7–6–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11149]

60-Day Notice of Proposed Information Collection: Electronic Medical Examination for Visa or Applicant

ACTION: Notice of request for public comment.

SUMMARY: The Department of State (''Department'') is seeking Office of Management and Budget (''OMB'') approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to September 8, 2020.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0028'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Legal Affairs, Visa Services, Bureau of Consular Affairs at *PRA_BurdenComments@state.gov* or over telephone at (202) 485–8910.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Electronic Medical Examination for Visa Applicant.
- *OMB Control Number:* 1405–0230.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–7994.
- *Respondents:* Panel Physician/Visa and Refugee Applicants.
- *Estimated Number of Respondents:* 580,330.
- *Estimated Number of Responses:* 580,330.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 580,330 annual hours.
- *Frequency:* Once per respondent.[1]
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

This electronic collection records medical information necessary to determine whether visa applicants have medical conditions affecting the applicant's eligibility for a visa.

[1] The majority of applicants only need to complete medical examinations, and therefore these forms once. However, medical exams are valid for a period of three to six months from the examination date. Therefore, if an applicant's medical examination expires prior to travel, then the applicant may need to undergo a new medical examination and therefore complete the forms more than once.

Methodology

Approved panel physicians will be granted access to an eMedical system by the Department to conduct medical examinations for visa eligibility determinations. The pilot program for the eMedical system launched in September 2018. The eMedical system was rolled out in six waves, the first wave of the rollout was in July 2019, and the final wave was in May 2020. Immigrant visa applicants with a completed and submitted DS–260, Application for Immigrant Visa and Alien Registration will have their medical exam results submitted to the Department via the eMedical system. The panel physician will input the exam information into the eMedical portal and it will be transmitted to the Department for visa adjudication and retained in the Department's systems. The information will also be transmitted to the Centers for Disease Control and Prevention's (''CDC'') systems.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2020–14584 Filed 7–6–20; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 11148]

60-Day Notice of Proposed Information Collection: Medical Examination for Visa or Refugee Applicant

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to September 8, 2020.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0027'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Legal Affairs, Visa Services, Bureau of Consular Affairs, at *PRA_BurdenComments@state.gov* or over telephone at (202) 485–8910.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Medical Examination for Visa or Refugee Applicant.
- *OMB Control Number:* 1405–0113.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* Forms DS–2054, DS–3030, DS–3025, DS–3026.
- *Respondents:* Visa and Refugee Applicants.
- *Estimated Number of Respondents:* 110,412.
- *Estimated Number of Responses:* 110,412.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 110,412 annual hours.
- *Frequency:* Once per respondent.[1]
- *Obligation to respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review

[1] The majority of applicants only need to complete medical examinations, and therefore these forms once. However, medical exams are valid for a period of three to six months from the examination date. Therefore, if an applicant's medical examination expires prior to travel, then the applicant may need to undergo a new medical examination and therefore complete the forms more than once.

Abstract of Proposed Collection

Forms for this collection are completed by panel physicians for refugees, aliens seeking immigrant visas, and for some aliens seeking nonimmigrant visas to the United States. The collection records medical information necessary to determine whether refugees or visa applicants have medical conditions affecting the applicant's eligibility for a visa, or affecting the public health and requiring treatment.

Methodology

A panel physician, contracted by the consular post, in accordance with instructions issued by the Centers for Disease Control and Prevention (''CDC''), performs the medical examination of the applicant and completes the forms. Upon completing the applicant's medical examination, the examining panel physician submits a report to the consular officer on the DS–2054, Medical Examination for Immigrant or Refugee Applicant, and associated worksheets.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2020–14583 Filed 7–6–20; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership

AGENCY: Surface Transportation Board.

ACTION: Notice of Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership.

SUMMARY: Effective immediately, the membership of the PRB and ERB is as follows:

Performance Review Board

William Brennan, Chairman
Rachel D. Campbell, Member
Lucille Marvin, Member
Craig M. Keats, Alternate Member

Executive Resources Board

Allison Davis, Chairman
Rachel Campbell, Member
Lucille Marvin, Member
Craig M. Keats, Alternate Member

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact:

Teresa Schlee at *teresa.schlee@stb.gov* or 202–245–0340.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–14539 Filed 7–6–20; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

Webinar Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a virtual meeting on Tuesday, July 21, 2020, to consider various matters. The RRSC was established to advise TVA on its natural resources and stewardship activities and the priority to be placed among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA).

DATES: The meeting will be held Tuesday, July 21, 2020, and run from 9:30 a.m. to 3:00 p.m., EDT. An hour break from 12:00 p.m.–1:00 p.m., EDT is scheduled.

ADDRESSES: This is a virtual meeting only. An individual requiring special accommodation for a disability should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Cathy Coffey, 865–632–4494, *ccoffey@tva.gov.*

SUPPLEMENTARY INFORMATION: The meeting agenda includes the following items:

1. Introductions and webinar logistics
2. Pollinator study
3. Environmental Policy
4. Update on Asian Carp
5. Public Comments
6. Council Discussion and Advice
7. Natural Resources Plan Update

The meeting is open to the public. Please register in advance at: *https://bit.ly/2NowQde.* Public comments will be accepted that afternoon for 30 minutes at 1:00 p.m., EDT. In order to make oral comments, the public must pre-register by 5:00 p.m. on Monday, July 20, 2020, by emailing *ccoffey@tva.gov.* Due to time limitations, speakers will be given two minutes to address the council. Written comments may be sent to the RRSC at any time through links on TVA's website at *www.tva.com/rrsc.*

Dated: June 26, 2020.

Joseph J. Hoagland,

Vice President, Innovation and Research, Tennessee Valley Authority.

[FR Doc. 2020–14466 Filed 7–6–20; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2020–0420]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: National Flight Data Center Web Portal

AGENCY: Federal Aviation Administration (FAA), Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 27, 2020. The collection involves aeronautical information detailing the physical description and operational status of all components of the National Airspace System (NAS). The information to be collected will be used to update government, military, and private aeronautical databases, charts, publications, and flight management systems.

DATES: Written comments should be submitted by August 6, 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. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Graybill by email at: *John.Graybill@faa.gov;* phone: 202–267–3742.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0754.

Title: National Flight Data Center Web Portal.

Form Numbers: AD1–ADCP, AD3–ACC.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 27, 2020 (2020–08836). 49 U.S.C. 40103, ''Sovereignty and Use of Airspace,'' authorizes and directs the FAA to develop plans and policy for the use of the navigable airspace. The National Flight Data Center (NFDC) is the authoritative government source for collecting, validating, storing, maintaining, and disseminating aeronautical data concerning the United States and its territories to support real-time aviation activities. The information collected ensures the safe and efficient navigation of the national airspace. The information collected is maintained in the National Airspace System Resources (NASR) database which serves as the official repository for NAS data and is provided to government, military, and private producers of aeronautical charts, publications, and flight management systems. Information will be collected via digital forms.

Respondents: Approximately 5,092 representatives of U.S. public airports. Average of 6,709 responses annually.

Frequency: Information to be collected on occasion.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: 2,236 hours.

Issued in Washington, DC, on July 1, 2020.

John L. Graybill,

Aeronautical Information Specialist, Data Systems Team, Aeronautical Information Services, AJV–A35.

[FR Doc. 2020–14542 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0114]

Hours of Service of Drivers: Application for Exemption; Werner Enterprises

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Werner Enterprises' (Werner) application for an exemption from the requirement that certain data fields be included in electronic records of duty status (RODS) files presented by electronic logging devices (ELDs). Due to incompatibility issues between Werner's current ELD supplier and its new supplier, Platform Science, Werner requests that, during the first eight days that each of its drivers transitions to Platform Science, the company be permitted to leave blank five specific data fields in the RODS file. The Agency has determined that the limited exemption would likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: This exemption is effective July 7, 2020 and expires July 7, 2021.

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 on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

I. SUPPLEMENTARY INFORMATION:

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* and insert the docket number, ''FMCSA–2020–0114'' 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 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., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). 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 safety analyses and public comments submitted, 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)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

On December 16, 2015 (80 FR 78292), FMCSA published a final rule requiring most drivers who are required to prepare hours-of-service (HOS) RODS to use ELDs instead of paper logs to document their RODS. The final rule also established minimum performance and technical design standards for ELDs. Appendix A to subpart B of 49 CFR part 395 (appendix A) provides requirements for data fields that must be included in electronic RODS files generated by ELDs. Generally, if more than one ELD is used to record a driver's records, the ELD in the vehicle the driver most recently operates must produce a complete ELD report for the driver on demand, reflecting the current 24-hour period and the previous 7 consecutive days.

IV. Werner's Exemption Application

Werner requests that during the first eight days that each of its drivers makes the transition from Werner's current ELD supplier to its new supplier, Platform Science, five specific data fields required within the ELD Outputs, as listed in Section 4.8 of appendix A be excluded in the RODS files accessed through the in-cab ELD unit. The files generated by the current ELDs used by Werner include all the required information. The files generated by the Platform Science ELDs that Werner began using in 2020 include all the required information. Due to incompatibilities between Werner's current ELD supplier and its new supplier, 5 data elements will not be available on the ELD during the transition, which will last no more than the first 8 days each driver uses the new ELD system. The affected fields in section 4.8 of appendix A are as follows:

- Co-driver information;
- Odometer Elapsed—vehicle elapsed miles/kilometers in given ignition power on cycle;
- Engine Hours Elapsed—elapsed time of engine operation in the given ignition power on cycle;
- Engine Hours Total—total engine hours at time of event; and
- Odometer Total (decimal)—total at time of the event.

Consequently, during the first eight days a driver is operating a Werner vehicle equipped with the new Platform Science ELD, the electronic RODS file accessible in the vehicle will not include the five data elements specified for the full required time prior to the installation of the new ELD; however, all other information needed to determine compliance with the HOS rules will be available. The inspector would review the electronic RODS via FMCSA's eRODS software which would detect the missing data elements in the Platform Science ELD presentation of the previous eight days of RODS. This problem will affect Werner's entire fleet which consists of roughly 10,000 drivers and 8,000 power units as the transition takes place.

Werner notes that its drivers would have electronic RODS files available for review using FMCSA's eRODS software providing accurate duty status information for the current day and the previous seven days at any inspection location. While the files would not include the five data elements listed, HOS information can still be verified at the roadside, and the information would be available for an on-site investigation conducted at a Werner facility. The remaining data elements would provide a means for identifying non-compliance with the underlying HOS requirements. Werner is requesting a one-year exemption to complete the transition.

V. Method To Ensure an Equivalent or Greater Level of Safety

According to Werner's application, ''[p]aper logbooks can be lost, falsified, illegible, etc. We know due to our extensive log audit system, which includes 100% real-time monitoring of hours of service records, that the Omnitracs hours of service records are accurate. Having the ability to upload this electronic data for the 8 days preceding the transition to the new Platform Science system is a safer option for our drivers to prevent fatigue and helps roadside enforcement be assured that the information is accurate.'' However, certain fields identified by Werner cannot be accurately transferred onto the new devices from its prior ELD data.

A copy of the exemption application is included in the docket referenced at the beginning of this notice.

VI. Public Comments

On April 13, 2020 (85 FR 20566), FMCSA published a **Federal Register** notice requesting public comment on Werner's exemption application. The Agency received 19 comments from the public, six in favor and 12 in opposition.

The six supporters were: The American Trucking Associations (ATA), California Trucking Association, Commercial Vehicle Training Association (CVTA), Florida Trucking Association, Nebraska Trucking Association and Truckload Carriers Association. For example, ATA wrote:

> The application merely presents a specific means to allow the interoperability of two ELD systems—not to exempt its drivers from the broader ELD requirements that ATA has long supported. Consequently, ATA believes this application meets FMCSA's requirement under 49 CFR 381.210(c)(4) to establish an equivalent or greater level of safety. As discussed, the application's limited time and scope provide Werner with the flexibility its staff and engineers need to monitor fleet compliance with HOS rules. Werner's desire to use RODS generated from an ELD—as compared to reverting to manually created paper records—will also undoubtedly eliminate the ability for falsification and inaccurate records.

CVTA said:

> For the reasons as outlined by the American Trucking Associations, Truckload Carriers Association, the Florida Trucking Association, California Trucking Association, and Nebraska Trucking Association, CVTA also believes that granting this exemption makes sense. Because we believe granting this exemption poses no risk to highway safety, we encourage the FMCSA to move forward and grant the application for exemption.

The 12 opponents were: Jesse Cole, Mark Rawn, Michael Groff, Larry Gump, Michael Glenn, George Thornton, David Battiest, Darrin Atkinson, Michael Crites, John Smith, John Haynes, and Caelan Helsel. Larry Gump stated, ''[p]lease deny this request it is unnecessary and [*sic*] Werner can afford to ensure the fields are provided.'' Mr. Michael Crites wrote, ''[a]bsolutely no exemption should be granted to any carrier. Especially one that pushed for the ELD mandate. They need to be held responsible for not having their act together. If this was any other carrier they would be held liable. Many other outfits have done exactly what was required of them. This is a [multi-million] dollar company. They have no excuse for this.''

VII. FMCSA Safety Analysis and Decision

FMCSA has evaluated the application for exemption and the public comments submitted.

Based on the information presented in Werner's request, the Agency believes it is appropriate to grant the exemption covering the appendix A requirement for the specific data fields discussed above during the 8-day period following the installation of the Platform Science ELD. We have determined, as required by 49 U.S.C. 31315(b)(1) and the implementing regulations under 49 CFR part 381, that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption.

From a safety equivalency perspective, all of Werner's drivers would have electronic RODS files available for review at any inspection location using FMCSA's eRODS software providing accurate duty status information for the current day and the previous seven days. While the files would not include the specific data elements discussed above, HOS information can still be verified at the roadside, and the information would be available for an on-site investigation conducted at a Werner facility. The remaining data elements would provide more than sufficient means for identifying non-compliance with the underlying hours-of-service requirements.

For the reasons cited above, we grant Werner Enterprises a limited waiver from the appendix A requirements for the specific data elements listed above with terms and conditions provided below.

VIII. Terms and Conditions for the Exemption

This exemption is limited to Section 4.8 of appendix A to subpart B of part 395 concerning the requirements for the following data fields in electronic RODS files generated by Omnitracs ELDs and retrieved via a Platform Science ELD:

- Information to be included in the Print/Display as required by 4.8.1.3(b):
  - Co-Driver: Co-Driver's Last Name, Co-Driver's First Name
  - Co-Driver ID: ELD username for the co-driver
  - Total Vehicle Miles
  - Total Engine Hours
  - Accumulated Vehicle Miles, and
  - Elapsed Engine Hours;
- Co-driver information as required in 4.8.2.1.1 of the Header Segment;
- ELD Event List records data elements required by 4.8.2.1.4 and the ELD Event Log List for the Unidentified Driver Profile 4.8.2.1.10:
  - Accumulated Vehicle Miles, and
  - Elapsed Engine Hours;
- Data elements for Malfunction and Data Diagnostic Events 4.8.2.1.7, ELD Login/Logout Report 4.8.2.1.8 and CMV's Power-Up and Shut Down Activity 4.8.2.1.9:
  - Total Vehicle Miles, and
  - Total Engine Hours.

During the period of the exemption:

1. Werner must ensure that each of its drivers continues to use ELDs that meet all the technical specifications required by 49 CFR part 395;
2. Each driver operating under the exemption must maintain a copy of this notice and documentation of the date of installation of the Platform Science ELD to establish the 8-day period for which the exemption is applicable;
3. Werner must maintain all electronic files generated by Omnitracs ELDs for each of its drivers for at least 6 months from the date the records were created and ensure that each of those files contains all the data elements specified by Section 4.8 of appendix A to subpart B of part 395.

Preemption of State Laws and Regulations

During the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption (49 U.S.C. 31315(d)).

Notification to FMCSA

Werner must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating

under the terms of this exemption. The notification must include the following information:

(a) Identity of the exemption: ''Werner Enterprises'';

(b) Name of operating motor carrier;

(c) Date of the accident;

(d) City or town, and State, in which the accident occurred, or closest to the accident scene;

(e) Driver's name and license number;

(f) Vehicle number and State license 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, motor carrier safety regulations; and

(k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be *emailed to MCPSD@DOT.GOV*.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. Interested parties or organizations possessing information that would otherwise show that Werner is not achieving the requisite statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–14496 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0113]

Agency Information Collection Activities; Notice and Request for Comment; Vehicle Information for the General Public

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a reinstatement of a previously approved collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) seeks public comment about our intention to request the Office of Management and Budget's approval on the reinstatement of a previously approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information concerning vehicle safety features for consumer information purposes for which NHTSA intends to seek OMB approval (OMB Control number 2127–0629).

DATES: Comments should be submitted on or before September 8, 2020.

ADDRESSES: You may submit comments [identified by Docket No. NHTSA–2019–0113] through one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Mail: Docket Management Facility; M–30, U.S. Department of Transportation, West Building Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Regardless of how you submit your comments, please be sure to mention the docket number of this document and identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number.

Note: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Johanna Lowrie, U.S. Department of Transportation, NHTSA, Room W43–410, 1200 New Jersey Ave. SE, Washington, DC 20590. Ms. Lowrie's telephone number is (202) 366–5269. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

Title: Vehicle Information for the General Public.

OMB Control Number: 2127–0629.

Type of Request: Reinstatement of a previously approved collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three Years.

Abstract: NHTSA's mission is to save lives, prevent injury, and reduce motor vehicle crashes. Consumer information programs are an important tool for improving vehicle safety through market forces. Pursuant to 49 U.S.C. 32302, the Secretary of Transportation (NHTSA by delegation) is directed to provide to the public the following information about passenger motor vehicles: Damage susceptibility; crashworthiness, crash avoidance, and any other areas the Secretary determines will improve safety of passenger motor vehicles; and the degree of difficulty of diagnosis and repair of damage to, or failure of, mechanical and electrical systems. For more than 40 years, under its New Car Assessment Program (NCAP), NHTSA has been providing consumers with vehicle safety information such as frontal and side crash results, crash avoidance performance test results, rollover propensity, and the availability of a wide array of safety features provided on new model year vehicles. Additionally, the agency uses this safety feature information when responding to consumer inquiries and analyzing rulemaking petitions and the regulatory

impacts of Congressional Acts that require the agency to issue or consider issuing new rules that would mandate certain vehicle safety features.

NHTSA has another information collection to obtain data related to motor vehicle compliance with the agency's Federal motor vehicle safety standards. Although the consumer information collection data (requested by NCAP) is distinct and unique from the compliance data, respondents to both collections are similar. Thus, the consumer information collection is closely coordinated with the compliance collection to enable responders to assemble the data more efficiently. The burden is further reduced by sending electronic files to the respondents so that they can enter the data and return it to the agency electronically.

Affected Public: Manufacturers that sell passenger cars and light truck vehicles (including sport utility vehicles, pickup trucks, and vans) that have a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less in the United States.

Estimated Number of Respondents: 21.

Frequency: Annually.

Number of Responses: 21.

The consumer information collected will be used to disseminate vehicle safely information via the agency's *www.nhtsa.gov* website, in the ''Purchasing with Safety in Mind: What to look for when buying a new vehicle'' brochure, and in other consumer publications, as well as for internal agency analyses and responses to consumer inquiries.

There are approximately 21 vehicle manufacturers that sell passenger cars and light truck vehicles (including sport utility vehicles, pickup trucks, and vans) in the United States with a Gross Vehicle Weight Rating of 10,000 pounds or less, that NHTSA requests annually to respond to this information request. These 21 vehicle manufacturers produce an aggregate of approximately 400 vehicle models each year. Estimates are based on an expected 5 hours to prepare the request for each vehicle model. In addition, the estimate on total annual burden hours for each task is based on a proportion of the job function (*e.g.,* 50 percent for data entry; 40 percent for technical information validation; 10 percent for technical content approval).

Estimated Total Annual Burden Hours: 2,000 hours.

Number of vehicle models: 400.

Number of hours per vehicle model: 5.

Total annual burden hours: 2,000 = (5 hours/model × 400 models).

	Vehicle models per year	Estimated hours per vehicle	Estimated total annual burden hours
Preparation of Response	400	5	2,000

A breakdown of the total annual burden hours (2,000) for this collection of information by labor type is as follows:

Burden hours for data entry = 2,000 hours × 50 percent = 1,000 hours.

Burden hours for technical information validation = 2,000 hours × 40 percent = 800 hours.

Burden hours for technical content approval = 2,000 hours × 10 percent = 200 hours.

	Hours by labor type	
	Percentage of total hours	Number of hours
Data Entry	50	1,000
Technical Information Validation	40	800
Technical Content Approval	10	200

Estimated Annual Labor Costs: $127,035.

Cost associated with data entry = 1,000 hours × $36.51 [1] per hour/0.701 [2] = $52,083.

Cost associated with technical information validation = 800 hours × $50.27 [3] per hour/0.701 = $57,369.

Cost associated with technical content approval = 200 hours × $61.63 [4] per hour/0.701 = $17,583.

Cost associated with total annual burden hours is $127,035 = ($52,083 + $57,369 + $17,583).

	Average wage	Percent of total compensation	Total compensation rate	Annual hours	Annual labor cost
Data Entry	$36.51	70.1	$52.08	1,000	$52,083
Vehicle Info. Validation	50.27	70.1	71.71	800	57,369
Tech. Content Approval	61.63	70.1	87.92	200	17,583

[1] ''Motor Vehicle Manufacturing—May 2016 OES Industry-Specific Occupational Employment and Wage Estimates.'' March 31, 2017. Business Operations Specialists, Occupation Code 13–1000; Mean Hourly Wage = $36.51. *https://www.bls.gov/oes/2016/may/naics4_336100.htm.* Accessed Dec. 9, 2019.

[2] See Table 1 at *https://www.bls.gov/news.release/pdf/ecec.pdf* for the total compensation rate for the employer for private workers.

[3] ''Motor Vehicle Manufacturing—May 2016 OES Industry-Specific Occupational Employment and Wage Estimates.'' March 31, 2017. Operations Specialties Managers, Occupation Code 11–3000; Mean Hourly Wage = $50.27. *https://www.bls.gov/oes/2016/may/naics4_336100.htm.* Accessed Dec. 9, 2019.

[4] ''Motor Vehicle Manufacturing—May 2016 OES Industry-Specific Occupational Employment and Wage Estimates.'' March 31, 2017. Advertising, Marketing, Promotions, Public Relations, and Sales Managers, Occupation Code 11–2000; Mean Hourly Wage = $61.63. *https://www.bls.gov/oes/2016/may/naics4_336100.htm.* Accessed Dec. 9, 2019.

	Average wage	Percent of total compensation	Total compensation rate	Annual hours	Annual labor cost
Estimated Annual Labor Cost for This Information Collection:					127,035

Public comments invited: The agency seeks comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35; and delegation of authority at 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2020–14569 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2011–0084]

Agency Information Collection Activities; Notice and Request for Comment; Compliance Labeling of Retroreflective Materials for Heavy Trailer Conspicuity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on the reinstatement of a previously approved collection of information.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval on the reinstatement of a previously approved collection of information on Federal Motor Vehicle Safety Standard (FMVSS) No. 108. Before a Federal agency can collect certain information from the public, it must receive approval from the OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of labeling information on FMVSS No. 108, for which NHTSA intends to seek OMB approval (OMB Control number 2127–0569). The labeling requirement is for retroreflective sheeting material.

DATES: Comments must be received on or before September 8, 2020.

ADDRESSES: You may submit comments [identified by Docket No. NHTSA–2011–0084] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Mail: Docket Management Facility; M–30, U.S. Department of Transportation, West Building Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Regardless of how you submit your comments, please be sure to mention the docket number of this document and identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number.

Note: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Andrei Denes, U.S. Department of Transportation, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Mr. Denes's telephone number is (202) 366–1810, and fax number is (202) 366–7002.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR 571.108, Standard No. 108; Lamps, reflective devices, and associated equipment; Compliance Labeling of Retroreflective Materials Heavy Trailer Conspicuity.

OMB Control Number: 2127–0569.

Type of Request: Reinstatement of a previously approved collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three Years.

Abstract: 49 U.S.C. 30111, 30112, and 30117 of the National Traffic and Motor Vehicle Safety Act of 1966 authorize the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The agency, in prescribing a FMVSS, considers available relevant motor vehicle safety data and consults with other agencies, as it deems appropriate. Further, the statute mandates that, in issuing any FMVSS, the agency considers whether the standard is ''reasonable, practicable and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to issue such rules and regulations as deemed necessary to carry out these requirements. Under this authority, the agency issued FMVSS No. 108, specifying labeling requirements to aid the agency in achieving many of its safety goals.

This notice requests comments on the labeling requirements of FMVSS No. 108, ''Lamp, reflective devices and

associated equipment,'' which requires that the inscription ''DOT–C2'', ''DOT–C3'', or ''DOT–C4'', as appropriate, constituting a certification that the retroreflective sheeting conforms to the requirements of the standard, appear at least once on the exposed surface of each white or red segment of retroreflective sheeting, and at least once every 300 mm on retroreflective sheeting that is white only. The characters must be not less than 3 mm high, and must be permanently stamped, etched, molded, or printed in indelible ink.

Affected Public: Manufacturers of conspicuity grade retroreflective materials.

Estimated Number of Respondents: 3.

The respondents are likely to be manufacturers of the conspicuity material. The agency estimates that currently there are three manufacturers producing conspicuity material.

Frequency: As needed.

Number of Responses: 190,000,000.

It is estimated that there are 2.34 million trailers and 0.54 million truck tractors that require new conspicuity tape annually. On average, a trailer requires approximately 60 ft. of reflective tape and a truck tractor requires about 4 ft. The labels are to be placed at intervals varying between 150 mm and 300 mm on rolls of retroreflective conspicuity tape. Considering the length of tape required per trailer and truck tractor, and that the labeling is applied on average every 9 in. (225 mm), a total number of 80 labels per trailer and 6 labels per truck tractor are required. Therefore, it is estimated that 190 million labels will be required annually (2.34 million trailers × 80 labels + 0.54 million truck tractors × 6 labels).

Estimated Total Annual Burden Hours: 3 hours.

The compliance symbol labeling program imposes only a minor hour burden per respondent, or three total hours, for the collection or reporting based on a maximum time required to ensure that the correct inscription is being applied to the sheeting by the printing presses. The application of symbols is performed by automated equipment incorporated in the production process of the retroreflective sheeting.

Estimated Total Annual Burden Cost: $4,000.

The cost to respondents is estimated based on information that was supplied by the respondents regarding the cost of supplying or modifying printing rollers to apply the label. The cost to manufacturers of applying the label requirement is the maintenance and amortization of printing rollers and the additional dye or ink consumed. The labels are printed during the normal course of steady flow manufacturing operations and do not add additional time to the production process.

Two methods of printing the label are in use. One method uses the same roller that applies the dye to the red segments of the material pattern. The roller is resurfaced annually using a computerized etching technique. The label was incorporated in the software to drive the roller resurfacing in 1993, and there is no additional cost to continue the printing of the label. In fact, costs would be incurred to discontinue the label.

The second method uses a separate roller and dye to apply the label. The manufacturer using this technique reported that the rollers have been in service for five years without detectable wear and predicted a service life of at least fifteen years. Four rollers costing about $2,500 each are used for a total of $10,000. If all three manufacturers chose to use this method, a total of 12 rollers would be used for a total cost of $30,000. A straight-line depreciation of the rollers over 15 years ($30,000 divided by 15 years) equals $2,000 per year. The total cost of the dye required is derived from the number of labels required to be printed yearly and the dye required for each label. The total number of labels printed annually is about 190 million. Therefore, at a cost of approximately $40 per gallon of dye and using about 0.001 milliliters of dye per label, the total cost of dye to print all the labels is estimated to be $2,000 (190 million labels × $40/gal × 0.001 ml × 0.000264172 ml/gal). With the yearly cost to replace the rollers of $2,000 and an annual allowance of $2,000 for dye, the annual total industry cost of maintaining the label is about $4,000.

Estimated annual cost burden:

Additional cost of maintaining printing rollers with added label—$0

Annual cost of separate printing rollers for label (where used)—$2,000

Annual cost of additional dye or ink—$2,000

Total annual respondent cost—$4,000

Number of rollers	Cost of each roller	Total cost rollers	Depreciation over 15 years	Total annual labels (million)	Annual additional dye allowance	Est. total annual cost to maintain label
12	$2,500	$30,000	$2,000	190	$2,000	$4,000

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35; and delegation of authority at 49 CFR 1.95 and 501.8)

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2020–14570 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the National Research Advisory Council will hold a meeting on Wednesday, September 2, 2020, by teleconference. The teleconference number is 1–404–397–1596. The meeting will convene at 11:00 a.m. and end at 2:00 p.m. Eastern daylight time. This meeting is open to the public.

The purpose of the National Research Advisory Council is to advise the Secretary on research conducted by the Veterans Health Administration, including policies and programs targeting the high priority of Veterans' health care needs.

On September 2, 2020, the agenda will include a discussion of concrete steps to address minority representation in research; follow-up discussion of the mental health research portfolio related

to COVID 19; disparities and COVID 19; and discussion of research efforts that contributed to COVID response. No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend, have questions or presentations to present may contact Dr. Marisue Cody, Designated Federal Officer, Office of Research and Development (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–443–5681, or at *Marisue.Cody@va.gov* no later than close of business on August 28, 2020. All questions and presentations will be presented during the public comment section of the meeting. Any member of the public seeking additional information should contact Dr. Cody at the above phone number or email address noted above.

Dated: July 1, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–14511 Filed 7–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Agency Information Collection Activity: VA Form 26–6705, Offer to Purchase and Contract of Sale, VA Form 26–6705b, Credit Statement of Prospective Purchaser, and VA Form 26–6705d, Addendum to VA Form 26–6705 (VIRGINIA)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

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. Refer to ''OMB Control No. 2900–0029.''

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0029'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Authority:* 44 U.S.C. 3501–21.

Title: VA FORM 26–6705, OFFER TO PURCHASE AND CONTRACT OF SALE, VA FORM 26–6705b AND FANNIE MAE (FNMA) FORM 1003, UNIFORM RESIDENTIAL LOAN APPLICATION, CREDIT STATEMENT OF PROSPECTIVE PURCHASER, AND VA FORM 26–6705d, ADDENDUM TO VA FORM 26–6705 (VIRGINIA).

OMB Control Number: 2900–0029.

Type of Review: Extension of a currently approved collection.

Abstract: Under the authority of 38 U.S.C. 3720(a)(5) and (6) the Department of Veterans Affairs (VA) acquires properties for sale to the general public utilizing a private Service Provider. The Service Provider utilizes private listings and sales brokers to sell VA properties.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 81 on April 27, 2020, page 23438.

Affected Public: Individuals or Households.

Estimated Annual Burden: 17,458.

Estimated Average Burden Per Respondent: 20 minutes and 5 minutes (average 15 minutes between the three forms).

Frequency of Response: One time.

Estimated Number of Respondents: 53,500.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–14536 Filed 7–6–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0875]

Agency Information Collection Activity: VA-Guaranteed Home Loan Cash-Out Refinance Loan Comparison Disclosure

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 8, 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 Administration (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. 2900–0875'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov*. Please refer to ''OMB Control No. 2900–0875'' 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 115–174; 38 CFR 36.4306.

Title: VA-Guaranteed Home Loan Cash-Out Refinance Loan Comparison Disclosure.

OMB Control Number: 2900–0875.

Type of Review: Extension of a currently approved collection.

Abstract: All-VA guaranteed cash-out refinancing loans must comply with the Act and AQ42. All refinancing loan applications taken on or after the effective date that do not meet the following requirements may be subject to indemnification or the removal of the guaranty. Failure to provide initial disclosures to the Veteran within 3 business days from the initial application date and at closing may result in indemnification of the loan up to 5 years. There are three categories of refinance loans; Interest Rate Reduction Refinancing Loans (IRRRL), TYPE I Cash-Out Refinance, and TYPE II Cash-Out Refinance.

Affected Public: Individuals and households.

Estimated Annual Burden: 12,480 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 158,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–14495 Filed 7–6–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 130 July 7, 2020

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0074; FRL–10006–88–OAR]

RIN 2060–AT86

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Organic Liquids Distribution (Non-Gasoline) (OLD) source category regulated under National Emission Standards for Hazardous Air Pollutants (NESHAP). The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the storage tank requirements as a result of the RTR. In addition, we are taking final action to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); add requirements for electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and Notification of Compliance Status (NOCS) reports; add operational requirements for flares; and make other minor technical improvements. We estimate that these amendments will reduce emissions of hazardous air pollutants (HAP) from this source category by 186 tons per year (tpy), which represents an approximate 8 percent reduction of HAP emissions from the source category.

DATES: This final rule is effective on July 7, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of July 7, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0074. 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 either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Neil Feinberg, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2214; fax number: (919) 541–0516; and email address: *feinberg.stephen@epa.gov.* For specific information regarding the risk assessment, contact Ms. Darcie Smith, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2076; fax number: (919) 541–0840; and email address: *smith.darcie@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. Jon Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ANSI American National Standards Institute
APCD air pollution control device
ASTM American Society for Testing and Materials
CAA Clean Air Act
CARB California Air Resources Board
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CF Code of Federal Regulations
CMS continuous monitoring systems
CRA Congressional Review Act
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
FTIR Fourier Transform Infrared (FTIR) Spectroscopy
HAP hazardous air pollutant(s)
HON National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry, also known as the Hazardous Organic NESHAP
HQ hazard quotient
IBR incorporation by reference
ICR Information Collection Request
km kilometer
LEL lower explosive limit
LDAR leak detection and repair
MACT maximum achievable control technology
MDL method detection limit
MIR maximum individual risk
NESHAP national emission standards for hazardous air pollutants
NHVcz net heating value in the combustion zone gas
NHVvg net heating value of the flare vent gas
NOCS Notification of Compliance Status
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OLD Organic Liquids Distribution (Non-Gasoline)
OMB Office of Management and Budget
PDF portable document format
POM polycyclic organic matter
ppm parts per million
ppmv parts per million by volume
PRA Paperwork Reduction Act
PRD pressure relief device
psia pounds per square inch absolute
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SCAQMD South Coast Air Quality Management District
SDS safety data sheet(s)
SOCMI synthetic organic chemical manufacturing industry
SSM startup, shutdown, and malfunction
TAC Texas Administrative Code
The Court United States Court of Appeals for the District of Columbia Circuit
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standard
VOC volatile organic compound(s)
VP_X vapor pressure

Background information. On October 21, 2019, the EPA proposed revisions to the OLD NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the *Summary of Public Comments and Responses for Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* Docket ID No. EPA–HQ–OAR–2018–0074. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

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

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What is the OLD source category and how does the NESHAP regulate HAP emissions from the source category?
C. What changes did we propose for the OLD source category in our October 21, 2019, RTR proposal?
III. What is included in this final rule?
A. What are the significant changes since proposal?
B. What are the final rule amendments based on the risk review for the OLD source category?
C. What are the final rule amendments based on the technology review for the OLD source category?
D. What are the final rule amendments pursuant to CAA Section 112(d)(2) and (3) for the OLD source category?
E. What are the final rule amendments addressing emissions during periods of SSM?
F. What other changes have been made to the NESHAP?
G. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the OLD source category?
A. Residual Risk Review for the OLD Source Category
B. Technology Review for the OLD Source Category
C. Amendments Pursuant to CAA Section 112(d)(2) and (3) for the OLD Source Category
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I. General Information

A. Does this action apply to me?

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

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code(s)
Organic Liquids Distribution (Non-Gasoline)	3222, 3241, 3251, 3252, 3259, 3261, 3361, 3362, 3399, 4247, 4861, 4869, 4931, 5622.

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. The final standards are directly applicable to the affected sources. Federal, state, local, and tribal government entities are not affected by this final action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030, July 1992), the OLD source category includes, but is not limited to, those activities associated with the storage and distribution of organic liquids other than gasoline, at sites which serve as distribution points from which organic liquids may be obtained for further use and processing.

The OLD source category involves the distribution of organic liquids into, out of, or within a source. The distribution activities include the storage of organic liquids in storage tanks not subject to other 40 CFR part 63 standards and transfers into or out of the tanks from or to cargo tanks, containers, and pipelines. The types of organic liquids and emission sources covered by the OLD NESHAP are frequently found at many types of facilities that are already subject to other NESHAP. If equipment is in OLD service and is subject to another 40 CFR part 63 NESHAP, then that equipment is not subject to the corresponding requirements in the OLD NESHAP.

To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/organic-liquids-distribution-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program, and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under the Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by September 8, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tpy or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 84 FR 56288, October 21, 2019.

B. What is the OLD source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the OLD NESHAP on February 3, 2004 (69 FR 5038). The standards are codified at 40 CFR part 63, subpart EEEE. The OLD industry consists of facilities that store and distribute organic liquids. The source category covered by this MACT standard currently includes 177 facilities. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report (*see EPA–450/3–91–030, July, 1992), the OLD source category includes, but is not limited to, those activities associated with the storage and distribution of organic liquids other than gasoline, at sites that serve as distribution points from which organic liquids may be obtained for further use and processing.

The OLD source category involves the distribution of organic liquids into, out of, or within a source. The distribution activities include the storage of organic liquids in storage tanks and transfers into or out of the tanks from or to cargo tanks, containers, and pipelines that are not subject to other 40 CFR part 63 standards. Organic liquids are any crude oils downstream of the first point of custody transfer and any non-crude oil liquid that contains at least 5 percent by weight of any combination of the 98 HAP listed in Table 1 to 40 CFR part 63, subpart EEEE. For the purposes of the OLD NESHAP, organic liquids do not include gasoline, kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oil and fuel oil, fuel that is consumed or dispensed on the plant site, hazardous waste, wastewater, ballast water, or any

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

non-crude liquid with an annual average true vapor pressure less than 0.7 kilopascals (0.1 psia). The OLD NESHAP applies only to major sources of HAP (*i.e.,* sources that have the potential to emit 10 tpy of any single HAP or 25 tpy of combined HAP). Facilities subject to this NESHAP fall into two types, either (1) petrochemical terminals primarily in the business of storing and distributing organic liquids or (2) chemical production facilities or other manufacturing facilities that either have a distribution terminal not subject to another major source NESHAP or have a few miscellaneous storage tanks or transfer racks that are not otherwise subject to another major source NESHAP.

Equipment controlled by the OLD NESHAP are storage tanks, transfer operations, transport vehicles while being loaded, and equipment leak components that have the potential to leak such as valves, pumps, and sampling connections. Table 2 to subpart EEEE of 40 CFR part 63 contains the criteria for control of storage tanks and transfer racks. If a storage tank of a certain threshold capacity stores crude oil or a non-crude organic liquid having a threshold sum of partial pressures of HAP, then compliance options are either to (1) route emissions through a closed vent system to a control device that achieves a 95-percent control efficiency or (2) comply with work practice standards of 40 CFR part 63, subpart WW (*i.e.,* operate the tank with a compliant internal floating roof or a compliant external floating roof), route emissions through a closed vent system to a fuel gas system of a process, or route emissions through a vapor balancing system that meets requirements specified in 40 CFR 63.2346(a)(4). Storage tanks storing non-crude organic liquids having a sum of partial pressures of HAP of at least 11.1 psia do not have the option to comply using an internal or external floating roof tank. Table 2 to subpart EEEE of 40 CFR part 63 contains the criteria for control of transfer racks, which are based on the facility-wide organic liquid loading volume for organic liquids having threshold HAP content expressed in percent HAP by weight of the organic liquid. For transfer racks required to control HAP emissions, the standards are either to (1) route emissions through a closed vent system to a control device that achieves 98-percent control efficiency or (2) operate a compliant vapor balancing system. Transfer rack systems that fill containers of 55 gallons or greater are required to comply with specific provisions of 40 CFR part 63, subpart PP or operate a vapor balancing system.

The NESHAP requires leak detection and repair for certain equipment components associated with storage tanks and transfer racks subject to this subpart and for certain equipment components associated with pipelines between such storage tanks and transfer racks. The components are specified in the definition of ''Equipment leak components'' at 40 CFR 63.2406 and include pumps, valves, and sampling connection systems in organic liquid service. The owner or operator is required to comply with the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H. This requires the use of EPA Method 21 of appendix A–7 to 40 CFR part 60 (''EPA Method 21'') to determine the concentration of any detected leaks and to repair the component if the measured concentration exceeds the definition of a leak within the applicable subpart.

Pressure relief devices (PRDs) on vapor balancing systems are required to be monitored quarterly for leaks. An instrument reading of 500 parts per million (ppm) or greater defines a leak. Leaks must be repaired within 5 days.

The types of organic liquids and emission sources covered by the OLD NESHAP are frequently found at many types of facilities that are already subject to other NESHAP. If equipment is in OLD service and is subject to another 40 CFR part 63 NESHAP, then that equipment is not subject to the corresponding requirements in the OLD NESHAP.

C. What changes did we propose for the OLD source category in our October 21, 2019, RTR proposal?

On October 21, 2019, the EPA published a proposed rule in the **Federal Register** for the OLD NESHAP, 40 CFR part 63, subpart EEEE, that took into consideration the RTR analyses. We proposed to find that the risks from the source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. In the proposed rule, we proposed under CAA section 112(d)(6) to amend the requirements for storage tanks and equipment leaks and also provided an alternative fenceline monitoring program in the OLD source category as follows:

- Revise the average true vapor pressure thresholds of the OLD storage tanks for existing sources requiring control to align with those of the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC) and National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (''HON,'' 40 CFR part 63, subpart G) where the thresholds are lower;
- add a requirement for leak detection and repair (LDAR), using EPA Method 21 with a 500 ppm leak definition for fittings on fixed roof storage tanks (*e.g.,* access hatches) that are not subject to the 95 percent by weight control requirements;
- revise the equipment leak requirements to add connectors to the monitored equipment component types at a leak definition of 500 ppm (*i.e.,* requiring connectors to be compliant with either 40 CFR part 63, subparts UU or H); and
- add an optional implementation of a fenceline monitoring program in lieu of the proposed technology review amendments for storage tanks and equipment leaks discussed above.

In the proposed rule, we proposed under CAA section 112(d)(2) and (3) to amend the operating and monitoring requirements for flares used as air pollution control devices (APCDs) in the OLD source category as follows:

- We proposed to add requirements at 40 CFR 63.2380 to directly apply the Petroleum Refinery Sector Rule (PRSR) flare definitions and requirements in 40 CFR part 63, subpart CC to flares in the OLD source category, with certain clarifications and exemptions;
- we proposed to amend requirements that flares used as APCDs in the OLD source category operate pilot flame systems continuously when organic HAP emissions are routed to the flare. Specifically, we proposed to remove the cross-reference to the General Provisions and instead cross-reference 40 CFR part 63, subpart CC to include in the OLD NESHAP the existing provisions that flares operate with a pilot flame at all times and be continuously monitored for a pilot flame using a thermocouple or any other equivalent device. We also proposed to add a continuous compliance measure that would consider each 15-minute block when there is at least 1 minute where no pilot flame is present when regulated material is routed to the flare as a deviation from the standard;
- we proposed to amend requirements that flares used as APCDs in the OLD source category operate with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours) when organic HAP emissions are routed to the flare. Specifically, we proposed to remove the

cross-reference to the General Provisions and instead cross-reference 40 CFR part 63, subpart CC to include the limitation on visible emissions. We also proposed to clarify that the initial 2-hour visible emissions demonstration should be conducted the first time regulated materials are routed to the flare. With regard to continuous compliance with the visible emissions limitation, we proposed daily visible emissions monitoring for whenever regulated material is routed to the flare. On days the flare receives regulated material, we proposed that owners or operators of flares monitor visible emissions at a minimum of once per day using an observation period of 5 minutes and EPA Method 22. Additionally, whenever regulated material is routed to the flare and there are visible emissions from the flare, we proposed that another 5-minute visible emissions observation period be performed using EPA Method 22, even if the required daily visible emissions monitoring has already been performed. If an employee observes visible emissions, then the owner or operator of the flare would perform a 5-minute EPA Method 22 observation to check for compliance upon initial observation or notification of such event. In addition, in lieu of daily visible emissions observations performed using EPA Method 22, we proposed that owners or operators be allowed to use video surveillance cameras. We also proposed to extend the observation period for a flare to 2 hours whenever visible emissions are observed for greater than 1 continuous minute during any of the required 5-minute observation periods;

• we proposed the consolidation of provisions related to flare tip velocity. Specifically, we proposed to remove the cross-reference to the General Provisions and instead cross-reference 40 CFR part 63, subpart CC to consolidate the specification of maximum flare tip velocity into the OLD NESHAP as a single equation, irrespective of flare type (*i.e.,* steam-assisted, air-assisted, or non-assisted). We also proposed not to include the special flare tip velocity equation in the General Provisions at 40 CFR 63.11(b)(6)(i)(A) for non-assisted flares with hydrogen content greater than 8 percent;

• in lieu of requiring compliance with the operating limits for net heating value of the flare vent gas in the General Provisions, we proposed to cross-reference 40 CFR part 63, subpart CC to include in the OLD NESHAP a single minimum operating limit for the net heating value in the combustion zone gas (NHVcz) of 270 British thermal units per standard cubic foot during any 15-minute period for steam-assisted, air-assisted, and non-assisted flares used as APCDs in the OLD source category. We also proposed to allow engineering estimates to characterize the amount of gas flared and the amount of assist gas (if applicable) introduced into the system. Finally, we proposed that owners or operators of flares in the OLD source category that use grab sampling and engineering calculations to determine compliance must still assess compliance with the NHVcz operating limit on a 15-minute block average using the equation at 40 CFR 63.670(m)(1) and cumulative volumetric flows of flare vent gas, assist steam, and premix assist air; and

• except for the visible emissions operating limits, we proposed to use a 15-minute block averaging period for each proposed flare operating parameter (*i.e.,* presence of a pilot flame, flare tip velocity, and NHVcz) to ensure that the flare is operated within the appropriate operating conditions.

In addition to the amendments proposed for flares used as APCDs, the EPA proposed to clarify that PRDs on vapor return lines of a vapor balancing system are also subject to the vapor balancing system requirements of 40 CFR 63.2346(a)(4)(iv).

We also proposed to:

• Revise the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008);

• add the requirement that owners or operators of OLD facilities submit electronic copies of required performance test reports, performance evaluation reports, compliance reports, NOCS reports, and fenceline monitoring reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI);

• add requirements for testing and recordkeeping to confirm the annual average true vapor pressure at least every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to ensure the tank's applicability and confirm that it should not be subject to the 95-percent control requirements of the regulation;

• add requirements that the contents of tanks that are claimed to be not subject to the OLD NESHAP because they contain less than 5-percent HAP (and, therefore, do not meet the definition of ''Organic liquids'' within the OLD NESHAP) should be tested every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to confirm that the tank is not storing ''Organic liquids'' and, therefore, is not subject to the rule;

• amend the definition of the term ''Annual average true vapor pressure'' at 40 CFR 63.2406 by replacing one of the acceptable methods for the determination of vapor pressure. We proposed to replace the method, ASTM D2879, ''Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,'' with the method, ASTM D6378–18a, ''Standard Test Method for Determination of Vapor Pressure (VPX) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method).'' Other monitoring method clarifications and incorporations by references were also proposed; and

• add a definition of the term ''Condensate'' and to specify its regulation in this rule in the same way crude oil is regulated at the definition of the term ''Organic liquid'' and at Tables 2 and 2b to 40 CFR part 63, subpart EEEE.

In addition to the revisions proposed above, we also proposed several editorial clarification and minor corrections to 40 CFR part 63, subpart EEEE.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the OLD source category and amends the OLD NESHAP based on those determinations. This action also finalizes other changes to the NESHAP, including adding requirements and clarifications for periods of SSM and bypasses, revising the operating and monitoring requirements for flares used as APCDs; adding provisions for electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports; and other minor editorial and technical changes. This action also reflects several changes to the October 21, 2019, RTR proposal in consideration of comments received during the public comment period as described in section IV of this preamble.

A. What are the significant changes since proposal?

This section introduces the significant changes to the OLD NESHAP amendments made since proposal being promulgated. These changes are discussed in further detail in section IV of this preamble.

• We are not finalizing the proposed requirements for LDAR using EPA Method 21 with a 500 ppm leak

definition for fittings on fixed roof storage tanks (*e.g.,* access hatches) that are not subject to the 95 percent by weight control requirements in the final rule;

• we are not finalizing the proposal to add connectors to the monitored equipment component types at a leak definition of 500 ppm (*i.e.,* requiring connectors to be compliant with either 40 CFR part 63, subparts UU or H);

• we are not finalizing the option of allowing for a fenceline monitoring program in lieu of other requirements;

• we are finalizing standards for storage tank degassing emission points during periods of SSM to ensure a CAA section 112 standard applies ''at all times;'' and

• we are not finalizing the proposed required testing and recordkeeping for emission sources not requiring control to confirm the annual average true vapor pressure at least every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to ensure the tank's applicability and confirm that it should not be subject to the 95 percent control requirements of the regulation. Further, we are not finalizing, as proposed, a requirement that the contents of tanks that are claimed to be not subject to the OLD NESHAP because they contain less than 5 percent HAP (and, therefore, do not meet the definition of ''Organic liquids'' within the OLD NESHAP) should be tested every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to confirm that the tank is not storing ''organic liquids'' and, therefore, is not subject to the rule.

B. What are the final rule amendments based on the risk review for the OLD source category?

This section introduces the final amendments to the OLD NESHAP being promulgated pursuant to CAA section 112(f). The EPA proposed no changes to the MACT standards based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks from this source category are acceptable, the standards provide an ample margin of safety to protect public health, and that more stringent standards are not necessary to prevent an adverse environmental effect. See section 3 of the *Summary of Public Comments and Responses for the Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action for comments we received regarding risk review and our responses.

C. What are the final rule amendments based on the technology review for the OLD source category?

We determined that there are developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), we are revising the MACT standards to include revised average true vapor pressure thresholds of the OLD storage tanks for existing sources, requiring control to align with those of the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC) and HON (40 CFR part 63, subpart G) where the thresholds are lower.

Section IV.B.3 of this preamble provides a summary of key comments we received on the technology review and our responses.

D. What are the final rule amendments pursuant to CAA Section 112(d)(2) and (3) for the OLD source category?

The EPA is finalizing the changes proposed pursuant to CAA section 112(d)(2) and (3). Consistent with the October 21, 2019, RTR proposal, we are revising monitoring and operational requirements for flares to ensure that OLD facilities that use flares as APCDs meet the MACT standards at all times when controlling HAP emissions. In addition, we are adding provisions and clarifications for periods of SSM and bypasses, including PRD releases, bypass lines on closed vent systems, maintenance activities, and certain gaseous streams routed to a fuel gas system to ensure that CAA section 112 standards apply continuously, consistent with *Sierra Club* v. *EPA* 551 F. 3d 1019 (D.C. Cir. 2008). Based on comments received on the proposed rulemaking, we are also adding a standard for storage tank degassing for storage tanks subject to the control requirements in Tables 2 and 2b to 40 CFR part 63, subpart EEEE.

Detailed changes and associated rationale regarding flares and PRDs are set forth in the proposed rule. See 84 FR 56302 through 56306, October 21, 2019. Section IV.C.3 of this preamble provides a summary of key comments we received on the CAA section 112(d)(2) and (3) provisions and our responses.

E. What are the final rule amendments addressing emissions during periods of SSM?

We are finalizing the proposed amendments to the OLD NESHAP to remove and revise provisions related to SSM. In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. As detailed in section IV.E.1 of the proposal preamble (84 FR 56318, October 21, 2019), the OLD NESHAP requires that the standards apply at all times (see 40 CFR 63.2350(a)), consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008). We determined that facilities in this source category can generally meet the applicable OLD NESHAP standards at all times, including periods of startup and shutdown. Where appropriate, and as discussed in section III.C of this preamble, we are also finalizing alternative standards in this preamble for storage tank degassing emission points during periods of SSM to ensure a CAA section 112 standard applies ''at all times.'' Other than the storage tank degassing emission point discussed in section III.C of this preamble, the EPA determined that no additional standards are needed to address emissions during these periods.

Further, the EPA is not finalizing standards for malfunctions. As discussed in the proposal preamble (84 FR 56318, October 21, 2019), the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. Refer to section IV.E.1 of the proposal preamble (84 FR 56318, October 21, 2019) for further discussion of the EPA's rationale for the decision not to set standards for malfunctions, as well as a discussion of the actions a source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, given that administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

As is explained in more detail below, we are finalizing revisions to the General Provisions table to 40 CFR part 63, subpart EEEE, to eliminate requirements that include rule language

providing an exemption for periods of SSM. Additionally, we are finalizing our proposal to eliminate language related to SSM that treats periods of startup and shutdown the same as periods of malfunction, as explained further below. As discussed in the proposal preamble, these revisions are consistent with the requirement in 40 CFR 63.2350(a) that the standards apply at all times.

Also, based on comments received during the public comment period, we are revising the proposed requirements of 40 CFR 63.2378(e) for periods of planned routine maintenance of the control device to allow tank breathing losses to be consistent with our intent at proposal (see 84 FR 56323, October 21, 2019), and we are revising 40 CFR 63.2346(l) to sufficiently address the SSM exemption provisions from subparts referenced by the OLD NESHAP standards (such as 40 CFR part 63, subparts SS, TT, and UU) that are no longer applicable. Finally, we are extending the compliance date of removing the portion of the ''deviation'' definition in 40 CFR 63.2406 that addresses SSM periods as being applicable to 3 years after publication of the final rule instead of 180 days after publication of the final rule in the **Federal Register** to provide a consistent compliance date for all final rule SSM provisions due to the addition of the tank degassing requirements discussed in section IV.C of this preamble. See section 10.1 of the *Summary of Public Comments and Responses for the Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action, for a summary of the significant comments we received on the SSM provisions and our responses.

F. What other changes have been made to the NESHAP?

This rule also finalizes, as proposed, revisions to several other NESHAP requirements. To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners or operators of facilities in the OLD source category submit electronic copies of required performance test reports, performance evaluation reports, compliance reports, and NOCS reports through the EPA's CDX using CEDRI. A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The final rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [2] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, performance evaluation results of continuous emissions monitoring systems (CEMS) measuring relative accuracy test audit pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT. The final rule requires that NOCS reports be submitted as a PDF upload in CEDRI. For compliance reports, the final rule requires that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. The final version of the template for these reports will be located on the CEDRI website.[3]

We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.,* for a possible outage in the CDX or CEDRI or for a *force majeure* event in the time just prior to a report's due date, as well as the process to assert such a claim.

We are finalizing the revision of 40 CFR 63.2354(c) to add ASTM D6886–18, ''Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography,'' as another acceptable method for the determination of HAP content of an organic liquid. We are also finalizing the replacement of method ASTM D2879 with method ASTM D6378–18a as an acceptable method for determination of whether a total vapor pressure (and, therefore, the sum total of Table 1 to 40 CFR part 63, subpart EEEE HAP) is below the threshold level requiring control for a storage tank.

Finally, we are finalizing all of the revisions that we proposed for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in 84 FR 56323 through 56324 and Table 9 of the proposal. Section IV.E.3 of this preamble provides a summary of key comments we received on these provisions and our responses.

G. What are the effective and compliance dates of the standards?

The revisions to the OLD NESHAP standards being promulgated in this action are effective on July 7, 2020. From our assessment of the timeframe needed for implementing the entirety of the revised requirements (see 84 FR 56324 and 56325, October 21, 2019), the EPA proposed a period of 3 years to be the most expeditious compliance period practicable. No opposing comments were received during the public comment period on the length of the compliance period and we are finalizing the 3-year period as proposed. Thus, the compliance date of the final amendments for all existing affected sources and all new affected sources that commence construction or reconstruction on or before October 21, 2019, is no later than 3 years after the effective date of the final rule. Furthermore, as discussed in sections III.C and D of this preamble, we are adding a standard for storage tank degassing for storage tanks subject to the control requirements in Tables 2 and 2b to 40 CFR part 63, subpart EEEE since degassing is considered a SSM event for storage tanks. The provisions being finalized are similar to the requirements promulgated in the Petroleum Refineries NESHAP. As we discovered during the Petroleum Refineries NESHAP rulemaking, the challenges faced by affected sources in complying with these requirements necessitated additional compliance time from what was promulgated, eventually having to move the original compliance date of these provisions from February 1, 2016, to August 1, 2018, an additional 2 and a half years.[4] Therefore, the 3-year compliance date that was proposed for the OLD NESHAP provides a consistent time allowance to OLD sources as was needed for petroleum refineries to fully implement the final amendments to this rule. We have also revised the effective date of removing the portion of the ''deviation'' definition in 40 CFR 63.2406 that addresses SSM periods as being applicable 3 years after publication of the final rule in the **Federal Register** to provide a consistent compliance date due to the addition of the tank degassing requirements. For all new affected sources that commenced construction or reconstruction after October 21, 2019, the effective date is

[2] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[3] *https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri.*

[4] See *https://www.epa.gov/sites/production/files/2018-07/documents/petrefinery_compliance_ext_factsheet.pdf.*

July 7, 2020, or upon initial startup, whichever is later.

IV. What is the rationale for our final decisions and amendments for the OLD source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Residual Risk Review for the OLD Source Category

1. What did we propose pursuant to CAA section 112(f) for the OLD source category?

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the October 21, 2019, proposed rule for 40 CFR part 63, subpart EEEE (84 FR 56288). The results of the risk assessment for the proposal are presented briefly below and in more detail in the document, *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2020 Risk and Technology Review Final Rule,* which is available in the docket for this rulemaking.

TABLE 2—ORGANIC LIQUIDS DISTRIBUTION (NON–GASOLINE) INHALATION RISK ASSESSMENT RESULTS AS PROPOSED

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]	Population at increased risk of cancer ≥1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]	Maximum screening acute noncancer HQ [4]
157	20	350,000	0.03	0.4	HQ_{REL} = 1 (toluene, formaldehyde, and chloroform).

[1] Number of facilities evaluated in the risk analysis. This number is less than the 173 existing facilities identified in the source category because OLD emission points could not be identified at all facilities. This is explained in the Data Quality memorandum. For this category, allowable emissions are assumed to equal actual emissions.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum target organ-specific hazard index (TOSHI). The target organ system with the highest TOSHI for the source category is respiratory.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. HQ values shown use the lowest available acute threshold value, which in most cases is the reference exposure level (REL). When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The results of the proposed inhalation risk assessment, as shown in Table 2 of this preamble, indicate the estimated cancer maximum individual risk (MIR) is 20-in-1 million, with 1,3-butadiene from equipment leaks as the major contributor to the risk. At proposal, the total estimated cancer incidence from this source category was estimated to be 0.03 excess cancer cases per year, or one excess case every 33 years. Approximately 350,000 people were estimated to face an increased cancer risk at or above 1-in-1 million due to inhalation exposure to actual HAP emissions from this source category. At proposal, the estimated maximum chronic noncancer TOSHI from inhalation exposure for this source category was 0.4. The screening assessment of worst-case inhalation impacts indicated a worst-case maximum acute HQ of 1 for toluene, formaldehyde, and chloroform based on the 1-hour REL for each pollutant.

At proposal, potential multipathway human health risks were estimated using a three-tier screening assessment of the HAP known to be persistent and bio-accumulative in the environment emitted by facilities in this source category. The only pollutants with elevated Tier 1 and Tier 2 screening values were polycyclic organic matter (POM) (cancer). The Tier 2 screening value for POM was 6, which means that we were confident that the cancer risk is lower than 6-in-1 million. For noncancer, the Tier 2 screening value for both cadmium and mercury was less than 1. There were no exceedances of the lead National Ambient Air Quality Standards (NAAQS).

The ecological risk screening assessment indicated all modeled points were below the Tier 1 screening thresholds based on actual and allowable emissions of arsenic, cadmium, mercury, hydrochloric acid, and hydrofluoric acid. For POM emissions, one facility did have a Tier 1 exceedance for a sediment community no-effect level by a maximum screening value of 6. There were no exceedances of the secondary lead NAAQS.

The EPA considered all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the risks posed by the OLD source category are acceptable (section IV.C.1 of proposal preamble, 84 FR 56309, October 21, 2019).

We then considered whether the existing MACT standards provide an ample margin of safety to protect public health and whether, taking into consideration costs, energy, safety, and other relevant factors, standards are required to prevent an adverse environmental effect. In considering whether the standards are required to provide an ample margin of safety to protect public health, we used the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. We proposed that additional emissions controls for the OLD source category are not necessary to provide an ample margin of safety to protect public health (section IV.C.2 of proposal preamble, 84 FR 56310, October 21, 2019).

At proposal, we also evaluated the risk from whole facility emissions in order to put the risks from the source category in context. The maximum lifetime individual cancer risk based on whole facility emissions was estimated to be 2,000-in-1 million at proposal, with ethylene oxide from a non-category source driving the risk. At proposal, the maximum chronic noncancer hazard index based on whole facility emissions was estimated to be 10 (for the kidney) driven by emissions of trichloroethylene from equipment leaks in the solvent recovery operations at a plastic parts manufacturing facility, which are non-category sources.

2. How did the risk review change for the OLD source category?

We have not changed any aspect of the risk assessment since the October 21, 2019 RTR proposal (84 FR 56288) for the OLD source category.[5]

[5] We note that, due to comments, there are four fewer existing OLD affected sources now than at

Continued

3. What key comments did we receive on the risk review, and what are our responses?

We received comments in support of and against the proposed residual risk review and our determination that no revisions were necessary under CAA section 112(f)(2) for the OLD source category. Generally, the comments that were not supportive of the determination from the risk reviews suggested changes to the underlying risk assessment methodology. For example, some commenters stated that the EPA should lower the acceptability benchmark so that risks below 100-in-1 million are unacceptable, include emissions outside of the source categories in question in the risk assessment and assume that HAP without dose-response values should be included in the risk assessment. After review of all the comments received, we determined that no changes were necessary. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the risk review?

As noted in our proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand'' (see 54 FR 38045, September 14, 1989). We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule, we determined that the risks from the OLD source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, we are not making any revisions to the existing standards under CAA section 112(f)(2).

B. Technology Review for the OLD Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the OLD source category?

We proposed, as part of our technology review for storage tanks, the following emission reduction options: (1) Revising the average true vapor pressure thresholds of the OLD storage tanks for existing sources requiring control to align with those of the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC) and HON (40 CFR part 63, subpart G) where the thresholds are lower; and (2) in addition to requirements specified in option 1, requiring LDAR using EPA Method 21 with a 500 ppm leak definition for fittings on fixed roof storage tanks (*e.g.,* access hatches) that are not subject to the 95 percent by weight control requirements.

We proposed option 1 (lower average vapor pressure thresholds for control) as a development in practices, processes, and control technologies for storage tanks because it reflects requirements and applicability thresholds that are widely applicable to existing tanks that are often collocated with OLD sources and that have been found to be cost effective for organic liquid storage tanks. We did not propose revisions to the OLD NESHAP applicability thresholds for new sources, as they were already more stringent than other similar rules. Table 3 of this preamble lists the proposed capacity and average true vapor pressure thresholds for control. As shown in Table 3 of this preamble, we also proposed to clarify that condensate and crude oil are considered to be the same material with respect to OLD applicability (see section IV.E.3 of the October 21, 2019, proposal (84 FR 56288) for more details on this clarification).

TABLE 3—NESHAP STORAGE TANK CAPACITY AND ANNUAL AVERAGE TRUE VAPOR PRESSURE THRESHOLDS FOR CONTROL UNDER PROPOSED CONTROL OPTION 1

Existing/new source and tank capacity	Tank contents and average true vapor pressure of total Table 1 to subpart EEEE of 40 CFR part 63 organic HAP
Existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <75.7 cubic meters (20,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Existing affected source with a capacity ≥75.7 cubic meters (20,000 gallons) and <151.4 cubic meters (40,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥13.1 kilopascals (1.9 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Existing affected source with a capacity ≥151.4 cubic meters (40,000 gallons) and <189.3 cubic meters (50,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥5.2 kilopascals (0.75 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Existing affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Reconstructed or new affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <37.9 cubic meters (10,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.

proposal (*i.e.,* four sources we identified as subject to the OLD NESHAP are not in fact subject to that rule). However, this change does not warrant an update to this analysis since proposal and has, therefore, not been updated.

TABLE 3—NESHAP STORAGE TANK CAPACITY AND ANNUAL AVERAGE TRUE VAPOR PRESSURE THRESHOLDS FOR CONTROL UNDER PROPOSED CONTROL OPTION 1—Continued

Existing/new source and tank capacity	Tank contents and average true vapor pressure of total Table 1 to subpart EEEE of 40 CFR part 63 organic HAP
Reconstructed or new affected source with a capacity ≥37.9 cubic meters (10,000 gallons) and <189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is ≥0.7 kilopascals (0.1 psia) and <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate.
Reconstructed or new affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	Not crude oil and if the annual average true vapor pressure of the stored organic liquid is <76.6 kilopascals (11.1 psia). The stored organic liquid is crude oil or condensate
Existing, reconstructed, or new affected source meeting any of the capacity criteria specified above.	Not crude oil or condensate and if the annual average true vapor pressure of the stored organic liquid is ≥76.6 kilopascals (11.1 psia).

We further proposed option 2 (LDAR) as an improvement in practices for storage tanks because these monitoring methods have been required by other regulatory agencies since promulgation of the OLD NESHAP to confirm the vapor tightness of tank seals and gaskets to ensure compliance with the standards. As we noted at proposal, we have observed leaks on roof deck fittings through monitoring with EPA Method 21 that could not be found with visual observation techniques (see 84 FR 56311, October 21, 2019).

Proposed option 2 applied to any fixed roof storage tank that is part of an OLD affected source that is not subject to the 95 percent by weight and equivalent controls according to the proposed thresholds above. The proposed requirements of option 2 applied to new and existing sources for storage tanks having a capacity of 3.8 cubic meters (1,000 gallons) or greater that store organic liquids with an annual average true vapor pressure of 10.3 kilopascals (1.5 psia) or greater.

Based on our review of the costs and emission reductions for each of the storage tank options, we proposed that control options 1 and 2 were cost-effective strategies for further reducing emissions from storage tanks at OLD facilities and proposed to revise the OLD NESHAP requirements for storage tanks pursuant to CAA section 112(d)(6). Other storage tank control options beyond these two, including installation of geodesic domes on external floating roof tanks, were considered during our technology review but were not found to be generally cost effective were not proposed. Details on the assumptions and methodologies for all options evaluated at proposal are provided in the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Storage Tanks Located in the Organic Liquids Distribution Source Category,* available in the docket to this action.

At proposal, our technology review for equipment leaks identified two potential developments in LDAR practices and processes: (1) Adding connectors to the monitored equipment component types at a leak definition of 500 ppm (*i.e.,* requiring connectors to be compliant with either 40 CFR part 63, subparts UU or H); and (2) eliminating the option of 40 CFR part 63, subpart TT for valves, pumps, and sampling connection systems, essentially requiring compliance with 40 CFR part 63, subpart UU or H. These two practices and processes were already in effect at sources that are often collocated with OLD NESHAP sources, such as in the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR part 63, subpart H). Further, we found that several OLD sources were permitted using various state LDAR regulations that incorporate equipment leak provisions at the 40 CFR part 63, subpart UU requirement level or above and that also require connector monitoring as part of the facility's air permit requirements.

For equipment leaks control option 1, we considered that the baseline was that connectors were not controlled using a LDAR program, since the current OLD NESHAP does not include them as equipment to be monitored. For equipment leaks control option 2, we considered lowering the leak definitions for valves and pumps to account for the differences in 40 CFR part 63, subpart UU from the requirements of 40 CFR part 63, subpart TT. That is, valves in light liquid service would drop from a leak definition of 10,000 parts per million by volume (ppmv) to 500 ppmv, and pumps would drop from 10,000 ppmv to 1,000 ppmv.

Based on our review of the costs and emission reductions for each of the equipment leak options, we proposed that control option 1 was a cost-effective strategy for further reducing emissions from equipment leaks at OLD facilities, especially when evaluated based on the expected reductions attributed to the emission inventory for fugitive HAP emissions, and we determined that option 2 was not cost effective for this source category. We proposed, pursuant to CAA section 112(d)(6), revising the OLD NESHAP for equipment leaks to reflect option 1. Details on the assumptions and methodologies for all options that were evaluated at proposal are provided in the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Equipment Leaks Located in the Organic Liquids Distribution Source Category,* available in the docket to this action.

As part of the technology review, we also considered options to reduce emissions from transfer racks. We evaluated the thresholds for control in the current rule against the 2012 proposed uniform standards for storage tanks and transfer operations (see Docket ID No. EPA–HQ–2010–0871) and found that the current thresholds for controls are equivalent to or more stringent than those proposed in 2012. We also considered an option that would apply 98 percent control requirements for transfer racks to large throughput transfer racks transferring organic liquid materials that are 5 percent or less by weight HAP. Considering the costs of control and the HAP emissions for these racks, this option was not found to be cost effective. Therefore, we did not propose any changes to the emission standard for transfer racks. For more information, see the *Clean Air Act Section 112(d)(6) Technology Review for Transfer Racks Located in the Organic Liquids Distribution Source Category* memorandum in the docket for this action.

Also, as part of the technology review, we evaluated developments in processes, practices, and control technologies for measuring and

controlling fugitive emissions from individual emission points at OLD sources. We proposed a fenceline monitoring program, available to existing and new OLD facilities, in lieu of implementing the proposed technology review requirements discussed above for storage tanks and equipment leaks. Provisions of the proposed fenceline monitoring program compliance alternative were described in detail in section IV.D.4 of the proposal preamble (see 84 FR 56313 through 56318, October 21, 2019).

The EPA proposed this option for fenceline monitoring for several reasons: (1) There was concern that because of the uncertainty surrounding estimated fugitive emissions from OLD operations, sources may be underestimating actual fugitive emissions from OLD operations; (2) the proposed fenceline monitoring program would provide owners or operators a flexible alternative to appropriately manage fugitive emissions of HAP from OLD operations if they were significantly greater than estimated values; and (3) the proposed frequency of monitoring time-integrated samples on a 2-week basis would provide an opportunity for owners or operators to detect and manage any spikes in fugitive emissions sooner than they might have been detected from equipment subject to annual or quarterly monitoring in the proposed amendments or from equipment that was not subject to equipment leak monitoring in the proposed rule.

The EPA proposed the fenceline monitoring alternative and considered it to be equivalent to the proposed technology review revisions it would replace. Therefore, we proposed the fenceline monitoring alternative under CAA section 112(d)(6) as an alternative equivalent requirement to address fugitive emissions from OLD sources.

2. How did the technology review change for the OLD source category?

After consideration of comments and reevaluation of our analyses at proposal, we are not finalizing the following: Requiring LDAR using EPA Method 21 with a 500 ppm leak definition for fittings on fixed roof storage tanks (*e.g.,* access hatches) that are not subject to the 95 percent by weight control requirements in the final rule; adding connectors to the monitored equipment component types at a leak definition of 500 ppm (*i.e.,* requiring connectors to be compliant with either 40 CFR part 63, subparts UU or H); or allowing the option for a fenceline monitoring program. Summaries of comments on these proposed provisions and our responses are provided below in section IV.B.3 of this preamble.

3. What key comments did we receive on the technology review, and what are our responses?

Comment: Multiple commenters opposed the proposed LDAR requirements for storage tanks that are not required to have emissions controls and are not currently subject to equipment standards that require they be enclosed and leak tight. Several commenters asserted that the EPA's estimated emission reductions for the proposed storage tank leak detection monitoring requirements overestimate emission reductions that may be attributed to these requirements. Many commenters observed that the EPA's estimated volatile organic compound (VOC) reduction of 1.1 tpy includes emissions from the conservation vent, emergency pressure relief vent, and other valves/instruments that were estimated using equipment leak emission factors from the synthetic organic chemical manufacturing industry (SOCMI) from the EPA's Protocol for Equipment Leak Emission Estimates. The commenters stated that the SOCMI emission factors were developed for process equipment containing material at pressures several times greater than an atmospheric storage tank, making their application to such tanks invalid. Commenters also stated that the costs for the proposed tank leak detection monitoring requirements are underestimated. These commenters argued that the EPA did not consider operational and safety issues that these requirements present. Several commenters noted that the language effectively requires a technician to climb up to the roof of a tank and check the entire surface, stressing that these small tanks were not built with the intention of regular roof inspections and do not have the same structural integrity as tanks that were designed with the intention of applying emission controls. One commenter generally supported the proposed revisions related to storage tanks to incorporate developments that the EPA has deemed cost effective and advocated that the EPA require further revisions to satisfy 42 U.S.C. 7412(d)(6).

Response: We have reviewed commenters' concerns and reevaluated the analyses for developing the proposed fixed roof tank LDAR requirements and agree that the emission reduction estimates serving as the basis for the proposed LDAR requirements were likely inaccurate for the smaller volume tanks and provide an overestimate of emission reductions for this control option. Coupled with concerns about additional costs that may be incurred to address safety and operational concerns, the EPA has determined that the proposed LDAR for fixed roof tanks not requiring control does not appear to be a cost-effective control option for this source category. Without appropriate data to better assess the emissions reductions and costs of this option, and given the fact that uncontrolled fixed roof tanks are allowed to breathe and would not necessarily be vapor-tight, we now recognize that the proposed requirements could potentially trigger leak protocols that we did not intend when we proposed the change. Therefore, we are not finalizing the proposed requirements that require LDAR for tanks that are currently beneath the volumetric and vapor pressure thresholds for controlling emissions under the OLD standards.

Comment: Several commenters contended that the EPA cost-effectiveness analysis for connectors was flawed, and based on the EPA's backup document, connector monitoring is not cost effective for OLD facilities and should not be finalized. The commenters stated that the backup document for the EPA's equipment leak analysis does not support the preamble conclusions. One commenter contended that the EPA overestimated the emission reductions achievable from connector monitoring by applying emissions from all equipment leaks to connectors and, thus, overestimating the emission reductions achievable. The commenter also alleged an error in the modeling file for one facility that accounted for half of the equipment leak emissions yet submitted a correction that stated there is no OLD-affected equipment at the facility. Commenters also claimed the EPA underestimated the compliance costs for connector monitoring. One commenter stated that the EPA's cost estimates failed to take into account that connectors at OLD sources tend to be more difficult to access than at refineries or other sources. The commenter further stated that for OLD facilities, for a high percentage of connectors, equipment such as a wheeled scissor-lift or hydraulic scaffold is required for monitoring access as well as a second technician for safety reasons; and additional time is required to move the equipment. Some commenters asserted that the EPA also underestimated costs by underestimating the monitoring frequency allowed under 40 CFR part 63, subpart UU, stating that the frequency should be every 4 years instead of 8 years that were used in the

cost estimates. One commenter further contended that the EPA underestimated the administrative costs (*e.g.,* training and reporting costs) for the program by incorrectly assuming no additional administrative costs for OLD facilities that are collocated with processes that already have an LDAR regulatory program. A couple of commenters also added that the industry finds and repairs leaks based on sensory methods, so requiring EPA Method 21 may not result in the level of emissions reductions that the EPA estimates.

Response: We revised our cost and emission reduction estimates and are not finalizing connector monitoring because we no longer find it to be as cost effective for this source category as originally determined. We reviewed commenters' concerns and reevaluated the analyses of emission reductions and cost for connector LDAR requirements and agree that the estimates of emission reductions that were not based on the model plant analysis that served as the basis for this proposed requirement were likely inaccurate and underestimated the cost per ton removed for this control option. Using the model plant emission reductions and costs (see EPA–HQ–OAR–2018–0074–0015), as well as updating measurement frequency, we estimate a cost effectiveness of $10,063/ton HAP. Coupled with unquantified additional costs that may be incurred to address safety concerns specific to OLD facilities, the EPA has determined that connector monitoring is not a cost-effective option for OLD sources. This determination also considers additional uncertainty, such as with the HAP content of the liquid. As a result, we are not finalizing the proposed requirements that require LDAR for connectors.

Comment: No commenters supported the fenceline provisions as proposed. Two commenters advocated that the fenceline monitoring option not be adopted in the rule. These commenters stated that because public health risks are not reduced due to the proposed enhancements to the control requirements for storage tanks and equipment leaks, the fenceline monitoring measures are unnecessary. The commenters also objected to the EPA's characterization of the fenceline monitoring program being an alternative standard since, as the commenters argued, the analytes and action levels are set based on the proposed, more stringent, control requirements and, therefore, facilities would have to install the proposed new controls anyway. These commenters also advocated that a refinery with collocated OLD sources should be allowed to incorporate OLD sources into their Petroleum Refineries NESHAP (40 CFR part 63, subpart CC) fenceline program, because the benzene fenceline monitoring is also appropriate for collocated OLD sources. These commenters also objected to many of the provisions for implementing the monitoring, including that the compliance timeline for commencing fenceline monitoring could be difficult to meet, that the timeline for approving and monitoring new analytes is too short, that OLD sources should be able to use analyte uptake rates that are published by national and international scientific organizations rather than going through EPA validation methods, that the action level determination be revised from 5 times the method detection limit (MDL) to 3 times the MDL to be consistent with previous EPA actions, that the EPA's modeling guidance for OLD sources contains some inconsistencies with the *Human Exposure Model (HEM–3) User's Guide,* and that a 45-day timeline for corrective action is too short in some cases.

From an alternate perspective, a public health advocate stated that fenceline monitoring should be required in addition to the proposed new emission control requirements for storage tanks and equipment leaks. The commenter stated that because fenceline monitors are a technological development that can reduce emissions, then the CAA requires that both the enhanced emission controls and fenceline monitoring requirements must be adopted. The commenter also advocated for the EPA to require real-time monitoring, like Fourier transform infrared spectroscopy, which has been demonstrated to be technically feasible and has been implemented in the South Coast Air Quality Management District's Rule 1180.

Response: We are not finalizing the fenceline monitoring alternative. The fenceline monitoring alternative was proposed as an optional control requirement to complying with the proposed control requirements for storage tanks and equipment leaks that we are not finalizing as explained above. Without the final requirements for which fenceline monitoring was an alternative compliance approach, fenceline monitoring is no longer necessary.

4. What is the rationale for our final approach for the technology review?

Based on our review and consideration of information provided in comments, the proposed requirement for revising the average true vapor pressure thresholds of the OLD storage tanks for existing sources requiring control to align with those of the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC) and HON (40 CFR part 63, subpart G) where the thresholds are lower is generally acknowledged to be cost effective. However, the other proposed technology review requirements of fixed roof tank LDAR and adding connectors to the LDAR program at OLD sources have been reevaluated in light of commenters' concerns and have not been found to be cost-effective options for the OLD source category at this time. Since the pool of emission reduction requirements is smaller in the final rule than proposed, we find it highly unlikely that OLD sources would have opted to utilize the proposed fenceline monitoring program. Therefore, we are also not finalizing the fenceline monitoring alternative in the final rule.

C. Amendments Pursuant to CAA Sections 112(d)(2) and (3) for the OLD Source Category

1. What did we propose pursuant to CAA sections 112(d)(2) and (3) for the OLD source category?

Under CAA section 112(d)(2) and (3), we proposed to amend the operating and monitoring requirements for flares used as APCDs in the OLD source category to ensure that OLD facilities that use flares as APCDs meet the MACT standards at all times when controlling HAP emissions. We proposed at 40 CFR 63.2380 to directly apply the petroleum refinery flare rule requirements in 40 CFR part 63, subpart CC to flares in the OLD source category with certain clarifications and exemptions. We proposed to retain the General Provisions requirements of 40 CFR 63.11(b) that flares used as APCDs in the OLD source category operate pilot flame systems continuously and that flares operate with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours) when organic HAP emissions are routed to the flare. We also proposed to consolidate measures related to flare tip velocity and new operational and monitoring requirements related to the combustion zone gas. We proposed to eliminate the cross-references to the General Provisions and instead cross-reference 40 CFR part 63, subpart CC.

The EPA also proposed to clarify that PRDs on vapor return lines of a vapor balancing system are also subject to the vapor balancing system requirements of 40 CFR 63.2346(a)(4)(iv). We requested comment on several issues related to PRDs, including whether work practices should be adopted for PRDs that are not

part of a vapor balancing system, whether work practices similar to those promulgated for petroleum refineries in 40 CFR part 63, subpart CC are necessary and appropriate for OLD operations, information on the nature of non-vapor balancing system PRDs, and whether monitoring devices should be required to be installed and operated to ensure continuous compliance with the standard at 40 CFR 63.2346(a)(4)(iv) that no PRD shall open during loading or as a result of diurnal temperature changes.

More information regarding our proposal to address CAA sections 112(d)(2) and (3) can be found in the proposed rule (84 FR 56302, October 21, 2019). Further details regarding comments received and the EPA's responses are discussed below.

2. How did the revisions pursuant to CAA sections 112(d)(2) and (3) change since proposal?

We are finalizing some clarifying edits to the overlap provisions of 40 CFR 63, subpart EEEE to address commenter concerns with overlap for flare provisions in the OLD source category with other regulations. Further, commenters noted some clarifying edits to the simplified requirements allowed in 40 CFR 63.670(j). We have revised the proposed requirements to address these concerns, which are discussed in section 8.0 of the *Summary of Public Comments and Responses for Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action.

We received comments that owners or operators have historically considered degassing emissions from shutdown of storage tanks to be covered by their SSM plans per the definition of ''Shutdown'' included at 40 CFR 63.2406 and that there are several OLD affected sources that are subject to standards for tank degassing in their air permits. We assessed the MACT floor level of control and, as a result, are adding a standard for storage tank degassing for storage tanks subject to the control requirements in Tables 2 and 2b to 40 CFR part 63, subpart EEEE.

We are also finalizing the PRD provisions as proposed. Comments on the PRD provisions and our responses are discussed in section 9.0 of the *Summary of Public Comments and Responses for Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action.

3. What key comments did we receive on the proposal revisions pursuant to CAA sections 112(d)(2) and (3), and what are our responses?

Comment: Commenters stated that the proposal to eliminate the SSM provisions makes it unclear as to what the OLD NESHAP compliance obligations are related to fixed roof tank degassing. The commenters added that because tank degassing is included in the shutdown definition, facilities have historically considered fixed roof tank degassing activities to be covered by their SSM plan, which includes procedures for minimizing emissions during shutdown activities. The commenters stated that the EPA is proposing to remove the requirement to implement and follow an SSM plan and adding a new general duty clause at 40 CFR 63.2350(d) that would require facilities to operate and maintain any affected source, including air pollution control device and monitoring equipment, at all times to minimize emissions. Commenters further asserted that at some point it is no longer reasonable or even technically feasible to continue to try to control the dilute vapors using the normal control device or by routing to a fuel gas system or to a process. The commenters noted that some facilities are subject to standards for fixed roof tank degassing in their permits. The commenters supported the Texas requirements for fixed roof tank degassing to represent what the average of the best performers are doing to minimize emissions from fixed roof tank degassing. The commenters concluded that these requirements state that fixed roof storage tanks otherwise required to be controlled must be degassed to a control device or controlled recovery system until the VOC concentration is less than 10,000 ppmv or 10 percent of the lower explosive level (LEL). One commenter also requested that the EPA clarify that once the atmospheric release criterion is met, vapors may also be released after tank entry. The commenter stated that for many tanks, there are sludges in the bottom of the tank or on the walls that may release some hydrocarbon vapors as they are shoveled or hydroblasted off the tank floor and/or walls.

Response: We agree that a standard is reasonable for tank degassing and have included it in the final rule. With the removal of SSM requirements, a standard specific to storage tank degassing did not exist. We agree with the commenters that storage tank degassing is similar to maintenance vents (*e.g.,* equipment openings) found in other rules, and that there must be a point in time when the storage tank can be opened and any emissions vented to the atmosphere. As such, we reviewed available data to determine how the best performers are controlling storage tank degassing emissions.

We, and commenters, are aware of three state or air quality management district provisions regarding storage tank degassing, two in the state of Texas and the third for the South Coast Air Quality Management District (SCAQMD) in California. Texas has degassing provisions in the Texas Administrative Code (TAC) (30 TAC Chapter 115, Subchapter F, Division 3) and through permit conditions (as noted by commenters), and SCAQMD has provisions in Rule 1149. The TAC requirements are the least stringent (35,000 ppmv as methane or 50 percent of the LEL), and the Texas permit conditions (10,000 ppmv or 10-percent LEL) and SCAQMD Rule 1149 (5,000 ppmv as methane) are equivalent. The Texas permit conditions and SCAQMD Rule 1149 are considered equivalent because 5,000 ppmv as methane equals 10 percent of the LEL for methane. OLD facilities located in Texas are subject to the permit conditions, and 3 OLD facilities are subject to the SCAQMD rule. Of the 173 currently operating (*i.e.,* existing) OLD facilities, 44 are in Texas. The Texas and California requirements are the most stringent we are aware of and; therefore, we conclude that those requirements reflect what the best performers in the OLD source category have implemented for storage tank degassing. Commenters also confirm this conclusion.

We reviewed the Texas permit conditions for key information that could be implemented into the form of a standard for storage tank degassing. The conditions require control of degassing emissions until the VOC concentration of the vapor is less than 10,000 ppmv or 10 percent of the LEL. We have used the 10 percent of the LEL in similar requirements in the Petroleum Refineries NESHAP (see 40 CFR 63.643(c) for example) and have, therefore, finalized these 10-percent LEL requirements for tanks requiring control at 40 CFR 63.2346(a)(6).

We calculated the impacts due to controlling storage tank degassing emissions by evaluating the population of estimated storage tanks subject to control according to the requirements in Tables 2 and 2b of 40 CFR part 63, subpart EEEE that are not located in Texas or in SCAQMD. Storage tanks in the OLD source category in Texas and SCAQMD would already be subject to the degassing requirements being finalized, and there would not be

additional costs or emissions reductions for these facilities. Based on commenter statements, tanks are degassed for inspection typically every 10 years. Based on this average and the population of storage tanks that are not in Texas or in SCAQMD, we estimate 89 storage tank degassing events would be subject to control each year. Controlling storage tank degassing would reduce HAP emissions by 74 tpy, with a total national annual cost of $418,656. See the technical memorandum titled *Tank Degassing Analysis for the Organic Liquids Distribution (Non-Gasoline) Source Category Final Rule,* which is available in Docket ID No. EPA–HQ–OAR–2018–0074 for details on the assumptions and methodologies used in this analysis.

We considered whether there are technically feasible options more stringent than the MACT floor requirements but are not aware of storage tank degassing provisions beyond those discussed above for Texas and SCAQMD. Therefore, no options more stringent than the MACT floor were evaluated. We also confirm that once the 10-percent LEL criterion is met, tank vapors may be vented to the atmosphere even after tank entry.

Comment: Several commenters contended that the assumptions the EPA used in developing the flare control cost and emission reduction estimates are not realistic. The commenters indicated that several of the EPA's assumptions laid out in the proposal preamble are incorrect for most OLD NESHAP flares. The commenters argued that the EPA's basis for the flare cost estimates is that OLD NESHAP operations are steady enough that compositions and flow rates do not change, so continuous instrumentation is not needed for compliance (except for continuous temperature and pressure monitoring), and that composition sampling and engineering estimates are sufficient. The commenters insisted this basis is incorrect. One commenter made the following points:

- Although some organic liquids have relatively constant composition as the EPA states, most OLD NESHAP flares will be receiving vapors from multiple OLD sources simultaneously, including tank vapors, loading vapors and likely small amounts from equipment leak vapors. The commenter asserted that in order to estimate the composition of the flare waste gas and the net heating value of the flare vent gas (NHVvg), facilities would need accurate flow information on each stream and composition information for those streams that have variable compositions;
- transfer operations generate vapors from tank cars, trucks, or containers loading (unloading emissions show up as tank emissions and barge and ship loading are not regulated by the OLD NESHAP though these may be routed to the same flare as OLD regulated emissions). The commenter noted the composition of those vapors will vary if the tank car, truck, or container is filled with vapors of another type (*e.g.,* air, nitrogen, other organics);
- storage tank emission rates vary significantly as a function of stored liquid temperature and changes in tank levels. The commenter pointed out that if the tank level is increasing due to material entering the tank, the emission rate will be much higher than the rate due to temperature changes; if the stored material temperature or level is dropping, air or inert gas will be drawn into the tank;
- loading emission rates vary as the backpressure varies as the receiving volume fills with liquid and/or the backpressure from the vapor collection system changes;
- the commenter urged that reasonably good flow measurements for each of these flows would be needed to estimate the total waste gas flow to an OLD NESHAP flare and would be required for every source going to that flare, not just the OLD NESHAP sources. The commenter noted that because of the impossibility of obtaining all the required individual flow information, the Petroleum Refineries NESHAP provisions focus only on measuring the total flow at the flare. The commenter insisted that because of the range of flows, this requires a sophisticated wide range meter such as a sonic flow meter; and
- the commenter stressed that assist steam and supplemental fuel demands vary widely as flare conditions change, and, thus, would not be amenable to estimation or using engineering estimates even though the gas molecular weight is known.

The commenter stated that due to the above, facilities must have at least continuous flow rate monitoring of the waste gas, supplemental fuel, and assist steam in order to allow control on a 15-minute basis, and stressed that, in most cases, continuous monitoring of waste gas composition is also needed. The commenter also urged that due to the broad range of potential flow rates, additional controls (typically split range controllers) would be needed to rapidly adjust assist gas and supplemental fuel to meet the NHVcz requirements on a 15-minute basis. The commenter contended that the EPA's engineering estimate approach using temperature and pressure is, therefore, untenable, and flare cost basis must consider that OLD flares will have to install the full range of continuous monitoring and control instrumentation that was required for the Petroleum Refineries NESHAP flares, with perhaps a few limited exceptions. One commenter also affirmed that although the compositional variability of flared gas streams is less than that of refineries, facilities will opt to conduct continuous monitoring to reduce incremental supplemental fuel costs, and are likely to install flow meters instead of relying on pressure and temperature monitoring systems and engineering calculations.

One commenter added that because of the typically remote location of OLD NESHAP-only flares, there are likely to be large additional costs compared to Petroleum Refineries NESHAP to add new utilities, analyzer houses, data systems, and control room instrumentation. The commenter, therefore, concluded that even if the EPA's assumption of only continuous temperature and pressure monitoring were correct, a $190,000 investment would unlikely be enough to instrument one flare, much less 27. The commenter remarked that use of the Petroleum Refineries NESHAP cost estimate prorated to the EPA's estimated 27 OLD NESHAP flares would yield an annualized OLD cost of $2.4 million and a cost effectiveness of $3,673/ton of VOC reduced and $37,182/ton of HAP reduced.

Another commenter provided a summary of information collected from member facilities on approximately 80 flares on the estimated cost impacts of flare requirements in the EPA's proposed revisions to the Ethylene MACT standards, which the commenter contended are essentially the same as the proposed revisions in the OLD NESHAP. The commenter asserted that for the Ethylene MACT, member companies indicated they would need to install at least two new flares due to the potential for existing flares to exceed the number of visible emissions events allowed by the emergency flaring provisions during upset conditions; at least one gas chromatograph in order to comply with the proposed monitoring requirements; upgraded natural gas controls for at least 23 flares (to meet the more stringent minimum flare gas net heating value) and flow monitoring; and additional costs based on the estimated amount of supplemental fuel firing. The commenter estimated that, based on this information, the average capital and annual costs to implement the changes applicable to OLD flares (*i.e.,* excluding the emergency flaring management work

practices) are $509,000 and $725,000 per flare, with an estimated annual average cost of incremental supplemental fuel of $655,000 per flare. The commenter concluded that with their estimated costs and the EPA's estimate of 64 tpy of HAP reductions, the cost effectiveness of the proposed amendments would be approximately $306,000/ton of HAP reduced. The commenter also questioned the validity of the EPA's proposed HAP reductions, stating that the EPA's basis for its 64 tpy estimate of reduced HAP emissions is simply an assumption that all OLD flares are operating with a 90-percent combustion efficiency, and that the Agency has not provided data to support this assumption.

One commenter estimated that the cost to install all required instrumentation is in the $600,000 to $800,000 range for a single flare.

Several commenters stated that, because costs for the OLD NESHAP flare instrumentation and controls will likely greatly exceed the proposed costs, the proposed revised flare requirements are not cost effective and should not be finalized.

Response: We do not agree with the comments that the proposed revisions to the flare requirements should not be finalized. We proposed the flare amendments under the authority of CAA sections 112(d)(2) and (3) to ensure that flares used to control OLD emission sources are meeting the combustion efficiency requirements that are the basis for our original rule. In proposing these amendments, we did not use the authority of CAA 112(d)(6) and did not consider costs. Since the revisions ensure continuous compliance with the MACT standard under CAA sections 112(d)(2) and (3), costs are not a factor considered for these revisions. We determined the flare operating and monitoring requirements were not adequate to ensure that 98-percent control efficiency can be met for a flare at all times. Regarding the commenter's arguments that the emission reductions assumed to be a result of the proposed flaring provisions are overstated, the 90-percent assumption was illustrative of potential emissions in worst case situations, but since cost and, thus, cost effectiveness are not considerations when determining the MACT floor, we did not rely on estimated HAP emission reductions in making our decision to propose or finalize these requirements. We did estimate costs in order to provide the resulting impacts, but we are not revising the costs as a result of this comment, especially as the costs presented by the commenter appear to have been developed with Ethylene MACT flares in mind. As acknowledged by several commenters, OLD flare operation and monitoring are likely simpler than ethylene flares, and some commenters' three 1-hour test run suggestion for demonstrating compliance are essentially equivalent to the grab sampling requirements in 40 CFR 63.670(j)(6) and they could be further refined to facilitate easier use of simplified monitoring provisions. We have revised those requirements to address concerns of petitioning to use the grab sample approach, which further streamlines these requirements. If, as the commenter suggests, their facilities opt to use more sophisticated continuous monitoring instrumentation instead of the proposed grab sample/worst case approach, they have the flexibility to do so. However, we disagree that cost estimates based on Ethylene Production source category flares are appropriate for OLD. We also note that the commenter applies a supplemental natural gas cost approximately 18 times higher than our estimate (if supplemental natural gas is needed to meet NHVcz limits for the flare) for their OLD flare cost assessment. This natural gas cost seems excessive, especially considering that commenters did not discuss adjusting other flare parameters instead of using such a large amount of natural gas.

4. What is the rationale for our final approach and final decisions pursuant to CAA sections 112(d)(2) and (3)?

As we discussed above, we proposed the flare amendments under the authority of CAA sections 112(d)(2) and (3) to ensure flares used to control OLD emission sources are meeting the combustion efficiency requirements that are the basis for our original rule and necessary to ensure sources are complying with the MACT level of control. For this reason, we did not consider costs in proposing these requirements and are generally finalizing these amendments as proposed. We did, however, make some revisions to the proposed requirements at 40 CFR 63.2380 to further streamline the requirements of 40 CFR 63.670(j) to facilitate the ability of sources to use the grab sample approach for determining net heating value. In addition, and as discussed earlier, we also amended the overlap provisions of 40 CFR 63.2396 to clarify applicability for flares subject to the requirements of the OLD NESHAP and to other NESHAP requirements.

Tank degassing is considered a shutdown activity and historically has been considered by OLD sources to be covered under their SSM plan and permit conditions. With the removal of SSM provisions that are not consistent with the requirement that the standards apply at all times, the EPA assessed the level of control the best performing OLD sources are using for tank degassing events. During this assessment and based on comments, air permit requirements for OLD sources in Texas require degassing to a 10-percent LEL or 10,000 ppm prior to opening the tank to the atmosphere, and these requirements represent the best level of control for tank degassing events for OLD sources and those in California and Texas are already complying with.

In this action, we are including provisions at 40 CFR 63.2346(a)(6) that require tanks that are subject to control to continue to route degassing vapors to a device equivalent to the control (*i.e.,* 95-percent organic HAP reduction, back to process or fuel gas system) until the vapor within the storage tank has reached 10 percent of the LEL.

The PRD definition and provisions that were proposed are being finalized. No additional work practice provisions or requirements are being added to the PRD requirements as a result of commenter suggestions, and the clarifications proposed in 40 CFR 63.2346(a)(iv) and the definition in 40 CFR 63.2406 are being made final. We note that we received several comments on these provisions and clarification on what constitutes a deviation for these types of devices within the OLD NESHAP. We have responded to these comments in section 9.0 of the *Summary of Public Comments and Responses for Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action.

D. Amendments Addressing Emissions During Periods of SSM

1. What amendments did we propose to address emissions during periods of SSM?

We proposed amendments to the OLD NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 56318–56322, October 21, 2019).

2. How did the SSM provisions change since proposal?

We are finalizing the SSM provisions proposed (84 FR 56318, October 21, 2019) with some modifications, including: Revisions to the proposed provisions of 40 CFR 63.2378(e) for periods of planned routine maintenance

of the control device to allow tank breathing losses to be consistent with our intent at proposal (see 84 FR 56323, October 21, 2019); revisions to 40 CFR 63.2346(l) to further clarify the SSM requirements in referenced subparts (such as 40 CFR part 63, subparts SS, TT, and UU) that are no longer applicable; and we have extended the effective date of removing the portion of the ''deviation'' definition in 40 CFR 63.2406 that addresses SSM periods as being applicable 3 years after publication of the final rule in the **Federal Register** to provide a consistent compliance date due to the addition of the tank degassing requirements discussed in section IV.C of this preamble.

3. What key comments did we receive on the SSM revisions and what are our responses?

We received several comments related to our proposed revisions to the SSM provisions. Commenters discussed issues related to the removal of the 240-hour exemption for planned maintenance of control devices, the need for tank degassing requirements with the revision of SSM provisions (as discussed in more detail in section IV.C of this preamble), and other miscellaneous issues pertaining to the SSM provisions of 40 CFR part 63, subparts SS, TT, and UU requirements referred to within 40 CFR part 63, subpart EEEE. These comments and our responses are available in section 10.1 of the *Summary of Public Comments and Responses for Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action. As discussed above, we have made some changes to the revisions to the SSM requirements in the final rule to address the significant issues brought forth by commenters.

4. What is the rationale for our final approach and final decisions to address emissions during periods of SSM?

We evaluated all comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule, we determined that these amendments remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the amendments we are finalizing for SSM is in the preamble to the proposed rule (84 FR 56318–56322, October 21, 2019). Additional revisions to these amendments based on comments received are discussed in further detail in section 10.1 of the *Summary of Public Comments and Responses for Risk and Technology Review for Organic Liquids Distribution (Non-Gasoline),* available in the docket for this action.

E. Technical Amendments to the MACT Standards

1. What other amendments did we propose for the OLD source category?

We proposed that owners or operators of OLD facilities submit electronic copies of required performance test reports, performance evaluation reports, compliance reports, NOCS reports, and fenceline monitoring reports through the EPA's CDX using CEDRI. Performance test results must be collected using test methods that are supported by the EPA's ERT as listed on the ERT website [6] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in PDF using the attachment module of the ERT. Similarly, performance evaluation results of CEMS measuring relative accuracy test audit pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT. We also proposed that NOCS reports must be submitted as a PDF upload in CEDRI.

For compliance reports and fenceline monitoring reports, we proposed that owners or operators use the appropriate spreadsheet template to submit information to CEDRI.

Additionally, we proposed two broad circumstances in which we may provide extension to these requirements. We proposed that an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. We also proposed that an extension may be warranted due to a *force majeure* event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

Additionally, we proposed required testing and recordkeeping for emission sources not requiring control to confirm the annual average true vapor pressure at least every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to ensure the tank's applicability and confirm that it should not be subject to the 95-percent control requirements of the regulation. Further, we proposed a requirement that the contents of tanks that are claimed to be not subject to the OLD NESHAP because they contain less than 5-percent HAP (and, therefore, do not meet the definition of ''Organic liquids'' within the OLD NESHAP) should be tested every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to confirm that the tank is not storing ''organic liquids'' and, therefore, is not subject to the rule. We proposed the revision of 40 CFR 63.2354(c) to add the voluntary consensus standard (VCS), ATSM D6886–18, ''Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography,'' as another acceptable method for the determination of HAP content of an organic liquid. We are also finalizing the replacement of method ASTM D2879 with method ASTM D6378–18a as one of the acceptable methods for the determination of vapor pressure.

Finally, we proposed several revisions to clarify text or correct typographical errors, grammatical errors, and cross-reference errors in 84 FR 56323 through 56324 and Table 9 of the proposal.

2. How did the other amendments for the OLD source category change since proposal?

We are not finalizing the proposed requirements for periodic testing and recordkeeping for the annual average true vapor pressure for those tanks not subject to the 95 percent control requirements of the regulation. Further, we are not finalizing, as proposed, a requirement that the contents of tanks that are claimed to be not subject to the OLD NESHAP because they contain less than 5 percent HAP (and, therefore, do not meet the definition of ''Organic liquids'' within the OLD NESHAP) should be tested every 5 years, or with a change of commodity in the tank's contents, whichever occurs first, to confirm that the tank is not storing ''organic liquids'' and, therefore, is not subject to the rule. We are, however, finalizing the revision of 40 CFR 63.2354(c) to add ASTM D6886–18, ''Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography,'' as another acceptable method for the determination of HAP content of an organic liquid. We are also finalizing the replacement of method ASTM D2879 with method ASTM D6378–18a as an acceptable method for determination of whether a total vapor pressure (and, therefore, the sum total of Table 1 to 40 CFR part 63, subpart EEEE

[6] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

HAP) is below the threshold level requiring control for a storage tank.

The proposed electronic reporting requirements and the technical and editorial corrections in Table 9 of the proposal (see 84 FR 56324, October 21, 2019) have not changed, aside from some additional editorial changes based on comments and the removal of the fenceline monitoring alternative electronic reporting. Aside from these noted differences from proposal, we are finalizing the electronic reporting requirements and technical and editorial corrections.

3. What key comments did we receive on the other amendments for the OLD source category and what are our responses?

Comment: Several commenters objected to the proposed requirement in 40 CFR 63.2343(b)(5) and (6) that facilities conduct periodic vapor pressure testing or obtain vapor pressure data from the organic liquid supplier to demonstrate that the annual average true vapor pressure of the organic liquid in each storage tank is below control thresholds. Commenters argued that the addition of these two testing requirements is burdensome and unnecessary, results in no HAP emissions reductions, goes beyond what other NESHAP require for storage tanks, and should not be finalized. Several commenters further objected to the proposed requirement to use test method ASTM D6378–18a for storage tank vapor pressure analyses. Commenters stated that the requirement that test method ASTM D6378–18a must be used is impracticable and conflicts with the wording of the control thresholds that are based on the annual average true vapor pressure of the total Table 1 HAP, not the total annual average true vapor pressure of the liquid, which is the measured result of ASTM D6378–18a. One commenter stated that periodic testing is not needed, since inbound organic liquids HAP contents, and, thus, calculated HAP partial pressures, are available from vendor and in-house analyses and outbound materials are tested in developing the required safety data sheet (SDS) for that material. Several commenters also noted that other NESHAP have storage tank vapor pressure thresholds for control but do not require regular testing to confirm vapor pressure (*e.g.,* 40 CFR part 63, subparts YY, GGG, and OOO). Another commenter further argued that the requirement to conduct periodic negative applicability determinations is precedent setting and is not warranted. The commenter stated that the EPA has not provided justification for the added requirement or provided an indication with supporting data of the ''problem'' the Agency is trying to resolve. The commenter further argued that facilities already have general obligations under title V 5-year renewals to ensure permits include all requirements applicable to a facility.

Response: The EPA acknowledges ASTM D6378–18a measures total vapor pressure and not HAP vapor pressure, therefore, we are not finalizing the periodic vapor pressure testing requirements due to lack of an appropriate method to measure only HAP vapor pressure. However, facilities may still use ASTM D6378–18a as a method for excluding tanks from control due to the fact that if the total vapor pressure of the liquid is less than the threshold for control, then the HAP vapor pressure (which is a subset of the total vapor pressure) would also be under the threshold. The EPA also acknowledges that the periodic 5-percent HAP content testing requirement creates a potential scenario of requiring sources to perform regular non-applicability determinations for all tanks at major sources that could be duplicative, considering the provisions of the OLD NESHAP are applied through a title V permit requirement, and that there are 5-year renewal obligations for title V permits. To be in compliance with their title V permit, OLD affected sources have an ongoing obligation to ensure that tanks storing organic liquids with greater than 5 percent HAP are meeting the OLD NESHAP requirements. Therefore, we are not finalizing periodic HAP content testing. Facilities will still be able to use Method 311, voluntary consensus standards, SDS, and certified product data sheets, and calculations as a means of determining applicability.

4. What is the rationale for our final approach and final decisions for the other amendments for the OLD source category?

After evaluating the comments on the proposed periodic HAP and vapor pressure testing requirements that were proposed, we are not finalizing these requirements. As discussed above, we agree that there are not any methods suitable to determine the organic HAP partial pressure of a liquid, and that these requirements could create a duplicative requirement scenario requiring sources to establish non-applicability although a similar obligation already exists in their title V permit. As we also explain, we have included ASTM 6378–18a in the final rule as a method suitable for use for excluding tanks from control. If the total vapor pressure of the liquid measured using ASTM 6378–18a is less than the vapor pressure threshold for control, then the liquid being stored would, therefore, also be below the threshold for control.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

There are 173 facilities currently operating OLD equipment subject to the OLD NESHAP and four new facilities under construction. A complete list of facilities that are currently subject to the OLD NESHAP is available in appendix A of the memorandum, *National Impacts of the 2020 Risk and Technology Review Final Rule for the Organic Liquids Distribution (Non-Gasoline) Source Category,* which is available in the docket for this action.

The EPA projects four new liquids terminals and one major terminal expansion that would be subject to the OLD NESHAP. These new sources are not included in the risk assessment modeling effort but are included in the impacts analysis.

B. What are the air quality impacts?

The risk assessment model input file identifies approximately 2,400 tons of HAP emitted per year from equipment regulated by the OLD NESHAP. The predominant HAP compounds include toluene, hexane, methanol, xylenes (mixture of o, m, and p isomers), benzene, styrene, methyl isobutyl ketone, methylene chloride, methyl tert-butyl ether, and ethyl benzene. More information about the baseline emissions in the risk assessment model input file can be found in appendix 1 of the memorandum, *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2020 Risk and Technology Review Final Rule,* which is available in the docket for this action. This final action would reduce HAP emissions from OLD NESHAP sources. The EPA estimates HAP emission reductions of approximately 186 tpy based on our analysis of the actions described in sections IV.B and C of this preamble. More information about the estimated emission reductions of this final action can be found in the document, *National Impacts of the 2020 Risk and Technology Review Final Rule for the Organic Liquids Distribution (Non-Gasoline) Source Category,* which is available in the docket for this action.

C. What are the cost impacts?

We estimate the total capital costs of these final amendments to be approximately $2.5 million and the total annualized costs (including recovery credits) to be $1.8 million per year (2016$). We also estimate the present value of the costs is $8.5 million at a discount rate of 3 percent and $7.1 million at 7 percent (2016$). Calculated as an equivalent annualized value, which is consistent with the present value of the costs, the costs are $1.1 million at a discount rate of 3 percent and $0.9 million at a discount rate of 7 percent (2016$). The annualized costs include those for operating and maintenance, and recovery credits of approximately $170,000 per year from the reduction in evaporative emissions from storage tanks. To estimate savings in chemicals not being emitted (*i.e.,* lost) due to the reduction in evaporative emissions, we applied a recovery credit of $900 per ton of VOC to the VOC emission reductions in the analyses. The $900 per ton recovery credit has historically been used by the EPA to represent the variety of chemicals that are used as reactants and produced at synthetic organic chemical manufacturing facilities.[7] At proposal, we solicited comment on the availability of more recent information to potentially update the value used in this analysis to estimate the recovery credits, but received none. We used an interest rate of 5 percent to annualize the total capital costs. These estimated costs are associated with amendments of the requirements for storage tanks, LDAR, flares, and transfer racks. Table 4 of this preamble shows the estimated costs for each of the equipment types. Detailed information about how we estimated these costs are described in the following documents available in the docket for this action: *National Impacts of the 2020 Risk and Technology Review Final Rule for the Organic Liquids Distribution (Non-Gasoline) Source Category,* and *Economic Impact and Small Business Analysis for the Final Organic Liquids Distribution (Non-Gasoline) (OLD) Risk and Technology Review (RTR) NESHAP.*

TABLE 4—SUMMARY OF COSTS OF FINAL AMENDMENTS BY EQUIPMENT TYPE, IN MILLIONS

[2016$]

Equipment type	Capital cost	Total annualized cost (without annual recovery credits)	Annual recovery credits	Total annualized cost (with annual recovery credits)
Storage tanks	2.28	0.29	0.17	0.12
Tank Degassing	0.00	0.42	N/A	0.42
Flares	0.19	0.36	N/A	0.36
Deletion of 240-hr exemption for control device maintenance during transfers (Transfer racks)	0.00	0.88	N/A	0.88
Total	*2.47*	*1.95*	*0.17*	*1.78*

D. What are the economic impacts?

The EPA conducted economic impact analyses for the amendments to the final rule, as detailed in the memorandum titled *Economic Impact and Small Business Analysis for the Final Organic Liquids Distribution (Non-Gasoline) (OLD) Risk and Technology Review (RTR) NESHAP,* which is available in the docket for this action. The economic impacts of the amendments to the final rule are calculated as the percentage of total annualized costs incurred by affected parent owners to their annual revenues. This ratio provides a measure of the direct economic impact to ultimate parent owners of OLD facilities while presuming no impact on consumers. We estimate that none of the ultimate parent owners affected by this final action will incur total annualized costs of 0.4 percent or greater of their revenues. This estimate reflects the total annualized costs without product recovery as a credit. Thus, these economic impacts are low for affected companies and the industries impacted by this final action, and there will not be substantial impacts on the markets for affected products. The costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

E. What are the benefits?

The EPA did not monetize the benefits from the estimated emission reductions of 186 tpy of HAP associated with this action. However, we expect this action will result in benefits associated with HAP emission reductions and lower risk of adverse health effects in communities near OLD sources.

While not explicitly calculated, we expect reductions in MIR, population exposed to a cancer risk of greater than or equal to 1-in-1 million, and in other risks metrics such as incidence, acute risk, multipathway risks, and ecological risks from the estimated emission reductions.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the OLD source category across different demographic

[7] U.S. EPA. 2007. Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries (*https://www.federalregister.gov/documents/2007/07/09/E7-13203/standards-of-performance-for-equipment-leaks-of-voc-in-the-synthetic-organic-chemicals-manufacturing*). Docket ID No. EPA–HQ–OAR–2006–0699.

groups within the populations living near facilities.

At proposal, we noted that our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Hispanic or Latino, Over 25 Without a High School Diploma, and Below the Poverty Level groups. In addition, the population living within 50 km of OLD facilities has a higher percentage of minority, lower income, and lower education people when compared to the nationwide percentages of those groups. However, acknowledging these potential disparities, the risks for the source category were determined to be acceptable, and emissions reductions from the final rule revisions will benefit these groups the most.

The methodology and the results of the demographic analysis [8] are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Organic Liquids Distribution (Non-Gasoline) Source Category Operations,* that is available in the docket for this action.

G. What analysis of children's environmental health did we conduct?

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the risk report, *Residual Risk Assessment for the Organic Liquids Distribution (Non-Gasoline) Source Category in Support of the 2020 Risk and Technology Review Final Rule,* available in the docket for this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1963.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

We are finalizing amendments that change the reporting and recordkeeping requirements for OLD operations. The amendments also require electronic reporting of performance test results and reports and compliance reports. The information will be collected to ensure compliance with 40 CFR part 63, subpart EEEE. The total estimated burden and cost for reporting and recordkeeping due to these amendments are presented below and are not intended to be cumulative estimates that include the burden associated with the requirements of the existing 40 CFR part 63, subpart EEEE.

Respondents/affected entities: Owners or operators of OLD operations at major sources of HAP are affected by these amendments. These respondents include, but are not limited to, facilities having NAICS codes: 4247 (Petroleum and Petroleum Products Merchant Wholesalers), 4861 (Pipeline Transportation of Crude Oil), and 4931 (Warehousing and Storage).

Respondent's obligation to respond: Mandatory under sections 112 and 114 of the CAA.

Estimated number of respondents: 177 facilities.

Frequency of response: Once or twice per year.

Total estimated burden: 4,111 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $570,132 (per year), which includes $154,000 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. Of the 90 ultimate parent companies that are subject to this action, ten of them are small according to the Small Business Administration's small business size standards. None of the affected small parent companies are expected to have compliance costs of more than 0.4 percent of their sales. For more information on the analysis, see the *Economic Impact and Small Business Analysis for the Final Organic Liquids Distribution (Non-Gasoline) (OLD) Risk and Technology Review (RTR) NESHAP,* available in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. None of the OLD facilities that have been identified as being affected by this final action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental

[8] We note that, based on public comments, there are four fewer existing OLD affected sources now than at proposal. However, this change does not warrant an update to this analysis since proposal and has, therefore, not been updated.

health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IV.A of this preamble.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. As discussed in the preamble of the proposal, the EPA conducted searches for the OLD NESHAP through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted VCS organizations and accessed and searched their databases. We conducted searches for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 21, 22, 25, 25A, 26, 26A, and 27 of 40 CFR part 60, appendix A and EPA Methods 301, 311, 316, 320, 325A, and 325B of 40 CFR part 63, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 of appendix A to 40 CFR part 63 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods.

The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

No applicable VCSs were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 21, 22, 27, and 316.

Seven VCSs were identified as an acceptable alternative to EPA test methods for the purposes of this rule:

(1) The VCS ANSI/ASME PTC 19.10–1981 Part 10, ''Flue and Exhaust Gas Analyses,'' is an acceptable alternative to EPA Method 3B manual portion only and not the instrumental portion. Therefore, we are adding this standard as a footnote to item 1.a.i.(3) of Table 5 to 40 CFR part 63, subpart EEEE and incorporate this standard by reference at 40 CFR 63.14(e)(1). ANSI/ASME PTC 19.10–1981 Part 10 specifies methods, apparatus, and calculations that are used in conjunction with Performance Test Codes to quantify the gaseous constituents of exhausts from stationary combustion sources. The gases covered include oxygen, carbon dioxide, carbon monoxide, nitrogen, sulfur dioxide, sulfur trioxide, nitric oxide, nitrogen dioxide, hydrogen sulfide, and hydrocarbons.

(2) The VCS ASTM D6420–18, ''Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry.'' This ASTM procedure has been approved by the EPA as an alternative to EPA Method 18 only when the target compounds are all known, and the target compounds are all listed in ASTM D6420 as measurable. ASTM D6420–18 uses a direct interface gas chromatograph/mass spectrometer to identify and quantify 36 VOC (or a subset of these compounds), however, ASTM D6420–18 should not be specified as a total VOC method. Therefore, we are adding this standard as a footnote to Table 5 to 40 CFR part 63, subpart EEEE and incorporate this standard by reference at 40 CFR 63.14(e)(93). We are also updating reference to the older version of this standard (*i.e.,* ASTM D6420–99 (Reapproved 2004) at 40 CFR 63.2354(b)(3) to the new 2018 version and are removing reference to the old version of this standard at 40 CFR 63.14(e)(90) for use in the OLD NESHAP.

(3) The VCS ASTM D6735–01(2009), ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources Impinger Method,'' is an acceptable alternative to EPA Method 26 or EPA Method 26A from Mineral Calcining Exhaust Sources, which is specified at 40 CFR part 63, subpart SS, which is cited in the OLD NESHAP. For further information about the EPA's decision to allow the use of this VCS in 40 CFR part 63, subpart SS, see the EPA's Ethylene Production RTR proposed amendments in Docket ID No. EPA–HQ–OAR–2017–0357. This standard is not being incorporated by reference.

(4) The VCS California Air Resources Board (CARB) Method 310, ''Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products,'' is an acceptable alternative to EPA Method 311. However, we are not specifying use of this method in the OLD NESHAP because CARB Method 310 is designed to measure the contents of aerosol cans and would not be well suited for organic liquid samples regulated under the OLD NESHAP. This standard is not being incorporated by reference.

(5) The VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' is an acceptable alternative to EPA Method 320. In the September 22, 2008, NTTAA summary, ASTM D6348–03(2010) was determined equivalent to EPA Method 320 with caveats. ASTM D6348–12e1 is a revised version of ASTM D6348–03(2010) and includes a new section on accepting the results from direct measurement of a certified spike gas cylinder, but still lacks the caveats we placed on the ASTM D6348–03(2010) version. The VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' is an acceptable alternative to EPA Method 320 at this time with caveats requiring inclusion of selected annexes to the standard as mandatory. This field test method uses an extractive sampling system to direct stationary source effluent to an FTIR spectrometer to identify and quantify gaseous compounds with results as a concentration. We are allowing the use of this VCS as an alternative to EPA Method 320 at 40 CFR 63.2354(b)(3)and(4) and at Table 5 to 40 CFR part 63, subpart EEEE under conditions that the test plan preparation and implementation in the Annexes to ASTM D6348–12e1, sections A1 through A8 are mandatory; the percent $(\%)_R$ must be determined for each target analyte (Equation A5.5); %R must be $70\% \geq R \leq 130\%$; if the %R value does not meet this criterion for a target compound, then the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest); and the %R value for each compound must be reported in the test report and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = ((Measured Concentration in Stack))/(%R) × 100.

We are incorporating this method at 40 CFR 63.14(e)(85) for use in the OLD NESHAP.

(6) The VCS ISO 16017–2:2003 (R2014), ''Indoor, Ambient and Workplace Air Sampling and Analysis of Volatile Organic Compounds by Sorbent Tube/Thermal Desorption/

Capillary Gas Chromatography—Part 2: Diffusive Sampling,'' is an acceptable alternative to EPA Method 325B. This VCS is already incorporated by reference in EPA Method 325B.

(7) The VCS ASTM D6196–03(2009), ''Standard Practice for Selection of Sorbents, Sampling and Thermal Desorption Analysis Procedures for Volatile Organic Compounds in Air,'' is an acceptable alternative to EPA Methods 325A and 325B. This VCS is already incorporated by reference in EPA Method 325B.

Additionally, the EPA is using ASTM D6886–18, ''Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography.'' ASTM D6886–18 is to be used as one acceptable method to determine the percent weight of HAP in organic liquid, especially for liquids that contain a significant amount of carbon tetrachloride or formaldehyde, which are not detected using the Flame Ionization Detector-based standard in the governing method currently cited in the OLD NESHAP (*i.e.,* EPA Method 311).

The ASTM standards newly incorporated by reference in this rule are available to the public for free viewing online in the Reading Room section on ASTM's website at *https://www.astm.org/READINGLIBRARY/.* In addition to this free online viewing availability on ASTM's website, hard copies and printable versions are available for purchase from ASTM.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A of this preamble and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Organic Liquids Distribution (Non-Gasoline) Source Category Operations,* available in the docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 12, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended:

■ a. By revising paragraphs (a) and (e)(1);

■ b. In paragraphs (h)(31) and (32), by removing ''63.2406,'';

■ c. By revising paragraphs (h)(83) and (85);

■ d. By redesignating paragraphs (h)(101) through (113) as paragraphs (h)(104) through (115), respectively;

■ e. By revising newly redesignated paragraphs (h)(91) and (93); and

■ f. By adding new paragraph (h)(103).

The revisions and additions read as follows:

§ 63.14 September 5, 2020 Incorporations by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the EPA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC, telephone number 202–566–1744, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(e) * * *

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.997(e), 63.1282(d) and (g), 63.1625(b), table 5 to subpart EEEE, 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), table 4 to subpart UUUU, table 3 to subpart YYYY, 63.9307(c), 63.9323(a), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 4 and 5 of subpart UUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJJ.

* * * * *

(h) * * *

(31) ASTM D2879–83, Standard Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, Approved 1983, IBR approved for §§ 63.111, 63.1402, and 63.12005.

(32) ASTM D2879–96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, Approved 1996, IBR approved for §§ 63.111, and 63.12005.

* * * * *

(83) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, including Annexes A1 through A8, Approved October 1, 2003, IBR approved for §§ 63.457(b), 63.997(e), and 63.1349, table 4 to subpart DDDD, table 5 to subpart EEEE, table 4 to subpart UUUU, table 4 subpart ZZZZ, and table 8 to subpart HHHHHHH.

* * * * *

(85) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for §§ 63.997(e), 63.1571(a), 63.2354(b), table 5 to subpart EEEE, and table 4 to subpart UUUU.

* * * * *

(91) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, (Approved October 1, 2004), IBR approved for §§ 63.457(b), 63.772(a), 63.772(e), 63.1282(a) and (d), and table 8 to subpart HHHHHHH.

* * * * *

(93) ASTM D6420–18, Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry, (Approved November 1, 2018), IBR approved for §§ 63.987(b), 63.997(e), 63.2354(b), and table 5 to subpart EEEE.

* * * * *

(103) ASTM D6886–18, Standard Test Method for Determination of the Weight Percent Individual Volatile Organic Compounds in Waterborne Air-Dry Coatings by Gas Chromatography, approved October 1, 2018, IBR approved for § 63.2354(c).

* * * * *

Subpart EEEE—National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

■ 3. Section 63.2338 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.2338 What parts of my plant does this subpart cover?

* * * * *

(c) The equipment listed in paragraphs (c)(1) through (3) of this section and used in the identified operations is excluded from the affected source.

* * * * *

■ 4. Section 63.2342 is amended by revising paragraph (a) introductory text, adding paragraph (b) introductory text, revising paragraph (d), and adding paragraph (e) to read as follows:

§ 63.2342 When do I have to comply with this subpart?

(a) Except as specified in paragraph (e) of this section, if you have a new or reconstructed affected source, you must comply with this subpart according to the schedule identified in paragraph (a)(1), (2), or (3) of this section, as applicable.

* * * * *

(b) Except as specified in paragraph (e) of this section, if you have an existing affected source, you must comply with this subpart according to the schedule identified in paragraph (b)(1), (2), or (3) of this section, as applicable.

* * * * *

(d) You must meet the notification requirements in §§ 63.2343 and 63.2382(a), as applicable, according to the schedules in § 63.2382(a) and (b)(1) through (2) and in subpart A of this part. Some of these notifications must be submitted before the compliance dates for the emission limitations, operating limits, and work practice standards in this subpart.

(e) An affected source that commenced construction or reconstruction on or before October 21, 2019, must be in compliance with the requirements listed in paragraphs (e)(1) through (5) of this section upon initial startup or July 7, 2023, whichever is later. An affected source that commenced construction or reconstruction after October 21, 2019, must be in compliance with the requirements listed in paragraphs (e)(1) through (5) of this section upon initial startup or July 7, 2020, whichever is later.

(1) The requirements for storage tanks not requiring control specified in § 63.2343(b)(4).

(2) The requirements for storage tanks at an existing affected source specified in §§ 63.2346(a)(5) and (6), 63.2386(d)(3)(iii), 63.2396(a)(4), footnote (2) to Table 2 to this subpart, and Table 2b to this subpart.

(3) The flare requirements specified in §§ 63.2346(k), 63.2382(d)(2)(ix), 63.2386(d)(5), 63.2390(h), footnote (1) to Table 2 to this subpart, item 7.d, to Table 3 to this subpart, items 1.a.iii and 2.a.iii of Table 8 to this subpart, and item 7.e of Table 9 to this subpart.

(4) The requirements specified in §§ 63.2346(l), 63.2350(d), 63.2366(c), 63.2390(f) and (g), 63.2386(c)(11) and (12), 63.2386(d)(1)(xiii) and (f) through (j), 63.2378(e), footnote (1) to Table 9 to this subpart, and items 1.a.i and 2.a.ii of Table 10 to this subpart.

(5) The performance testing requirements specified in § 63.2354(b)(6).

■ 5. Section 63.2343 is amended by:

■ a. Revising the introductory text, paragraph (a), and paragraph (b) introductory text;

■ b. Adding paragraph (b)(4); and

■ c. Revising paragraph (c)(1)(iii).

The revisions and additions read as follows:

§ 63.2343 What are my requirements for emission sources not requiring control?

This section establishes the notification, recordkeeping, and reporting requirements for emission sources identified in § 63.2338 that do not require control under this subpart (*i.e.,* under § 63.2346(a) through (e)). Such emission sources are not subject to any other notification, recordkeeping, or reporting sections in this subpart, including § 63.2350(c), except as indicated in paragraphs (a) through (d) of this section.

(a) For each storage tank subject to this subpart having a capacity of less than 18.9 cubic meters (5,000 gallons) and for each transfer rack subject to this subpart that only unloads organic liquids (*i.e.,* no organic liquids are loaded at any of the transfer racks), you must keep documentation that verifies that each storage tank and transfer rack identified in this paragraph (a) is not required to be controlled. The documentation must be kept up-to-date (*i.e.,* all such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled) and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location. The documentation may consist of identification of the tanks and transfer racks identified in this paragraph (a) on a plant site plan or process and instrumentation diagram (P&ID).

(b) Except as specified in paragraph (b)(4) of this section, for each storage tank subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that is not subject to control based on the criteria specified in Table 2 to this subpart, items 1 through 6, you must comply with the requirements specified in paragraphs (b)(1) through (3) of this section.

* * * * *

(4) Beginning no later than the compliance dates specified in § 63.2342(e), the requirements specified in paragraphs (b)(1) through (3) of this section apply to the following storage tanks:

(i) Storage tanks at an existing affected source subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that are not subject to control based on the criteria specified in Table 2b to this subpart, items 1 through 3.

(ii) Storage tanks at a reconstructed or new affected source subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that are not subject to control based on the criteria specified in Table 2 to this subpart, items 3 through 6.

(c) * * *

(1) * * *

(iii) If you are already submitting a Notification of Compliance Status or a first Compliance report under § 63.2386(c), you do not need to submit a separate Notification of Compliance Status or first Compliance report for each transfer rack that meets the conditions identified in this paragraph (c) (*i.e.,* a single Notification of Compliance Status or first Compliance report should be submitted).

* * * * *

■ 6. Section 63.2346 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(1) and (2), (a)(4)(ii) and (iv), (a)(4)(v) introductory text, and (a)(4)(v)(A);
■ b. Adding paragraph (a)(5) and (6);
■ c. Revising paragraphs (b)(1) and (2), (c), (d)(2), (e), (f), and (i); and
■ b. Adding paragraphs (k) and (l).

The revisions and additions read as follows:

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

(a) *Storage tanks.* Except as specified in paragraphs (a)(5) and (6) and (l) of this section, for each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, items 1 through 5, you must comply with paragraph (a)(1), (2), (3), or (4) of this section. For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, item 6, you must comply with paragraph (a)(1), (2), or (4) of this section.

(1) Meet the emission limits specified in Table 2 or 2b to this subpart and comply with paragraph (l) of this section and the applicable requirements specified in subpart SS of this part, for meeting emission limits, except substitute the term ''storage tank'' at each occurrence of the term ''storage vessel'' in subpart SS.

(2) Route emissions to fuel gas systems or back into a process as specified in subpart SS of this part. If you comply with this paragraph, then you must also comply with the requirements specified in paragraph (l) of this section.

* * * * *

(4) * * *

(ii) Transport vehicles must have a current certification in accordance with the United States Department of Transportation (U.S. DOT) qualification and maintenance requirements of 49 CFR part 180, subparts E (for cargo tanks) and F (for tank cars).

* * * * *

(iv) No pressure relief device on the storage tank, on the vapor return line, or on the cargo tank or tank car, shall open during loading or as a result of diurnal temperature changes (breathing losses).

(v) Pressure relief devices must be set to no less than 2.5 pounds per square inch gauge (psig) at all times to prevent breathing losses. Pressure relief devices may be set at values less than 2.5 psig if the owner or operator provides rationale in the notification of compliance status report explaining why the alternative value is sufficient to prevent breathing losses at all times. The owner or operator shall comply with paragraphs (a)(4)(v)(A) through (C) of this section for each relief valve.

(A) The relief valve shall be monitored quarterly using the method described in § 63.180(b).

* * * * *

(5) Beginning no later than the compliance dates specified in § 63.2342(e), the tank capacity criteria, liquid vapor pressure criteria, and emission limits specified for storage tanks at an existing affected source in Table 2 of this subpart, item 1 no longer apply. Instead, for each storage tank at an existing affected source storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2b to this subpart, items 1 through 3, you must comply with paragraph (a)(1), (2), (3), or (4) and paragraph (a)(6) of this section.

(6) Beginning no later than the compliance dates specified in § 63.2342(e), tank emissions during storage tank shutdown operations (*i.e.,* emptying and degassing of a storage tank) for each storage tank at an affected source storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in items 3 through 6 of Table 2 to this subpart, or items 1 through 3 of Table 2b to this subpart, you must comply with paragraphs (a)(6)(i) through (iii) of this section during tank emptying and degassing until the vapor space concentration in the tank is less than 10 percent of the lower explosive limit (LEL). The owner or operator must determine the LEL using process instrumentation or portable measurement devices and follow procedures for calibration and maintenance according to manufacturer's specifications.

(i) Remove organic liquids from the storage tank as much as practicable;

(ii) Comply with either of the following:

(A) The requirements of Table 2 or 2b to this subpart, item 1.a.i. as applicable; OR,

(B) The requirements of Table 4 to this subpart, item 1.b.

(iii) Comply with the requirements in § 63.2350(d) for each storage tank shutdown event and maintain records necessary to demonstrate compliance with the requirements in § 63.2350(d) including, if appropriate, records of existing standard site procedures used to empty and degas (deinventory) equipment for safety purposes.

(b) * * *

(1) Meet the emission limits specified in Table 2 to this subpart and comply with paragraph (l) of this section and the applicable requirements for transfer racks specified in subpart SS of this part, for meeting emission limits.

(2) Route emissions to fuel gas systems or back into a process as specified in subpart SS of this part. If you comply with this paragraph, then you must also comply with the requirements specified in paragraph (l) of this section.

* * * * *

(c) *Equipment leak components.* For each pump, valve, and sampling connection that operates in organic liquids service for at least 300 hours per year, you must comply with paragraph (l) of this section and the applicable requirements under subpart TT of this part (control level 1), subpart UU of this part (control level 2), or subpart H of this part. Pumps, valves, and sampling connectors that are insulated to provide protection against persistent sub-freezing temperatures are subject to the ''difficult to monitor'' provisions in the applicable subpart selected by the owner or operator. This paragraph only applies if the affected source has at least one storage tank or transfer rack that meets the applicability criteria for control in Table 2 or 2b to this subpart.

(d) * * *

(2) Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.

(e) *Operating limits.* For each high throughput transfer rack, you must meet each operating limit in Table 3 to this subpart for each control device used to comply with the provisions of this subpart whenever emissions from the loading of organic liquids are routed to the control device. Except as specified in paragraph (k) of this section, for each storage tank and low throughput transfer rack, you must comply with paragraph (l) of this section and the requirements for monitored parameters as specified in subpart SS of this part, for storage vessels and, during the loading of organic liquids, for low throughput transfer racks, respectively. Alternatively, you may comply with the operating limits in Table 3 to this subpart.

(f) *Surrogate for organic HAP.* For noncombustion devices, if you elect to demonstrate compliance with a percent reduction requirement in Table 2 or 2b to this subpart using total organic compounds (TOC) rather than organic HAP, you must first demonstrate,

subject to the approval of the Administrator, that TOC is an appropriate surrogate for organic HAP in your case; that is, for your storage tank(s) and/or transfer rack(s), the percent destruction of organic HAP is equal to or higher than the percent destruction of TOC. This demonstration must be conducted prior to or during the initial compliance test.

* * * * *

(i) *Safety device.* Opening of a safety device is allowed at any time that it is required to avoid unsafe operating conditions. Beginning no later than July 7, 2023, this paragraph no longer applies.

* * * * *

(k) *Flares.* Beginning no later than the compliance dates specified in § 63.2342(e), for each storage tank and low throughput transfer rack that is subject to control based on the criteria specified in Tables 2 or 2b to this subpart, if you vent emissions through a closed vent system to a flare then you must comply with the requirements specified in § 63.2380 instead of the requirements in § 63.987 and the provisions regarding flare compliance assessments at § 63.997(a), (b), and (c).

(l) *Startup, shutdown, and malfunction.* Beginning no later than the compliance dates specified in § 63.2342(e), the referenced provisions specified in paragraphs (l)(1) through (20) of this section do not apply when demonstrating compliance with subpart H of this part, subpart SS of this part, subpart TT of this part, and subpart UU of this part.

(1) The second sentence of § 63.181(d)(5)(i).

(2) The second sentence of § 63.983(a)(5).

(3) The phrase ''except during periods of start-up, shutdown, and malfunction as specified in the referencing subpart'' in § 63.984(a).

(4) The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in § 63.985(a).

(5) The phrase ''other than start-ups, shutdowns, or malfunctions'' in § 63.994(c)(1)(ii)(D).

(6) § 63.996(c)(2)(ii).

(7) The last sentence of § 63.997(e)(1)(i).

(8) § 63.998(b)(2)(iii).

(9) The phrase ''other than periods of start-ups, shutdowns or malfunctions'' from § 63.998(b)(5)(i)(A).

(10) The phrase ''other than a start-up, shutdown or malfunction'' from § 63.998(b)(5)(i)(B)(3).

(11) The phrase ''other than periods of start-ups, shutdowns or malfunctions'' from § 63.998(b)(5)(i)(C).

(12) The phrase ''other than a start-up, shutdown or malfunction'' from § 63.998(b)(5)(ii)(C).

(13) The phrase '', except as provided in paragraphs (b)(6)(i)(A) and (B) of this section'' from § 63.998(b)(6)(i).

(14) The second sentence of § 63.998(b)(6)(ii).

(15) § 63.998(c)(1)(ii)(D), (E), (F), and (G).

(16) § 63.998(d)(3).

(17) The phrase ''may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or'' from § 63.1005(e)(4)(i).

(18) The phrase ''may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or'' from § 63.1024(f)(4)(i).

(19) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1007(e)(1)(ii)(A).

(20) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1026(e)(1)(ii)(A).

■ 7. Section 63.2350 is revised to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, operating limits, and work practice standards in this subpart at all times when the equipment identified in § 63.2338(b)(1) through (5) is in OLD operation.

(b) Except as specified in paragraph (d) of this section, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) Except for emission sources not required to be controlled as specified in § 63.2343, you must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3). Beginning no later than July 7, 2023, this paragraph no longer applies; however, for historical compliance purposes, a copy of the plan must be retained and available according to the requirements in § 63.2394(c) for five years after July 7, 2023.

(d) Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (b) of this section no longer applies. Instead, at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 8. Section 63.2354 is amended by:

■ a. Revising paragraphs (a)(2) and (3) and (b)(1), (3), (4), and (5);

■ b. Adding paragraph (b)(6);

■ c. Revising paragraph (c); and

■ d. Adding paragraph (d).

The revisions and additions read as follows:

§ 63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?

(a) * * *

(2) For each design evaluation you conduct, you must use the procedures specified in subpart SS of this part. You must also comply with the requirements specified in § 63.2346(l).

(3) For each performance evaluation of a continuous emission monitoring system (CEMS) you conduct, you must follow the requirements in § 63.8(e) and paragraph (d) of this section. For CEMS installed after the compliance date specified in § 63.2342(e), conduct a performance evaluation of each CEMS within 180 days of installation of the monitoring system.

(b)(1) Except as specified in paragraph (b)(6) of this section, for nonflare control devices, you must conduct each performance test according to the requirements in § 63.7(e)(1), and either § 63.988(b), § 63.990(b), or § 63.995(b), using the procedures specified in § 63.997(e).

* * * * *

(3)(i) In addition to Method 25 or 25A (40 CFR part 60, appendix A–7), to determine compliance with the TOC emission limit, you may use Method 18 (40 CFR part 60, appendix A–6) or Method 320 of appendix A to this part to determine compliance with the total organic HAP emission limit. You may not use Method 18 or Method 320 of appendix A to this part if the control device is a combustion device, and you must not use Method 320 of appendix A to this part if the gas stream contains entrained water droplets. All compounds quantified by Method 320 of appendix A to this part must be validated according to Section 13.0 of

Method 320 of appendix A to this part. As an alternative to Method 18, for determining compliance with the total organic HAP emission limit, you may use ASTM D6420–18 (incorporated by reference, see § 63.14), under the conditions specified in paragraph (b)(3)(ii) of this section.

(A) If you use Method 18 (40 CFR 60, appendix A–6) or Method 320 of appendix A to this part to measure compliance with the percentage efficiency limit, you must first determine which organic HAP are present in the inlet gas stream (*i.e.,* uncontrolled emissions) using knowledge of the organic liquids or the screening procedure described in Method 18. In conducting the performance test, you must analyze samples collected simultaneously at the inlet and outlet of the control device. Quantify the emissions for the same organic HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(B) If you use Method 18 (40 CFR part 60, appendix A–6) or Method 320 of appendix A to this part, to measure compliance with the emission concentration limit, you must first determine which organic HAP are present in the inlet gas stream using knowledge of the organic liquids or the screening procedure described in Method 18. In conducting the performance test, analyze samples collected as specified in Method 18 at the outlet of the control device. Quantify the control device outlet emission concentration for the same organic HAP identified as present in the inlet or uncontrolled gas stream.

(ii) You may use ASTM D6420–18 (incorporated by reference, see § 63.14), to determine compliance with the total organic HAP emission limit if the target concentration for each HAP is between 150 parts per billion by volume and 100 ppmv and either of the conditions specified in paragraph (b)(2)(ii)(A) or (B) of this section exists. For target compounds not listed in Section 1.1 of ASTM D6420–18 and not amenable to detection by mass spectrometry, you may not use ASTM D6420–18.

(A) The target compounds are those listed in Section 1.1 of ASTM D6420–18 (incorporated by reference, see § 63.14); or

(B) For target compounds not listed in Section 1.1 of ASTM D6420–18 (incorporated by reference, see § 63.14), but potentially detected by mass spectrometry, you must demonstrate recovery of the compound and the additional system continuing calibration check after each run, as detailed in ASTM D6420–18, Section 10.5.3, must be followed, met, documented, and submitted with the data report, even if there is no moisture condenser used or the compound is not considered water-soluble.

(iii) You may use ASTM D6348–12e1 (incorporated by reference, see § 63.14) instead of Method 320 of appendix A to this part under the conditions specified in footnote 4 of Table 5 to this subpart.

(4) If a principal component of the uncontrolled or inlet gas stream to the control device is formaldehyde, you must use Method 316 of appendix A to this part, Method 320 of appendix A to this part, or Method 323 of appendix A to this part for measuring the formaldehyde, except you must not use Method 320 or Method 323 of appendix A to this part if the gas stream contains entrained water droplets. If you use Method 320 of appendix A to this part, formaldehyde must be validated according to Section 13.0 of Method 320 of appendix A to this part. You must measure formaldehyde either at the inlet and outlet of the control device to determine control efficiency or at the outlet of a combustion device for determining compliance with the emission concentration limit. You may use ASTM D6348–12e1 (incorporated by reference, see § 63.14) instead of Method 320 of appendix A to this part under the conditions specified in footnote 4 of Table 5 to this subpart.

(5) Except as specified in paragraph (b)(6) of this section, you may not conduct performance tests during periods of SSM, as specified in § 63.7(e)(1).

(6) Beginning no later than the compliance dates specified in § 63.2342(e), paragraphs (b)(1) and (5) of this section no longer apply. Instead, you must conduct each performance test according to the requirements in paragraphs (b)(6)(i) and (ii) of this section.

(i) In lieu of the requirements specified in § 63.7(e)(1), you must conduct performance tests under such conditions as the Administrator specifies based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(ii) Pursuant to paragraph (b)(6)(i) of this section, you must conduct each performance test according to the requirements in either § 63.988(b), § 63.990(b), or § 63.995(b), using the procedures specified in § 63.997(e). You must also comply with the requirements specified in § 63.2346(l).

(c) To determine the HAP content of the organic liquid, you may use Method 311 of appendix A to this part, ASTM D6886–18 (incorporated by reference, see § 63.14), or other method approved by the Administrator. If you use ASTM D6886–18 to determine the HAP content, you must use either Method B or Method B in conjunction with Method C, as described in section 4.3 of ASTM D6886–18. In addition, you may use other means, such as voluntary consensus standards, safety data sheets (SDS), or certified product data sheets, to determine the HAP content of the organic liquid. If the method you select to determine the HAP content provides HAP content ranges, you must use the upper end of each HAP content range in determining the total HAP content of the organic liquid. The EPA may require you to test the HAP content of an organic liquid using Method 311 of appendix A to this part or other method approved by the Administrator. For liquids that contain any amount of formaldehyde or carbon tetrachloride, you may not use Method 311of appendix A to this part. If the results of the Method 311 of appendix A to this part (or any other approved method) are different from the HAP content determined by another means, the Method 311 of appendix A to this part (or approved method) results will govern. For liquids that contain any amount of formaldehyde or carbon tetrachloride, if the results of ASTM D6886–18 using method B or C in section 4.3 (or any other approved method) are different from the HAP content determined by another means, ASTM D6886–18 using method B or C in section 4 (or approved method) results will govern.

(d) Each VOC CEMS must be installed, operated, and maintained according to the requirements of one of the following performance specifications in appendix B to part 60 of this chapter: Performance Specification 8, Performance Specification 8A, Performance Specification 9, or Performance Specification 15. You must also comply with the requirements of procedure 1 of appendix F to part 60 of this chapter, for CEMS using Performance Specification 8 or 8A.

(1) For CEMS using Performance Specification 9 or 15 (40 CFR part 60,

appendix B), determine the target analyte(s) for calibration using either process knowledge or the screening procedures of Method 18 (40 CFR part 60, appendix A–6).

(2) For CEMS using Performance Specification 8A (40 CFR part 60, appendix B), conduct the relative accuracy test audits required under Procedure 1 (40 CFR part 60, appendix F) in accordance with Sections 8 and 11 of Performance Specification 8 (40 CFR part 60, appendix B). The relative accuracy must meet the criteria of Section 13.2 of Performance Speciation 8 (40 CFR part 60, appendix B).

(3) For CEMS using Performance Specification 8 or 8A of 40 CFR part 60, appendix B, calibrate the instrument on methane and report the results as carbon (C1). Use Method 25A of 40 CFR part 60, appendix A–7 as the reference method for the relative accuracy tests.

(4) If you are required to monitor oxygen in order to conduct concentration corrections, you must use Performance Specification 3 (40 CFR part 60, appendix B), to certify your oxygen CEMS, and you must comply with procedure 1 (40 CFR part 60, appendix F). Use Method 3A (40 CFR part 60, appendix A–2), as the reference method when conducting a relative accuracy test audit.

■ 9. Section 63.2358 is amended by adding paragraph (b)(3) to read as follows:

§ 63.2358 By what date must I conduct performance tests and other initial compliance demonstrations?

* * * * *

(b) * * *

(3) For storage tanks at existing affected sources that commenced construction or reconstruction on or before October 21, 2019, you must demonstrate initial compliance with the emission limitations listed in Table 2b to this subpart within 180 days of either the initial startup or July 7, 2023, whichever is later, except as provided in paragraphs (b)(3)(i) and (ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a.ii. in Table 2b to this subpart and item 1.a. in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than July 7, 2030.

(ii) For storage tanks complying with item 1.a.ii. in Table 2b to this subpart and item 1.b. or 1.c. in Table 4 to this subpart, you must comply within 180 days after July 7, 2023.

* * * * *

■ 10. Section 63.2362 is amended by revising paragraph (b)(2) to read as follows:

§ 63.2362 When must I conduct subsequent performance tests?

* * * * *

(b) * * *

(2) For transport vehicles that you own that do not have vapor collection equipment, you must maintain current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subparts E (cargo tanks) and F (tank cars).

■ 11. Section 63.2366 is revised to read as follows:

§ 63.2366 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain a continuous monitoring system (CMS) on each control device required in order to comply with this subpart. If you use a continuous parameter monitoring system (CPMS) (as defined in § 63.981), you must comply with § 63.2346(l) and the applicable requirements for CPMS in subpart SS of this part and § 63.671, for the control device being used. If you use a CEMS, you must install, operate, and maintain the CEMS according to the requirements in § 63.8 and paragraph (d) of this section, except as specified in paragraph (c) of this section.

(b) For nonflare control devices controlling storage tanks and low throughput transfer racks, you must submit a monitoring plan according to the requirements in subpart SS of this part, for monitoring plans. You must also comply with the requirements specified in § 63.2346(l).

(c) Beginning no later than the compliance dates specified in § 63.2342(e), you must keep the written procedures required by § 63.8(d)(2) on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2). In addition to the information required in § 63.8(d)(2), your written procedures for CEMS must include the information in paragraphs (c)(1) through (6) of this section:

(1) Description of CEMS installation location.

(2) Description of the monitoring equipment, including the manufacturer and model number for all monitoring equipment components and the span of the analyzer.

(3) Routine quality control and assurance procedures.

(4) Conditions that would trigger a CEMS performance evaluation, which must include, at a minimum, a newly installed CEMS; a process change that is expected to affect the performance of the CEMS; and the Administrator's request for a performance evaluation under section 114 of the Clean Air Act.

(5) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1) and (3), (c)(4)(ii), and (c)(7) and (8);

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) and (e)(1).

(d) For each CEMS, you must locate the sampling probe or other interface at a measurement location such that you obtain representative measurements of emissions from the regulated source and comply with the applicable requirements specified in § 63.2354(d).

■ 12. Section 63.2370 is amended by revising paragraphs (a) and (c) to read as follows:

§ 63.2370 How do I demonstrate initial compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard that applies to you as specified in Tables 6 and 7 to this subpart.

* * * * *

(c) You must submit the results of the initial compliance determination in the Notification of Compliance Status according to the requirements in § 63.2382(d). If the initial compliance determination includes a performance test and the results are submitted electronically via the Compliance and Emissions Data Reporting Interface (CEDRI) in accordance with § 63.2386(g), the unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

■ 13. Section 63.2374 is amended by revising paragraph (a) to read as follows:

§ 63.2374 When do I monitor and collect data to demonstrate continuous compliance and how do I use the collected data?

(a) You must monitor and collect data according to subpart SS of this part, and paragraphs (b) and (c) of this section. You must also comply with the requirements specified in § 63.2346(l).

* * * * *

■ 14. Section 63.2378 is amended by revising paragraphs (a), (b) introductory text, (b)(2), (c), and (d), and adding paragraphs (e) and (f) to read as follows:

§ 63.2378 How do I demonstrate continuous compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limitation, operating limit, and work practice standard in Tables 2 through 4 to this subpart that applies to you according to the methods specified in subpart SS of this part, and in Tables 8 through 10 to this subpart, as applicable. You must also comply with the requirements specified in § 63.2346(l).

(b) Except as specified in paragraph (e) of this section, you must follow the requirements in § 63.6(e)(1) and (3) during periods of startup, shutdown, malfunction, or nonoperation of the affected source or any part thereof. In addition, the provisions of paragraphs (b)(1) through (3) of this section apply.

* * * * *

(2) The owner or operator must not shut down control devices or monitoring systems that are required or utilized for achieving compliance with this subpart during periods of SSM while emissions are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (b)(2) does not apply if the item of equipment is malfunctioning. This paragraph (b)(2) also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous SSM of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous SSM of the affected source of portion thereof, the owner or operator must provide documentation supporting such a claim in the next Compliance report required in Table 11 to this subpart, item 1. Once approved by the Administrator, the provision for ceasing to collect, during a SSM, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the SSM plan.

* * * * *

(c) Except as specified in paragraph (e) of this section, periods of planned routine maintenance of a control device used to control storage tanks or transfer racks, during which the control device does not meet the emission limits in Table 2 to this subpart, must not exceed 240 hours per year.

(d) Except as specified in paragraph (e) of this section, if you elect to route emissions from storage tanks or transfer racks to a fuel gas system or to a process, as allowed by § 63.982(d), to comply with the emission limits in Table 2 to this subpart, the total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except SSM or product changeovers of flexible operation units and periods when a storage tank has been emptied and degassed), must not exceed 240 hours.

(e) Beginning no later than the compliance dates specified in § 63.2342(e), paragraphs (b) through (d) of this section no longer apply. Instead, you must be in compliance with each emission limitation, operating limit, and work practice standard specified in paragraph (a) of this section at all times, except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies and must comply with the requirements specified in paragraphs (e)(1) through (5) of this section, as applicable. Equipment subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 4 are not subject to this paragraph (e).

(1) Except as specified in paragraphs (e)(3) through (5) of this section, the use of a bypass line at any time on a closed vent system to divert a vent stream to the atmosphere or to a control device not meeting the requirements specified in paragraph (a) of this section is an emissions standards deviation.

(2) If you are subject to the bypass monitoring requirements of § 63.983(a)(3), then you must continue to comply with the requirements in § 63.983(a)(3) and the recordkeeping and reporting requirements in §§ 63.998(d)(1)(ii) and 63.999(c)(2), in addition to § 63.2346(l), the recordkeeping requirements specified in § 63.2390(g), and the reporting requirements specified in § 63.2386(c)(12).

(3) Periods of planned routine maintenance of a control device used to control storage tank breathing loss emissions, during which the control device does not meet the emission limits in Table 2 or 2b to this subpart, must not exceed 240 hours per year. The level of material in the storage vessel shall not be increased during periods that the closed-vent system or control device is bypassed to perform routine maintenance.

(4) If you elect to route emissions from storage tanks to a fuel gas system or to a process, as allowed by § 63.982(d), to comply with the emission limits in Table 2 or 2b to this subpart, the total aggregate amount of time during which the breathing loss emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except product changeovers of flexible operation units and periods when a storage tank has been emptied and degassed), must not exceed 240 hours. The level of material in the storage vessel shall not be increased during periods that the fuel gas system or process is bypassed to perform routine maintenance.

(f) The CEMS data must be reduced to daily averages computed using valid data consistent with the data availability requirements specified in § 63.999(c)(6)(i)(B) through (D), except monitoring data also are sufficient to constitute a valid hour of data if measured values are available for at least two of the 15-minute periods during an hour when calibration, quality assurance, or maintenance activities are being performed. In computing daily averages to determine compliance with this subpart, you must exclude monitoring data recorded during CEMS breakdowns, out of control periods, repairs, maintenance periods, calibration checks, or other quality assurance activities.

■ 15. Section 63.2380 is added before the undesignated center heading ''Notifications, Reports, and Records'' to read as follows:

§ 63.2380 What are my requirements for certain flares?

(a) Beginning no later than the compliance dates specified in § 63.2342(e), if you reduce organic HAP emissions by venting emissions through a closed vent system to a steam-assisted, air-assisted, or non-assisted flare to control emissions from a storage tank, low throughput transfer rack, or high throughput transfer rack that is subject to control based on the criteria specified in Tables 2 or 2b to this subpart, then the flare requirements specified in § 63.11(b); subpart SS of this part; the provisions specified in items 7.a

through 7.d of Table 3 to this subpart; Table 8 to this subpart; and the provisions specified in items 1.a.iii and 2.a.iii, and items 7.a through 7.d.2 of Table 9 to this subpart no longer apply. Instead, you must meet the applicable requirements for flares as specified in §§ 63.670 and 63.671, including the provisions in Tables 12 and 13 to subpart CC of this part, except as specified in paragraphs (b) through (m) of this section. For purposes of compliance with this paragraph, the following terms are defined in § 63.641: Assist air, assist steam, center steam, combustion zone, combustion zone gas, flare, flare purge gas, flare supplemental gas, flare sweep gas, flare vent gas, lower steam, net heating value, perimeter assist air, pilot gas, premix assist air, total steam, and upper steam.

(b) The following phrases in § 63.670(c) do not apply:

(1) ''Specify the smokeless design capacity of each flare and''; and

(2) ''And the flare vent gas flow rate is less than the smokeless design capacity of the flare.''

(c) The phrase ''and the flare vent gas flow rate is less than the smokeless design capacity of the flare'' in § 63.670(d) does not apply.

(d) Section 63.670(j)(6)(ii) does not apply. Instead submit the information required by § 63.670(j)(6)(ii) with the Notification of Compliance Status according to § 63.2382(d)(2)(ix).

(e) Section 63.670(o) does not apply.

(f) Substitute ''pilot flame or flare flame'' or each occurrence of ''pilot flame.''

(g) Substitute ''affected source'' for each occurrence of ''petroleum refinery.''

(h) Each occurrence of ''refinery'' does not apply.

(i) You may elect to comply with the alternative means of emissions limitation requirements specified in § 63.670(r)in lieu of the requirements in § 63.670(d) through (f), as applicable. However, instead of complying with § 63.670(r)(3)(iii), you must also submit the alternative means of emissions limitation request to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143–01), Attention: Organic Liquids Distribution Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Electronic copies in lieu of hard copies may also be submitted to *oldrtr@epa.gov.*

(j) If you choose to determine compositional analysis for net heating value with a continuous process mass spectrometer, then you must comply with the requirements specified in paragraphs (j)(1) through (7) of this section.

(1) You must meet the requirements in § 63.671(e)(2). You may augment the minimum list of calibration gas components found in § 63.671(e)(2) with compounds found during a pre-survey or known to be in the gas through process knowledge.

(2) Calibration gas cylinders must be certified to an accuracy of 2 percent and traceable to National Institute of Standards and Technology (NIST) standards.

(3) For unknown gas components that have similar analytical mass fragments to calibration compounds, you may report the unknowns as an increase in the overlapped calibration gas compound. For unknown compounds that produce mass fragments that do not overlap calibration compounds, you may use the response factor for the nearest molecular weight hydrocarbon in the calibration mix to quantify the unknown component's NHVvg.

(4) You may use the response factor for n-pentane to quantify any unknown components detected with a higher molecular weight than n-pentane.

(5) You must perform an initial calibration to identify mass fragment overlap and response factors for the target compounds.

(6) You must meet applicable requirements in Performance Specification (PS) 9 (40 CFR part 60, appendix B) for continuous monitoring system acceptance including, but not limited to, performing an initial multi-point calibration check at three concentrations following the procedure in Section 10.1 of PS 9 and performing the periodic calibration requirements listed for gas chromatographs in Table 13 to subpart CC of this part, for the process mass spectrometer. You may use the alternative sampling line temperature allowed under Net Heating Value by Gas Chromatograph in Table 13 to subpart CC of this part.

(7) The average instrument calibration error (CE) for each calibration compound at any calibration concentration must not differ by more than 10 percent from the certified cylinder gas value. The CE for each component in the calibration blend must be calculated using the following equation:

$$CE = \frac{C_m - C_a}{Ca} x\ 100$$

Where:

Cm = Average instrument response (ppm)
Ca = Certified cylinder gas value (ppm)

(k) If you use a gas chromatograph or mass spectrometer for compositional analysis for net heating value, then you may choose to use the CE of NHV measured versus the cylinder tag value NHV as the measure of agreement for daily calibration and quarterly audits in lieu of determining the compound-specific CE. The CE for NHV at any calibration level must not differ by more than 10 percent from the certified cylinder gas value. The CE for must be calculated using the following equation:

$$CE = \frac{NHV_{measured} - NHV_a}{NHV_a} x\ 100$$

Where:

NHVmeasured = Average instrument response (Btu/scf)
NHVa = Certified cylinder gas value (Btu/scf)

(l) Instead of complying with § 63.670(p), you must keep the flare monitoring records specified in § 63.2390(h).

(m) Instead of complying with § 63.670(q), you must comply with the reporting requirements specified in § 63.2382(d)(2)(ix) and § 63.2386(d)(5).

■ 16. Section 63.2382 is amended by revising paragraphs (a), (d)(1), (d)(2) introductory text, (d)(2)(ii), (vi), and (vii), and adding paragraphs (d)(2)(ix) and (d)(3) to read as follows:

§ 63.2382 What notifications must I submit and when and what information should be submitted?

(a) You must submit each notification in subpart SS of this part, Table 12 to this subpart, and paragraphs (b) through (d) of this section that applies to you. You must submit these notifications according to the schedule in Table 12 to this subpart and as specified in paragraphs (b) through (d) of this

section. You must also comply with the requirements specified in § 63.2346(l).

* * * * *

(d) * * *

(1) *Notification of Compliance Status.* If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Table 5, 6, or 7 to this subpart, you must submit a Notification of Compliance Status.

(2) *Notification of Compliance Status requirements.* The Notification of Compliance Status must include the information required in § 63.999(b) and in paragraphs (d)(2)(i) through (ix) of this section.

* * * * *

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to Tables 6 and 7 to this subpart. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures. If performance test results are submitted electronically via CEDRI in accordance with § 63.2386(g), the unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

* * * * *

(vi) The applicable information specified in § 63.1039(a)(1) through (3) for all pumps and valves subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 4.

(vii) If you are complying with the vapor balancing work practice standard for transfer racks according to Table 4 to this subpart, item 3.a, include a statement to that effect and a statement that the pressure vent settings on the affected storage tanks are greater than or equal to 2.5 psig.

* * * * *

(ix) For flares subject to the requirements of § 63.2380, you must also submit the information in this paragraph in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for flare monitoring. In lieu of the information required in § 63.987(b), the Notification of Compliance Status must include flare design (*e.g.,* steam-assisted, air-assisted, or non-assisted); all visible emission readings, heat content determinations (including information required by § 63.670(j)(6)(i), as applicable), flow rate measurements, and exit velocity determinations made during the initial visible emissions demonstration required by § 63.670(h), as applicable; and all periods during the compliance determination when the pilot flame or flare flame is absent.

(3) *Submitting Notification of Compliance Status.* Beginning no later than the compliance dates specified in § 63.2342(e), you must submit all subsequent Notification of Compliance Status reports to the EPA via CEDRI, which can be accessed through EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), then submit a complete report, including information claimed to be CBI, to the EPA. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (C404–02), Attention: Organic Liquids Distribution Sector Lead, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described earlier in this paragraph. You may assert a claim of EPA system outage or force majeure for failure to timely comply with this reporting requirement provided you meet the requirements outlined in § 63.2386(i) or (j), as applicable.

■ 17. Section 63.2386 is amended by:

■ a. Revising paragraphs (a), (b) introductory text, (c) introductory text, (c)(2), (3), (5), and (9);

■ b. Adding paragraphs (c)(11) and (12);

■ c. Revising paragraph (d) introductory text, (d)(1) introductory text, (d)(1)(i) through (d)(1)(vii), (ix), and (x);

■ d. Adding paragraphs (d)(1)(xiii) through (xv);

■ e. Revising paragraph (d)(2)(i);

■ f. Adding paragraph (d)(2)(iv);

■ g. Revising paragraph (d)(3);

■ h. Adding paragraph (d)(5);

■ i. Revising paragraph (e); and

■ j. Adding paragraphs (f) through (j).

The revisions and additions read as follows:

§ 63.2386 What reports must I submit and when and what information is to be submitted in each?

(a) You must submit each report in subpart SS of this part, Table 11 to this subpart, Table 12 to this subpart, and in paragraphs (c) through (j) of this section that applies to you. You must also comply with the requirements specified in § 63.2346(l).

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to Table 11 to this subpart and by the dates shown in paragraphs (b)(1) through (3) of this section, by the dates shown in subpart SS of this part, and by the dates shown in Table 12 to this subpart, whichever are applicable.

* * * * *

(c) *First Compliance report.* The first Compliance report must contain the information specified in paragraphs (c)(1) through (12) of this section, as well as the information specified in paragraph (d) of this section.

* * * * *

(2) Statement by a responsible official, including the official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete. If your report is submitted via CEDRI, the certifier's electronic signature during the submission process replaces this requirement.

(3) Date of report and beginning and ending dates of the reporting period. You are no longer required to provide the date of report when the report is submitted via CEDRI.

* * * * *

(5) Except as specified in paragraph (c)(11) of this section, if you had a SSM during the reporting period and you took actions consistent with your SSM plan, the Compliance report must include the information described in § 63.10(d)(5)(i).

* * * * *

(9) A listing of all transport vehicles into which organic liquids were loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, during the previous 6 months for which vapor tightness documentation as required in § 63.2390(c) was not on file at the facility.

* * * * *

(11) Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (c)(5) of this section no longer applies.

(12) Beginning no later than the compliance dates specified in § 63.2342(e), for bypass lines subject to the requirements § 63.2378(e)(1) and (2), the compliance report must include the start date, start time, duration in hours, estimate of the volume of gas in

standard cubic feet (scf), the concentration of organic HAP in the gas in ppmv and the resulting mass emissions of organic HAP in pounds that bypass a control device. For periods when the flow indicator is not operating, report the start date, start time, and duration in hours.

(d) *Subsequent Compliance reports.* Subsequent Compliance reports must contain the information in paragraphs (c)(1) through (9) and paragraph (c)(12) of this section and, where applicable, the information in paragraphs (d)(1) through (5) of this section.

(1) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to comply with an emission limitation in this subpart, or for each CMS that was inoperative or out of control during the reporting period, you must include in the Compliance report the applicable information in paragraphs (d)(1)(i) through (xv) of this section. This includes periods of SSM.

(i) The date and time that each malfunction started and stopped, and the nature and cause of the malfunction (if known).

(ii) The start date, start time, and duration in hours for each period that each CMS was inoperative, except for zero (low-level) and high-level checks.

(iii) The start date, start time, and duration in hours for each period that the CMS that was out of control.

(iv) Except as specified in paragraph (d)(1)(xiii) of this section, the date and time that each deviation started and stopped, and whether each deviation occurred during a period of SSM, or during another period.

(v) The total duration in hours of all deviations for each CMS during the reporting period, and the total duration as a percentage of the total emission source operating time during that reporting period.

(vi) Except as specified in paragraph (d)(1)(xiii) of this section, a breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) The total duration in hours of CMS downtime for each CMS during the reporting period, and the total duration of CMS downtime as a percentage of the total emission source operating time during that reporting period.

* * * * *

(ix) A brief description of the emission source(s) at which the CMS deviation(s) occurred or at which the CMS was inoperative or out of control.

(x) The equipment manufacturer(s) and model number(s) of the CMS and the pollutant or parameter monitored.

* * * * *

(xiii) Beginning no later than the compliance dates specified in § 63.2342(e), paragraphs (d)(1)(iv) and (vi) of this section no longer apply. For each instance, report the start date, start time, and duration in hours of each failure. For each failure, the report must include a list of the affected sources or equipment, an estimate of the quantity in pounds of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, and the cause of the deviation (including unknown cause, if applicable), as applicable, and the corrective action taken.

(xiv) Corrective actions taken for a CMS that was inoperative or out of control.

(xv) Total process operating time during the reporting period.

(2) * * *

(i) Except as specified in paragraph (d)(2)(iv) of this section, for each storage tank and transfer rack subject to control requirements, include periods of planned routine maintenance during which the control device did not comply with the applicable emission limits in Table 2 to this subpart.

* * * * *

(iv) Beginning no later than the compliance dates specified in § 63.2342(e), paragraph (d)(2)(i) of this section no longer applies. Instead for each storage tank subject to control requirements, include the start date, start time, end date and end time of any planned routine maintenance during which the control device used to control storage tank breathing losses did not comply with the applicable emission limits in Table 2 or 2b to this subpart.

(3)(i) Except as specified in paragraph (d)(3)(iii) of this section, a listing of any storage tank that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 1 through 6, since the filing of the last Compliance report.

(ii) A listing of any transfer rack that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 7 through 10, since the filing of the last Compliance report.

(iii) Beginning no later than the compliance dates specified in § 63.2342(e), the emission limits specified in Table 2 to this subpart for storage tanks at an existing affected source no longer apply as specified in § 63.2346(a)(5). Instead, beginning no later than the compliance dates specified in § 63.2342(e), you must include a listing of any storage tanks at an existing affected source that became subject to controls based on the criteria for control specified in Table 2b to this subpart, items 1 through 3, since the filing of the last Compliance report.

* * * * *

(5) Beginning no later than the compliance dates specified in § 63.2342(e), for each flare subject to the requirements in § 63.2380, the compliance report must include the items specified in paragraphs (d)(5)(i) through (iii) of this section in lieu of the information required in § 63.999(c)(3).

(i) Records as specified in § 63.2390(h)(1) for each 15-minute block during which there was at least one minute when regulated material is routed to a flare and no pilot flame or flare flame is present. Include the start and stop time and date of each 15-minute block.

(ii) Visible emission records as specified in § 63.2390(h)(2)(iv) for each period of 2 consecutive hours during which visible emissions exceeded a total of 5 minutes.

(iii) The periods specified in § 63.2390(h)(6). Indicate the date and start and end time for the period, and the net heating value operating parameter(s) determined following the methods in § 63.670(k) through (n) as applicable.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 11 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission limitation in this subpart, we will consider submission of the Compliance report as satisfying any obligation to report the same deviations in the semiannual monitoring report. However, submission of a Compliance report will not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the applicable title V permitting authority.

(f) Beginning no later than the compliance dates specified in § 63.2342(e), you must submit all Compliance reports to the EPA via CEDRI, which can be accessed through

EPA's CDX (*https://cdx.epa.gov/*). You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. Unless the Administrator or delegated state agency or other authority has approved a different schedule for submission of reports under §§ 63.9(i) and 63.10(a), the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (C404–02), Attention: Organic Liquids Distribution Sector Lead, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described earlier in this paragraph. You may assert a claim of EPA system outage or force majeure for failure to timely comply with this reporting requirement provided you meet the requirements outlined in paragraph (i) or (j) of this section, as applicable.

(g) Beginning no later than the compliance dates specified in § 63.2342(e), you must start submitting performance test reports in accordance with this paragraph. Unless otherwise specified in this subpart, within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (g)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *CBI.* If you claim some of the information submitted under paragraph (g)(1) or (2) of this section is CBI, then you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described in paragraphs (g)(1) and (2) of this section.

(h) Beginning no later than the compliance dates specified in § 63.2342(e), you must start submitting performance evaluation reports in accordance with this paragraph. Unless otherwise specified in this subpart, within 60 days after the date of completing each CEMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) *Performance evaluations of CEMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Performance evaluations of CEMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *CBI.* If you claim some of the information submitted under paragraph (h)(1) or (2) of this section is CBI, then you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (h)(1) and (2) of this section.

(i) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (i)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(j) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (j)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this paragraph, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 18. Section 63.2390 is amended by:

■ a. Revising paragraphs (b)(1) and (2);

■ b. Adding paragraph (b)(3);

■ c. Revising paragraphs (c) introductory text, (c)(2) and (3), and (d); and

■ d. Adding paragraphs (f) through (h).

The revisions and additions read as follows:

§ 63.2390 What records must I keep?

* * * * *

(b) * * *

(1) Except as specified in paragraph (h) of this section for flares, you must keep all records identified in subpart SS of this part and in Table 12 to this subpart that are applicable, including records related to notifications and reports, SSM, performance tests, CMS, and performance evaluation plans. You must also comply with the requirements specified in § 63.2346(l).

(2) Except as specified in paragraph (h) of this section for flares, you must keep the records required to show continuous compliance, as required in subpart SS of this part and in Tables 8 through 10 to this subpart, with each emission limitation, operating limit, and work practice standard that applies to you. You must also comply with the requirements specified in § 63.2346(l).

(3) In addition to the information required in § 63.998(c), the manufacturer's specifications or your written procedures must include a schedule for calibrations, preventative maintenance procedures, a schedule for preventative maintenance, and corrective actions to be taken if a calibration fails.

(c) For each transport vehicle into which organic liquids are loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must keep the applicable records in paragraphs (c)(1) and (2) of this section or alternatively the verification records in paragraph (c)(3) of this section.

* * * * *

(2) For transport vehicles without vapor collection equipment, current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.

(3) In lieu of keeping the records specified in paragraph (c)(1) or (2) of this section, as applicable, the owner or operator shall record that the verification of U.S. DOT tank certification or Method 27 of 40 CFR part 60, appendix A–8 testing, required in Table 5 to this subpart, item 2, has been performed. Various methods for the record of verification can be used, such as: A check-off on a log sheet, a list of U.S. DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on site that do not have the appropriate documentation.

(d) You must keep records of the total actual annual facility-level organic liquid loading volume as defined in § 63.2406 through transfer racks to document the applicability, or lack thereof, of the emission limitations in Table 2 to this subpart, items 7 through 10.

* * * * *

(f) Beginning no later than the compliance dates specified in § 63.2342(e), for each deviation from an emission limitation, operating limit, and work practice standard specified in paragraph (a) of this section, you must keep a record of the information specified in paragraph (f)(1) through (3) of this section.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time and duration of each failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.2350(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(g) Beginning no later than the compliance dates specified in § 63.2342(e), for each flow event from a bypass line subject to the requirements in § 63.2378(e)(1) and (2), you must maintain records sufficient to determine whether or not the detected flow included flow requiring control. For each flow event from a bypass line requiring control that is released either directly to the atmosphere or to a control device not meeting the requirements specified in § 63.2378(a), you must include an estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting emissions of organic HAP that bypassed the control device using process knowledge and engineering estimates.

(h) Beginning no later than the compliance dates specified in § 63.2342(e), for each flare subject to the

requirements in § 63.2380, you must keep records specified in paragraphs (h)(1) through (10) of this section in lieu of the information required in § 63.998(a)(1).

(1) Retain records of the output of the monitoring device used to detect the presence of a pilot flame or flare flame as required in § 63.670(b) for a minimum of 2 years. Retain records of each 15-minute block during which there was at least one minute that no pilot flame or flare flame is present when regulated material is routed to a flare for a minimum of 5 years. You may reduce the collected minute-by-minute data to a 15-minute block basis with an indication of whether there was at least one minute where no pilot flame or flare flame was present.

(2) Retain records of daily visible emissions observations or video surveillance images required in § 63.670(h) as specified in paragraphs (h)(2)(i) through (iv) of this section, as applicable, for a minimum of 3 years.

(i) To determine when visible emissions observations are required, the record must identify all periods when regulated material is vented to the flare.

(ii) If visible emissions observations are performed using Method 22 of 40 CFR part 60, appendix A–7, then the record must identify whether the visible emissions observation was performed, the results of each observation, total duration of observed visible emissions, and whether it was a 5-minute or 2-hour observation. Record the date and start and end time of each visible emissions observation.

(iii) If a video surveillance camera is used, then the record must include all video surveillance images recorded, with time and date stamps.

(iv) For each 2-hour period for which visible emissions are observed for more than 5 minutes in 2 consecutive hours, then the record must include the date and start and end time of the 2-hour period and an estimate of the cumulative number of minutes in the 2-hour period for which emissions were visible.

(3) The 15-minute block average cumulative flows for flare vent gas and, if applicable, total steam, perimeter assist air, and premix assist air specified to be monitored under § 63.670(i), along with the date and time interval for the 15-minute block. If multiple monitoring locations are used to determine cumulative vent gas flow, total steam, perimeter assist air, and premix assist air, then retain records of the 15-minute block average flows for each monitoring location for a minimum of 2 years, and retain the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years. If pressure and temperature monitoring is used, then retain records of the 15-minute block average temperature, pressure, and molecular weight of the flare vent gas or assist gas stream for each measurement location used to determine the 15-minute block average cumulative flows for a minimum of 2 years, and retain the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years.

(4) The flare vent gas compositions specified to be monitored under § 63.670(j). Retain records of individual component concentrations from each compositional analysis for a minimum of 2 years. If an NHVvg analyzer is used, retain records of the 15-minute block average values for a minimum of 5 years.

(5) Each 15-minute block average operating parameter calculated following the methods specified in § 63.670(k) through (n), as applicable.

(6) All periods during which operating values are outside of the applicable operating limits specified in § 63.670(d) through (f) when regulated material is being routed to the flare.

(7) All periods during which you do not perform flare monitoring according to the procedures in § 63.670(g).

(8) Records of periods when there is flow of vent gas to the flare, but when there is no flow of regulated material to the flare, including the start and stop time and dates of periods of no regulated material flow.

(9) The monitoring plan required in § 63.671(b).

(10) Records described in § 63.10(b)(2)(vi).

■ 19. Section 63.2396 is amended by:
■ a. Revising paragraph (a)(3);
■ b. Adding paragraph (a)(4);
■ c. Revising paragraph (c)(1) and (2);
■ d. Adding paragraph (d); and
■ e. Revising paragraph (e)(2).

The revisions and additions read as follows:

§ 63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) * * *

(3) Except as specified in paragraph (a)(4) of this section, as an alternative to paragraphs (a)(1) and (2) of this section, if a storage tank assigned to the OLD affected source is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to comply only with the requirements of this subpart for storage tanks meeting the applicability criteria for control in Table 2 to this subpart.

(4) Beginning no later than the compliance dates specified in § 63.2342(e), the applicability criteria for control specified in Table 2 to this subpart for storage tanks at an existing affected source no longer apply as specified in § 63.2346(a)(5). Instead, beginning no later than the compliance dates specified in § 63.2342(e), as an alternative to paragraphs (a)(1) and (2) of this section, if a storage tank assigned to an existing OLD affected source is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to comply only with the requirements of this subpart for storage tanks at an existing affected source meeting the applicability criteria for control in Table 2b to this subpart.

* * * * *

(c) * * *

(1) After the compliance dates specified in § 63.2342, if you have pumps, valves, or sampling connections that are subject to a 40 CFR part 60 subpart, and those pumps, valves, and sampling connections are in OLD operation and in organic liquids service, as defined in this subpart, you must comply with the provisions of each subpart for those equipment leak components.

(2) After the compliance dates specified in § 63.2342, if you have pumps, valves, or sampling connections subject to subpart GGG of this part, and those pumps, valves, and sampling connections are in OLD operation and in organic liquids service, as defined in this subpart, you may elect to comply with the provisions of this subpart for all such equipment leak components. You must identify in the Notification of Compliance Status required by § 63.2382(b) the provisions with which you will comply.

(d) *Overlap of subpart EEEE with other regulations for flares for the OLD source category.* (1) Beginning no later than the compliance dates specified in § 63.2342(e), flares that are subject to § 60.18 of this chapter or § 63.11 and used as a control device for an emission point subject to the requirements in Tables 2 or 2b to of this subpart are required to comply only with § 63.2380. At any time before the compliance dates specified in § 63.2342(e), flares that are subject to § 60.18 or § 63.11 and elect to comply with § 63.2380 are required to comply only with § 63.2380.

(2) Beginning no later than the compliance dates specified in § 63.2342(e), flares that are subject to § 63.987 and used as a control device for an emission point subject to the requirements in Tables 2 or 2b to this subpart are required to comply only with § 63.2380. At any time before the compliance dates specified in

§ 63.2342(e), flares that are subject to §§ 63.987 and elect to comply with § 63.2380 are required to comply only with § 63.2380.

(3) Beginning no later than the compliance dates specified in § 63.2342(e), flares that are subject to the requirements of subpart CC of this part and used as a control device for an emission point subject to the requirements in Tables 2 or 2b to this subpart are required to comply only with the flare requirements in subpart CC of this part.

(e) * * *

(2) Equipment leak components. After the compliance dates specified in § 63.2342, if you are applying the applicable recordkeeping and reporting requirements of another subpart of this part to the valves, pumps, and sampling connection systems associated with a transfer rack subject to this subpart that only unloads organic liquids directly to or via pipeline to a non-tank process unit component or to a storage tank subject to the other subpart of this part, the owner or operator must be in compliance with the recordkeeping and reporting requirements of this subpart EEEE. If complying with the recordkeeping and reporting requirements of the other subpart satisfies the recordkeeping and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the recordkeeping and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the recordkeeping and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(d).

■ 20. Section 63.2402 is amended by revising paragraph (b) introductory text and adding paragraph (b)(5) to read as follows:

§ 63.2402 Who implements and enforces this subpart?

* * * * *

(b) In delegating implementation and enforcement authority for this subpart to a State, local, or eligible tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not delegated to the State, local, or eligible tribal agency.

* * * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 21. Section 63.2406 is amended by:

■ a. Revising the definition of ''Annual average true vapor pressure'';

■ b. Adding in alphabetical order a definition for ''Condensate'';

■ c. Revising the definitions of ''Deviation'' and ''Equipment leak component'';

■ d. Adding in alphabetical order a definition for ''Force majeure event'';

■ e. Revising the definition of ''Organic liquid'';

■ f. Adding definitions in alphabetical order for ''Pressure relief device'' and ''Relief valve''; and

■ g. Revising the definition of ''Vapor-tight transport vehicle''.

The revisions and additions read as follows:

§ 63.2406 What definitions apply to this subpart?

* * * * *

Annual average true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in Table 1 to this subpart in the stored or transferred organic liquid. For the purpose of determining if a liquid meets the definition of an organic liquid, the vapor pressure is determined using conditions of 77 degrees Fahrenheit and 29.92 inches of mercury. For the purpose of determining whether an organic liquid meets the applicability criteria in Table 2 to this subpart, items 1 through 6, or Table 2b to this subpart, items 1 through 3, use the actual annual average temperature as defined in this subpart. The vapor pressure value in either of these cases is determined:

(1) Using standard reference texts;

(2) By ASTM D6378–18a (incorporated by reference, see § 63.14) using a vapor to liquid ratio of 4:1; or

(3) Using any other method that the EPA approves.

* * * * *

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions as specified in § 63.2. Only those condensates downstream of the first point of custody transfer after the production field are considered condensates in this subpart.

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or portion thereof, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Before July 7, 2023, fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during SSM. On and after July 7, 2023, this paragraph no longer applies.

* * * * *

Equipment leak component means each pump, valve, and sampling connection system used in organic liquids service at an OLD operation. Valve types include control, globe, gate, plug, and ball. Relief and check valves are excluded.

Force majeure event means a release of HAP, either directly to the atmosphere from a safety device or discharged via a flare, that is demonstrated to the satisfaction of the Administrator to result from an event beyond the owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the OLD operation (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the OLD operation that impacts the OLD operation's ability to operate.

* * * * *

Organic liquid means:

(1) Any non-crude oil liquid, non-condensate liquid, or liquid mixture that contains 5 percent by weight or greater of the organic HAP listed in Table 1 to this subpart, as determined using the procedures specified in § 63.2354(c).

(2) Any crude oils or condensates downstream of the first point of custody transfer.

(3) Organic liquids for purposes of this subpart do not include the following liquids:

(i) Gasoline (including aviation gasoline), kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils;

(ii) Any fuel consumed or dispensed on the plant site directly to users (such as fuels for fleet refueling or for refueling marine vessels that support the operation of the plant);

(iii) Hazardous waste;

(iv) Wastewater;

(v) Ballast water; or

(vi) Any non-crude oil or non-condensate liquid with an annual average true vapor pressure less than 0.7 kilopascals (0.1 psia).

* * * * *

Pressure relief device means a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices.

Relief valve means a type of pressure relief device that is designed to re-close after the pressure relief.

* * * * *

Vapor-tight transport vehicle means a transport vehicle that has been demonstrated to be vapor-tight. To be considered vapor-tight, a transport vehicle equipped with vapor collection equipment must undergo a pressure change of no more than 250 pascals (1 inch of water) within 5 minutes after it is pressurized to 4,500 pascals (18 inches of water). This capability must be demonstrated annually using the procedures specified in Method 27 of 40 CFR part 60, appendix A–8. For all other transport vehicles, vapor tightness is demonstrated by performing the U.S. DOT pressure test procedures for tank cars and cargo tanks.

* * * * *

■ 22. Table 2 to subpart EEEE of Part 63 is revised to read as follows:

Table 2 to Subpart EEEE of Part 63—Emission Limits

If you own or operate . . .	And if . . .	Then you must . . .[1]
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons)[2].	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3-percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of subpart SS of this part and § 63.2346(l); OR ii. Comply with the work practice standards specified in Table 4 to this subpart, items 1.a, 1.b, or 1.c for tanks storing liquids described in that table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
2. A storage tank at an existing affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
3. A storage tank at a reconstructed or new affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <37.9 cubic meters (10,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
4. A storage tank at a reconstructed or new affected source with a capacity ≥37.9 cubic meters (10,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥0.7 kilopascals (0.1 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
5. A storage tank at a reconstructed or new affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or 1.a.ii of this table.

If you own or operate . . .	And if . . .	Then you must . . .[1]
6. A storage tank at an existing, reconstructed, or new affected source meeting the capacity criteria specified in Table 2 to this subpart, items 1 through 5.	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3-percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of subpart SS of this part and § 63.2346(l); OR ii. Comply with the work practice standards specified in Table 4 to this subpart, item 2.a or 2.b, for tanks storing the liquids described in that table.
7. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons and less than 10 million gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 98 percent by weight and is being loaded into a transport vehicle.	i. For all such loading arms at the rack, reduce emissions of total organic HAP (or, upon approval, TOC) from the loading of organic liquids either by venting the emissions that occur during loading through a closed vent system to any combination of control devices meeting the applicable requirements of subpart SS of this part and § 63.2346(l), achieving at least 98 weight-percent HAP reduction, OR, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3-percent oxygen for combustion devices using supplemental combustion air; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3 of Table 4 to this subpart.
8. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is ≥10 million gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is less than 800,000 gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 25 percent by weight and is being loaded into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.
10. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.

[1] Beginning no later than the compliance dates specified in § 63.2342(e), for each storage tank and low throughput transfer rack, if you vent emissions through a closed vent system to a flare then you must comply with the requirements specified in § 63.2346(k).

[2] Beginning no later than the compliance dates specified in § 63.2342(e), the tank capacity criteria, liquid vapor pressure criteria, and emission limits specified for storage tanks at an existing affected source in Table 2 to this subpart, item 1 no longer apply. Instead, you must comply with the requirements as specified in § 63.2346(a)(5) and Table 2b to this subpart.

■ 23. Subpart EEEE of Part 63 is amended by adding Table 2b to read as follows:

Table 2b to Subpart EEEE of Part 63—Emission Limits For Storage Tanks At Certain Existing Affected Sources

As stated in § 63.2346(a)(5), beginning no later than the compliance dates specified in § 63.2342(e), the requirements in this Table 2b to this subpart apply to storage tanks at an existing affected source in lieu of the requirements in Table 2 to this subpart, item 1 for storage tanks at an existing affected source.

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <75.7 cubic meters (20,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3- percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to a flare meeting the requirements of §§ 63.983 and 63.2380, or by venting emissions through a closed vent system to any combination of nonflare control devices meeting the applicable requirements of subpart SS of this part and § 63.2346(l); OR. ii. Comply with the work practice standards specified in Table 4 to this subpart, items 1.a, 1.b, or 1.c for tanks storing liquids described in that table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or ii of this table.
2. A storage tank at an existing affected source with a capacity ≥75.7 cubic meters (20,000 gallons) and <151.4 cubic meters (40,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥13.1 kilopascals (1.9 psia).	i. See the requirement in item 1.a.i or ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or ii of this table.
3. A storage tank at an existing affected source with a capacity ≥151.4 cubic meters (40,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil or condensate and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥5.2 kilopascals (0.75 psia).	i. See the requirement in item 1.a.i or ii of this table.
	b. The stored organic liquid is crude oil or condensate.	i. See the requirement in item 1.a.i or ii of this table.

■ 24. Table 3 to subpart EEEE of Part 63 is revised to read as follows:

Table 3 to Subpart EEEE of Part 63—Operating Limits—High Throughput Transfer Racks

As stated in § 63.2346(e), you must comply with the operating limits for existing, reconstructed, or new affected sources as follows:

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	Maintain the daily average fire box or combustion zone temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
	Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the condenser exit less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Achieve a pressure reduction during each adsorption bed regeneration cycle greater than or equal to the pressure reduction established during the design evaluation or performance test that demonstrated compliance with the emission limit.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
7. A flare to comply with an emission limit in Table 2 to this subpart	a. Except as specified in item 7.d of this table, comply with the equipment and operating requirements in § 63.987(a); AND b. Except as specified in item 7.d of this table, conduct an initial flare compliance assessment in accordance with § 63.987(b); AND c. Except as specified in item 7.d of this table, install and operate monitoring equipment as specified in § 63.987(c). d. Beginning no later than the compliance dates specified in § 63.2342(e), comply with the requirements in § 63.2380 instead of the requirements in § 63.987 and the provisions regarding flare compliance assessments at § 63.997(a), (b), and (c).
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(b), and monitor the control device in accordance with that plan.

■ 25. Table 4 to subpart EEEE of Part 63 is revised to read as follows:

Table 4 to Subpart EEEE of Part 63—Work Practice Standards

As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .

For each . . .	You must . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5 or Table 2b to this subpart, items 1 through 3.	a. Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), if you elect to meet 40 CFR part 63, subpart WW (control level 2) requirements as an alternative to the emission limit in Table 2 to this subpart, items 1 through 5 or the emission limit in Table 2b to this subpart, items 1 through 3; OR.

For each . . .	You must . . .
	b. Comply with the requirements in §§ 63.2346(l) and 63.984 for routing emissions to a fuel gas system or back to a process; OR. c. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.
2. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, item 6.	a. Comply with the requirements in §§ 63.2346(l) and 63.984 for routing emissions to a fuel gas system or back to a process; OR b. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.
3. Transfer rack subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. If the option of a vapor balancing system is selected, install and, during the loading of organic liquids, operate a system that meets the requirements in Table 7 to this subpart, item 3.b.i and item 3.b.ii, as applicable; OR b. Comply with the requirements in §§ 63.2346(l) and 63.984 during the loading of organic liquids, for routing emissions to a fuel gas system or back to a process.
4. Pump, valve, and sampling connection that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Comply with § 63.2346(l) and the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H.
5. Transport vehicles equipped with vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles, and comply with the provisions in 40 CFR 60.502(f), (g), (h), and (i), except substitute the term transport vehicle at each occurrence of tank truck or gasoline tank truck in those paragraphs.
6. Transport vehicles equipped without vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT qualification and maintenance requirements in 49 CFR part 180, subpart E for cargo tanks and subpart F for tank cars.

■ 26. Table 5 to subpart EEEE of Part 63 is revised to read as follows:

Table 5 to Subpart EEEE of Part 63—Requirements for Performance Tests and Design Evaluations

As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 10, and each existing affected source using a nonflare control device to comply with an emission limit in Table 2b to this subpart, items 1 through 3.	a. A performance test to determine the organic HAP (or, upon a pproval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) Method 1 or 1A in appendix A–1 of 40 CFR part 60, as appropriate.	(A) Sampling port locations and the required number of traverse points.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) the outlet sampling site must be located at each control device prior to any releases to the atmosphere.
			(2) Method 2, 2A, 2C, 2D, or 2F in appendix A–1 of 40 CFR part 60, or Method 2G in appendix A–2 of 40 CFR part 60, as appropriate.	(A) Stack gas velocity and volumetric flow rate.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(3) Method 3A or 3B in appendix A–2 of 40 CFR part 60, as appropriate [1].	(A) Concentration of CO_2 and O_2 and dry molecular weight of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(4) Method 4 in appendix A–3 of 40 CFR part 60.	(A) Moisture content of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
			(5) Method 25 or 25A in appendix A–7 of 40 CFR part 60, as appropriate. Method 316, Method 320[4], or Method 323 in appendix A of this part if you must measure formaldehyde. You may not use Methods 320[2 4] or 323 for formaldehyde if the gas stream contains entrained water droplets.	(A) TOC and formaldehyde emissions, from any control device.	(i) The organic HAP used for the calibration gas for Method 25A in appendix A–7 of 40 CFR part 60 must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which TOC emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20-ppmv exhaust concentration.
			(6) Method 18[3] in appendix A–6 of 40 CFR part 60 or Method 320[2 4] of appendix A to this part, as appropriate. Method 316, Method 320[2 4], or Method 323 in appendix A of this part for measuring formaldehyde. You may not use Methods 320 or 323 if the gas stream contains entrained water droplets.	(A) Total organic HAP and formaldehyde emissions, from non-combustion control devices.	(i) During the performance test, you must establish the operating parameter limits within which total organic HAP emissions are reduced by the required weight-percent.
	b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device.	§ 63.985(b)(1)(i)			During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent for storage tanks or 98 weight-percent for transfer racks, or, as an option for nonflare combustion devices, to 20-ppmv exhaust concentration.
2. Each transport vehicle that you own that is equipped with vapor collection equipment and is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	A performance test to determine the vapor tightness of the tank and then repair as needed until it passes the test.		Method 27 of appendix A of 40 CFR part 60.	Vapor tightness	The pressure change in the tank must be no more than 250 pascals (1 inch of water) in 5 minutes after it is pressurized to 4,500 pascals (18 inches of water).

[1] The manual method in American Society of Mechanical Engineers (ASME) PTC 19.10–1981-Part 10 (2010) (incorporated by reference, see § 63.14) may be used instead of Method 3B in appendix A–2 of 40 CFR part 60 to determine oxygen concentration.

[2] All compounds quantified by Method 320 of appendix A to this part must be validated according to Section 13.0 of Method 320.

[3] ASTM D6420–18 (incorporated by reference, see § 63.14) may be used instead of Method 18 of 40 CFR part 60, appendix A–6 to determine total HAP emissions, but if you use ASTM D6420–18, you must use it under the conditions specified in § 63.2354(b)(3)(ii).

[4] ASTM D6348–12e1 (incorporated by reference, see § 63.14) may be used instead of Method 320 of appendix A to this part under the following conditions: the test plan preparation and implementation in the Annexes to ASTM D6348–12e1, Sections A1 through A8 are mandatory; the percent (%) R must be determined for each target analyte (Equation A5.5); %R must be 70% $\geq$ R $\leq$ 130%; if the %R value does not meet this criterion for a target compound, then the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest); and the %R value for each compound must be reported in the test report and all field measurements must be corrected with the calculated %R value for that compound by using the following equation: Reported Results = ((Measured Concentration in Stack))/(%R) $\times$ 100.

■ 27. Table 6 to subpart EEEE of Part 63 is amended by revising the rows for items 1 and 2 to read as follows:

Table 6 to Subpart EEEE of Part 63—Initial Compliance With Emission Limits

As stated in §§ 63.2370(a) and 63.2382(b), you must show initial compliance with the emission limits for existing, reconstructed, or new affected sources as follows:

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6, or Table 2b to this subpart, items 1 through 3.	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 95 weight-percent, or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 95 weight-percent or as an option for nonflare combustion devices to an exhaust concentration ≤20 ppmv.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	Reduce total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids by at least 98 weight-percent, or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 98 weight-percent or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.

■ 28. Table 7 to subpart EEEE of Part 63 is amended by revising the rows for items 1, 3, and 4 to read as follows:

TABLE 7 TO SUBPART EEEE OF PART 63—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2, or Table 2b to this subpart, items 1 through 3.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. You meet the requirements in § 63.984(b) and submit the statement of connection required by § 63.984(c).
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. You meet the requirements in § 63.2346(a)(4).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. You visually inspect each internal floating roof before the initial filling of the storage tank and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. See item 1.c.i of this table.
3. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Load organic liquids only into transport vehicles having current vapor tightness certification as described in Table 4 to this subpart, item 5 and item 6.	i. You comply with the provisions specified in Table 4 to this subpart, item 5 or item 6, as applicable.

TABLE 7 TO SUBPART EEEE OF PART 63—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header. ii. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into containers directly (*e.g.,* no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.
	c. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
4. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service ≥300 hours per year at an existing, reconstructed, or new affected source.	a. Carry out a leak detection and repair program or equivalent control according to one of the subparts listed in Table 4 to this subpart, item 4.	i. You specify which one of the control programs listed in Table 4 to this subpart you have selected, OR ii. Provide written specifications for your equivalent control approach.

■ 29. Table 8 to subpart EEEE of Part 63 is revised to read as follows:

Table 8 to Subpart EEEE of Part 63—Continuous Compliance With Emission Limits

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table:

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6 or Table 2b to this subpart, items 1 through 3.	a. Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 95 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378, except as specified in item 1.a.iii of this table; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit. iii. Beginning no later than the compliance dates specified in § 63.2342(e), if you use a flare, you must demonstrate continuous compliance by performing CMS monitoring and collecting data according to requirements in § 63.2380.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Reduce total organic HAP (or, upon approval, TOC) emissions during the loading of organic liquids from the closed vent system and control device by 98 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378 during the loading of organic liquids, except as specified in item 2.a.iii of this table; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit during the loading of organic liquids. iii. Beginning no later than the compliance dates specified in § 63.2342(e), if you use a flare, you must demonstrate continuous compliance by performing CMS monitoring and collecting data according to requirements in § 63.2380.

■ 30. Table 9 to subpart EEEE of Part 63 is revised to read as follows:

Table 9 to Subpart EEEE of Part 63—Continuous Compliance With Operating Limits—High Throughput Transfer Racks

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the operating limits for existing, reconstructed, or new affected sources according to the following table:

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average fire box or combustion zone, as applicable, temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording fire box or combustion zone, as applicable, temperature every 15 minutes and maintaining the daily average fire box temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Replacing the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
	b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND.	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
	c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the absorber exhaust and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Continuously monitoring the scrubbing liquid temperature and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	ii. Maintaining the difference between the specific gravities greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		iii. Keeping the applicable records required in § 63.998.[1]
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the exit of the condenser less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration at the condenser exit and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.[1]
	b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.[1]
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the daily average organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.[1]
	b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Maintaining the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test; AND	ii. Maintaining the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	Achieve greater than or equal to the pressure reduction during the adsorption bed regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit.	iii. Achieving greater than or equal to the pressure reduction during the regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		iv. Keeping the applicable records required in § 63.998.[1]

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.[1]
	b. Replace the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Replacing the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.[1]
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Except as specified in item 7.e of this table, maintain a pilot flame or flare flame in the flare at all times that vapors may be vented to the flare (§ 63.11(b)(5)); AND	i. Continuously operating a device that detects the presence of the pilot flame or flare flame; AND ii. Keeping the applicable records required in § 63.998.[1]
	b. Except as specified in item 7.e of this table, maintain a flare flame at all times that vapors are being vented to the flare (§ 63.11(b)(5)); AND	i. Maintaining a flare flame at all times that vapors are being vented to the flare; AND ii. Keeping the applicable records required in § 63.998.[1]
	c. Except as specified in item 7.e of this table, operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)); AND EITHER	i. Operating the flare with no visible emissions exceeding the amount allowed; AND ii. Keeping the applicable records required in § 63.998.[1]
	d.1. Except as specified in item 7.e of this table, operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(7) and (8) and with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii); OR	i. Operating the flare within the applicable exit velocity limits; AND ii. Operating the flare with the gas heating value greater than the applicable minimum value; AND iii. Keeping the applicable records required in § 63.998.[1]
	d.2. Except as specified in item 7.e of this table, adhere to the requirements in § 63.11(b)(6)(i).	i. Operating the flare within the applicable limits in 63.11(b)(6)(i); AND ii. Keeping the applicable records required in § 63.998.[1]
	e. Beginning no later than the compliance dates specified in § 63.2342(e), comply with the requirements in § 63.2380 instead of the requirements in § 63.11(b).	i. Operating the flare with the applicable limits in § 63.2380; AND ii. Keeping the applicable records required in § 63.2390(h).
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(b) and monitor the control device in accordance with that plan.	Submitting a monitoring plan and monitoring the control device according to that plan.

[1] Beginning no later than the compliance dates specified in § 63.2342(e), the referenced provisions specified in § 63.2346(l) do not apply.

■ 31. Table 10 to subpart EEEE of Part 63 is revised to read as follows:

Table 10 to Subpart EEEE of Part 63—Continuous Compliance With Work Practice Standards

As stated in §§ 63.2378(a) and (b) and 63.2386(c)(6), you must show continuous compliance with the work practice standards for existing, reconstructed, or new affected sources according to the following table:

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
1. Internal floating roof (IFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity, and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5, or Table 2b to this subpart, items 1 through 3.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR once per year (§ 63.1063(d)(2)); AND ii. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(1), (d)(1), and (e)); AND iii. Keeping the tank records required in § 63.1065.
2. External floating roof (EFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5, or Table 2b to this subpart, items 1 through 3.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each EFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(2), (d), and (e)); AND ii. Performing seal gap measurements on the secondary seal of each EFR at least once every year, and on the primary seal of each EFR at least every 5 years (§ 63.1063(c)(2), (d), and (e)); AND iii. Keeping the tank records required in § 63.1065.
3. IFR or EFR tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5, or Table 2b to this subpart, items 1 through 3.	a. Repair the conditions causing storage tank inspection failures (§ 63.1063(e)).	i. Repairing conditions causing inspection failures: Before refilling the storage tank with organic liquid, or within 45 days (or up to 105 days with extensions) for a tank containing organic liquid; AND ii. Keeping the tank records required in § 63.1065(b).
4. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards
	c. Route emissions to a fuel gas system or back to a process.	i. Continuing to meet the requirements specified in § 63.984(b)
5. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service at least 300 hours per year.	a. Comply with § 63.2346(l) and the requirements of 40 CFR part 63, subpart TT, UU, or H.	i. Carrying out a leak detection and repair program in accordance with the subpart selected from the list in item 5.a of this table
6. Storage tank at an existing, reconstructed, or new affected source meeting any of the tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6, or Table 2b to this subpart, items 1 through 3.	a. Route emissions to a fuel gas system or back to the process.	i. Continuing to meet the requirements specified in § 63.984(b)

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
	b. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a storage tank using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a storage tank occurs during a quarter, then monitoring of the vapor balancing system is not required

■ 32. Table 11 to subpart EEEE of Part 63 is revised to read as follows:

Table 11 to Subpart EEEE of Part 63—Requirements for Reports

As stated in § 63.2386(a), (b), and (f), you must submit compliance reports and startup, shutdown, and malfunction reports according to the following table:

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report or Periodic Report	a. The information specified in § 63.2386(c), (d), (e). If you had a SSM during the reporting period and you took actions consistent with your SSM plan, the report must also include the information in § 63.10(d)(5)(i) except as specified in item 1.e of this table; AND.	Semiannually, and it must be postmarked or electronically submitted by January 31 or July 31, in accordance with § 63.2386(b).
	b. The information required by 40 CFR part 63, subpart TT, UU, or H, as applicable, for pumps, valves, and sampling connections; AND.	See the submission requirement in item 1.a of this table.
	c. The information required by § 63.999(c); AND.	See the submission requirement in item 1.a of this table.
	d. The information specified in § 63.1066(b) including: Notification of inspection, inspection results, requests for alternate devices, and requests for extensions, as applicable.	See the submission requirement in item 1.a of this table.
	e. Beginning no later than the compliance dates specified in § 63.2342(e), the requirement to include the information in § 63.10(d)(5)(i) no longer applies..	
2. Immediate SSM report if you had a SSM that resulted in an applicable emission standard in the relevant standard being exceeded, and you took an action that was not consistent with your SSM plan.	a. The information required in § 63.10(d)(5)(ii)	i. Except as specified in item 2.a.ii of this table, by letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)). ii. Beginning no later than the compliance dates specified in § 63.2342(e), item 2.a.i of this table no longer applies.

■ 33. Table 12 to subpart EEEE of Part 63 is revised to read as follows:

Table 12 to Subpart EEEE of Part 63—Applicability of General Provisions to Subpart EEEE

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.1	Applicability	Initial applicability determination; Applicability after standard established; Permit requirements; Extensions, Notifications.	Yes.

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations.	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; Circumvention, Severability.	Yes.
§ 63.5	Construction/Reconstruction.	Applicability; Applications; Approvals	Yes.
§ 63.6(a)	Compliance with Standards/O&M Applicability.	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in this subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in this subpart or by equivalent time period (*e.g.,* 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)(i)	Operation and Maintenance.	Operate to minimize emissions at all times	Yes, before July 7, 2023. No, beginning on and after July 7, 2023. See § 63.2350(d) for general duty requirement.
§ 63.6(e)(1)(ii)	Operation and Maintenance.	Correct malfunctions as soon as practicable	Yes, before July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.6(e)(1)(iii)	Operation and Maintenance.	Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(2)	[Reserved].		
§ 63.6(e)(3)	SSM Plan	Requirement for SSM plan; content of SSM plan; actions during SSM.	Yes, before July 7, 2023; however, (1) the 2-day reporting requirement in paragraph § 63.6(e)(3)(iv) does not apply and (2) § 63.6(e)(3) does not apply to emissions sources not requiring control. No, beginning on and after July 7, 2023.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	Yes, before July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Opacity/Visible Emission Standards.	You must comply with opacity and visible emission standards at all times except during SSM.	Yes, before July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.6(h)(2)–(9)	Opacity/Visible Emission Standards.	Requirements for compliance with opacity and visible emission standards.	No; except as it applies to flares for which Method 22 observations are required as part of a flare compliance assessment.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt any source from requirement to comply with this subpart.	Yes.
§ 63.7(a)(2)	Performance Test Dates.	Dates for conducting initial performance testing; must conduct 180 days after compliance date.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test.	Yes.

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.7(b)(2)	Notification of Rescheduling.	If you have to reschedule performance test, must notify Administrator of rescheduled date as soon as practicable and without delay.	Yes.
§ 63.7(c)	Quality Assurance (QA)/Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM.	Yes, before July 7, 2023. No, beginning on and after July 7, 2023. See § 63.2354(b)(6).
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes; however, for transfer racks per §§ 63.987(b)(3)(i)(A)–(B) and 63.997(e)(1)(v)(A)–(B) provide exceptions to the requirement for test runs to be at least 1 hour each.
§ 63.7(e)(4)	Authority to Require Testing.	Administrator has authority to require testing under CAA section 114 regardless of § 63.7 (e)(1)–(3).	Yes.
§ 63.7(f)	Alternative Test Method.	Procedures by which Administrator can grant approval to use an intermediate or major change, or alternative to a test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status; keep data for 5 years.	Yes, except this subpart specifies how and when the performance test and performance evaluation results are reported.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard.	Yes.
§ 63.8(a)(2)	Performance Specifications.	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring of Flares	Monitoring requirements for flares in § 63.11	Yes, before July 7, 2023; however, flare monitoring requirements in § 63.987(c) also apply before July 7, 2023. No, beginning on and after July 7, 2023. See § 63.2380.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each affected source or after combined with another affected source before it is released to the atmosphere provided the monitoring is sufficient to demonstrate compliance with the standard; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM.	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes, before July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.8(c)(1)(ii)	CMS malfunction not in SSM plan.	Keep the necessary parts for routine repairs if CMS malfunctions.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	Develop a written SSM plan for CMS	Yes, before July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	Yes.

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.8(c)(4)	CMS Requirements	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes; however, COMS are not applicable.
§ 63.8(c)(5)	COMS Minimum Procedures.	COMS minimum procedures	No.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements. Out-of-control periods.	Yes, but only applies for CEMS. Subpart SS of this part provides requirements for CPMS.
§ 63.8(d)(1)–(2)	CMS Quality Control	Requirements for CMS quality control	Yes, but only applies for CEMS. Subpart SS of this part provides requirements for CPMS.
§ 63.8(d)(3)	CMS Quality Control	Must keep quality control plan on record for 5 years; keep old versions.	Yes, before July 7, 2023, but only applies for CEMS. Subpart SS of this part provides requirements for CPMS. No, beginning on and after July 7, 2023. See § 63.2366(c).
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports.	Yes, but only applies for CEMS, except this subpart specifies how and when the performance evaluation results are reported.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes, but subpart SS of this part also provides procedures for approval of CPMS.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least four equally spaced data points; data that cannot be used in average.	Yes; however, COMS are not applicable.
§ 63.9(a)	Notification Requirements.	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2), (4)–(5).	Initial Notifications	Submit notification within 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate (BACT/LAER).	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Sources.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification about use of COMS data; notification that exceeded criterion for relative accuracy alternative.	Yes; however, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/visible emissions, which are due 30 days after; when to submit to federal vs. state authority.	Yes; however, (1) there are no opacity standards and (2) all initial Notification of Compliance Status, including all performance test data, are to be submitted at the same time, either within 240 days after the compliance date or within 60 days after the last performance test demonstrating compliance has been completed, whichever occurs first.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	No. These changes will be reported in the first and subsequent compliance reports.
§ 63.10(a)	Recordkeeping/Reporting.	Applies to all, unless compliance extension; when to submit to federal vs. state authority; procedures for owners of more than one source.	Yes.

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.10(b)(1)	Recordkeeping/Reporting.	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)	Records Related to Startup and Shutdown.	Occurrence of each for operations (process equipment).	Yes, July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.10(b)(2)(ii)	Recordkeeping Relevant to Malfunction Periods and CMS.	Occurrence of each malfunction of air pollution equipment.	Yes, before July 7, 2023. No, beginning on and after July 7, 2023. See § 63.2390(f).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Maintenance on air pollution control equipment	Yes.
§ 63.10(b)(2)(iv)	Recordkeeping Relevant to SSM Periods and CMS.	Actions during SSM	Yes, before July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.10(b)(2)(v)	Recordkeeping Relevant to SSM Periods and CMS.	Actions during SSM	No.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control periods.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)(1)–(14)	Records	Additional records for CMS	Yes.
§ 63.10(c)(15)	Records	Additional records for CMS	Yes, before July 7, 2023. No, beginning on and after July 7, 2023.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to federal or state authority	No. This subpart specifies how and when the performance test results are reported.
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	What to report and when	Yes.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes, before July 7, 2023. No, beginning on and after July 7, 2023. See § 63.2386(d)(1)(xiii).
§ 63.10(e)(1)–(2)	Additional CMS Reports.	Must report results for each CEMS on a unit; written copy of CMS performance evaluation; two-three copies of COMS performance evaluation.	Yes, except this subpart specifies how and when the performance evaluation results are reported; however, COMS are not applicable.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	Yes; however, note that the title of the report is the compliance report; deviations include excess emissions and parameter exceedances.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports.	Requirement to revert to quarterly submission if there is an excess emissions or parameter monitoring exceedance (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.
§ 63.10(e)(3)(vi)–(viii).	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS (now called deviations); requires all of the information in §§ 63.10(c)(5)–(13) and 63.8(c)(7)–(8).	No. This subpart specifies the reported information for deviations within the compliance reports.
§ 63.10(e)(4)	Reporting COMS Data	Must submit COMS data with performance test data.	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.11(b)	Flares	Requirements for flares	Yes, before July 7, 2023; § 63.987 requirements apply, and the section references § 63.11(b). No, beginning on and after July 7, 2023. See § 63.2380.
§ 63.11(c), (d), and (e).	Control and work practice requirements.	Alternative work practice for equipment leaks	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference.	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information.	Public and confidential information	Yes.

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 7, 145, 155, et al.

Activities and Operations of National Banks and Federal Savings Associations; National Bank and Federal Savings Association Digital Activities; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7, 145 and 160

[Docket ID OCC–2020–0003]

RIN 1557–AE74

Activities and Operations of National Banks and Federal Savings Associations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency is issuing a notice of proposed rulemaking to revise and reorganize its regulations relating to the activities and operations of national banks and Federal savings associations. This proposal would clarify and codify recent OCC interpretations, integrate certain regulations for national banks and Federal savings associations, and update or eliminate outdated regulatory requirements that no longer reflect the modern financial system.

DATES: Comments must be received on or before August 3, 2020.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Activities and Operations of National Banks and Federal Savings Associations'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta Regulations.gov Classic:* Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC 2020–0003'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC–2020–0003'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or click on the document title and click the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site please call (877)–378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email to *regulations@erulemakinghelpdesk.com.*

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0003'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:Regulations.gov Classic:* Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2020–0003'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC–2020–0003'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting Materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site please call (877)–378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email to *regulations@erulemakinghelpdesk.com.*

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

FOR FURTHER INFORMATION CONTACT: Beth Kirby, Assistant Director, Valerie Song, Assistant Director, Heidi Thomas, Special Counsel, or Chris Rafferty, Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY, (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of the Comptroller of the Currency (OCC) periodically reviews its regulations to eliminate outdated or otherwise unnecessary regulatory provisions and, where possible, to clarify or revise requirements imposed on national banks and Federal savings associations. These reviews are in addition to the OCC's decennial review of its regulations as required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).[1] These reviews also consider, where appropriate, opportunities to integrate rules that apply to national banks with similar rules that apply to Federal savings associations in light of the transfer to the OCC of all functions of the former Office of Thrift Supervision (OTS) relating to Federal savings association by Title III of the Dodd-

[1] Public Law 104–208 (1996), codified at 12 U.S.C. 3311(b). Section 2222 of EGRPRA requires that, at least once every 10 years, the OCC along with the other Federal banking agencies and the Federal Financial Institutions Examination Council (FFIEC) conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Specifically, EGRPRA requires the agencies to categorize and publish their regulations for comment, eliminate unnecessary regulations to the extent that such action is appropriate, and submit a report to Congress summarizing their review. The agencies completed their second EGRPRA review on March 2017 and published their report in the **Federal Register**. 82 FR 15900 (March 30, 2017).

Frank Wall Street Reform and Consumer Protection Act.[2]

As part of this process, the OCC is proposing to revise and reorganize subparts A through D of 12 CFR part 7, Activities and Operations. Specifically, the OCC is proposing new regulations or updates to existing regulations to address developing issues and industry practices and to clarify OCC interpretive positions. For example, proposed revisions to subpart A include new regulations covering tax equity finance transactions, derivatives activities, and payment system memberships. Proposed revisions to subpart B address corporate governance issues, such as expanding the ability of national banks to choose corporate governance provisions under State or other law, clarifying permissible anti-takeover provisions, and adding provisions relating to capital stock-related activities of national banks. The OCC also is proposing to update and integrate rules relating to bank hours and closings in subpart C and to update rules relating to loan production and deposit production offices and remote service units in subpart D and move these sections to subpart A to improve the organization of part 7.[3] As a companion to this proposed rule, the OCC is separately issuing an Advance Notice of Proposed Rulemaking (ANPR), published elsewhere in this issue of the **Federal Register** as a separate document, that requests comment on subpart E of 12 CFR part 7 and 12 CFR part 155, the OCC's rules on electronic banking activities.

The OCC also is proposing more general changes throughout part 7 including removing outdated or superfluous regulations; consolidating related regulations into one section; and making various technical changes throughout part 7. In addition, the OCC is proposing to integrate a number of rules in part 7 to include Federal savings associations.

This proposed rule accompanies other OCC efforts to modernize OCC rules, remove unnecessary burden, and clarify requirements, including the proposed rule published in the **Federal Register** on April 2, 2020, which would amend requirements in 12 CFR part 5 for national banks and Federal savings associations that seek to engage in certain corporate transactions or activities.[4]

II. Description of the Proposed Rule

Subpart A—National Banks and Federal Savings Association Powers

Activities That are Part of, or Incidental to, the Business of Banking (New § 7.1000)

Section 7.5001 identifies the criteria that the OCC uses to determine whether an electronic activity is authorized for national banks as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh) or other statutory authority. While this section details those criteria in the context of electronic activities, the OCC uses these same criteria to determine whether any activity is part of, or incidental to, the business of banking. To confirm the broader applicability of the criteria listed in § 7.5001, the OCC is proposing to remove the word ''electronic'' from this section and move § 7.5001 to subpart A of part 7 as new § 7.1000. As part of this move, the proposal would redesignate current § 7.1000 as § 7.1024. These proposed changes would better organize OCC rules and clarify that the criteria of this new § 7.1000 may apply to any potential national bank activity and not just those that are electronic in nature. The OCC believes that new § 7.1000 belongs at the beginning of part 7 because it provides the framework for all national bank powers that follow in subpart A.

The OCC also proposes a technical change to § 7.1000(c)(1). Specifically, the proposed rule would amend this provision to clarify that the four-factor test set forth in this section to determine activities authorized as part of the business of banking applies to activities not specifically included in 12 U.S.C. 24(Seventh) or other statutory authority. Activities that are specifically included in 12 U.S.C. 24(Seventh) or other statutory authority are by express statutory language within the business of banking. This clarification reflects the OCC's long-standing use of the four-factor test to determine whether an activity not expressly included in a statute is within the business of banking.[5]

National Bank Acting as Finder (§ 7.1002)

The OCC is proposing a technical change to its finder regulation at § 7.1002 and invites comment on the inclusion of Federal savings association finder activities in part 7. The OCC has long permitted a national bank to act as a finder to bring together buyers and sellers of financial and nonfinancial products and services.[6] The OCC's regulations include two separate rules relating to permissible national bank finder activities. Section 7.1002, which codifies OCC interpretive letters, provides that finder activities are part of the business of banking.[7] This section also describes permissible finder activities; provides an illustrative, non-exclusive list of permissible finder activities; clarifies that a national bank's finder authority does not allow it to engage in brokerage activities that have not been found to be permissible for national banks; and authorizes a national bank to advertise and accept fees for finder services unless otherwise prohibited by Federal law. Section 7.5002 provides that a national bank generally may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that is otherwise permissible. Section 7.5002(a)(1) clarifies that a national bank may act as electronic finders and includes a list of permissible electronic finder activities.[8]

The OCC is proposing to amend its regulations by adding a new paragraph (8) to § 7.1002(b) that would cross-reference the permissible electronic finder activities listed in § 7.5002(a)(1). This change would reference all examples of permissible finder activities for national banks in one rule.

While finder activities are part of the business of banking for a national bank, a Federal savings association may engage in a finder activity only to the extent that the activity is incidental to Federal savings association powers authorized under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq*).[9] The former OTS determined that,

[2] Public Law 111–203, 124 Stat. 1376 (2010) (transferring to the OCC all functions of the former OTS relating to Federal savings associations).

[3] The OCC has separately proposed a rule that would amend 12 CFR 7.4001. *See* 84 FR 64229 (Nov. 21, 2019) (Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred). The OCC also has issued an interim final rule that amends 12 CFR 7.1001 and 7.1003. *See* 85 FR 31943 (May 28, 2020) (Director, Shareholder, and Member Meetings).

[4] 85 FR 18728.

[5] The Supreme Court has held that the business of banking is not limited to the enumerated powers listed in 12 U.S.C. 24(Seventh) but encompasses more broadly activities that are part of or incidental to the business of banking. *NationsBank of N.C., N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. 251, 258–60 (1995).

[6] *See, e.g.,* OCC Interpretive Letter No. 607 (Aug. 24, 1992).

[7] *See, e.g.,* OCC Interpretive Letter No. 824 (Feb. 27, 1998).

[8] The OCC's ANPR on National Bank and Federal Savings Association Use of Digital Technology, published elsewhere in this issue of the **Federal Register** as a separate document, also requests comment on whether to add more examples to the electronic finder activities list in 12 CFR 7.5002(a)(1).

[9] The OCC and the predecessor agencies previously responsible for the supervision of Federal savings associations ''have long recognized that federal savings associations possess 'incidental'

Continued

if certain factors are met, a Federal savings association may collect fees for referring customers to third parties [10] and may provide services and products to customers through a third-party discount program [11] as activities incidental to their statutorily enumerated powers. The OCC also has recognized Federal savings association finder authority in its Retail Nondeposit Investment Products Booklet of the Comptroller's Handbook.[12]

The OCC invites comment on whether it should add a separate provision to § 7.1002 to set forth Federal savings association finder authority. This provision could provide that a Federal savings association may engage in finder activities to the extent that those activities are incidental to Federal savings association powers expressly authorized under the HOLA. The OCC also could include in this provision a list of Federal savings association finder activities that the former OTS or the OCC have determined are permissible. This list could codify prior interpretations and include collecting fees for referring customers to third parties and providing services and products to customers through a third-party discount program. The OCC specifically requests comment on what other Federal savings association finder activities the OCC could add to this list.

Money Lent by a National Bank at Banking Offices or at Facilities Other Than Banking Offices (§ 7.1003)

Twelve U.S.C. 81 provides that a national bank must transact business in the place specified in its organization certificate and in any branches established or maintained in accordance with 12 U.S.C. 36. The OCC interprets 12 U.S.C. 81 to mean that money is deemed to be lent at a bank's main office unless there is a sufficient nexus tying the transaction to another location, in which case that location must be licensed as a branch office.

Twelve U.S.C. 36 and 12 CFR 5.30 define ''branch'' as a place of business established by the national bank where ''deposits are received, or checks paid, or money lent.'' Section 7.1003 provides that for purposes of what constitutes a branch within the meaning of 12 U.S.C. 36 and 12 CFR 5.30, ''money'' is deemed to be ''lent'' only at the place, if any, where the borrower in-person receives loan proceeds directly from bank funds either: (1) From the lending bank or its operating subsidiary or (2) at a facility that is established by the lending bank or its operating subsidiary. Section 7.1003(b) further provides that a borrower may receive loan proceeds directly from bank funds in person at a place that is not the bank's main office and is not licensed as a branch without violating 12 U.S.C. 36, 12 U.S.C. 81, and 12 CFR 5.30, provided that a third party is used to deliver the funds and the place is not established by the lending bank or its operating subsidiary. This paragraph defines a third party to include a person who satisfies the requirements of § 7.1012(c)(2) or one who customarily delivers loan proceeds directly from bank funds under accepted industry practice, such as an attorney or escrow agent at a real estate closing.

The OCC is proposing to amend § 7.1003 to incorporate an OCC interpretation that further clarifies when the OCC considers money to be lent at a location other than the main office. Specifically, proposed paragraph (c) would provide that a national bank operating subsidiary may distribute loan proceeds from its own funds or bank funds directly to the borrower in person at offices the operating subsidiary established without violating 12 U.S.C. 36, 12 U.S.C. 81, and 12 CFR 5.30 if the operating subsidiary provides similar services on substantially similar terms and conditions to customers of unaffiliated entities, including unaffiliated banks.[13] Based on Supreme Court precedent,[14] OCC interpretations have recognized that a facility must provide a convenience to bank customers that gives the bank a competitive advantage in obtaining customers for the facility to be considered a branch for purposes of 12 U.S.C. 36 and 12 CFR 5.30.[15] The OCC has found that a facility where members of the public, customers, and noncustomers alike receive substantially similar services on substantially similar terms is not a facility created to attract bank customers and thus the establishment of this type of facility offers no competitive advantage to the national bank.[16] Proposed paragraph (c) reflects this OCC precedent.

Establishment of a Loan Production Office by a National Bank (§ 7.1004)

Credit Decisions at Other Than Banking Offices of a National Bank (§ 7.1005)

Section 7.1004 provides that a national bank may use the services of persons not employed by the bank for originating loans. It also provides that an employee or agent of a national bank or its subsidiary may originate a loan at a site other than the main office or a branch office of the bank without violating the branching and place of business requirements of 12 U.S.C. 36 and 12 U.S.C. 81 if the loan is approved and made at the main office or a branch office of the bank or at an office of an operating subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank. Section 7.1005 provides that a national bank and its operating subsidiary may make a credit decision regarding a loan application at a site other than the main office or a branch office of the bank provided that ''money'' is not ''lent'' at those other sites within the meaning of § 7.1003.

OCC precedent has explained that the purpose of § 7.1004 is not to prescribe where certain activities must be performed but rather to help avoid violations of the branching laws by defining a ''safe harbor'' of loan origination activities that will not constitute branching.[17] Further, the OCC has stated that this section does not purport to address the outer limits of what is permissible nor establish any affirmative requirement for where loan production office (LPO)-originated loans must be approved or made.[18] The OCC has found that § 7.1004 should not be read to require loans originated at LPOs to be approved and made at a main or branch office, and that it is permissible for loans originated at an LPO to be approved at separate back office facilities not located on the premises of, or contiguous to, a main or branch office of the bank.[19] These OCC interpretations were codified in § 7.1005. When the OCC adopted § 7.1005, the agency noted that it was retaining § 7.1004 despite the potential tension between the two sections because § 7.1004 is a judicially recognized safe harbor permitting national banks to undertake certain

powers, *i.e.,* powers that are incident to the express powers of federal savings associations as set forth in the Home Owners' Loan Act.'' OTS Op. Acting Ch. Couns. at 3 (Mar. 25, 1994).

[10] OTS Op. Ch. Couns. (May 5, 2000).

[11] OTS Op. Ch. Couns. (Aug. 5, 2008).

[12] OCC, Comptroller's Handbook: Retail Nondeposit Investment Products Booklet at 9 (Jan. 2015).

[13] *See* Interpretive Letter No. 814 (Nov. 3, 1997).

[14] In *First National Bank in Plant City* v. *Dickinson,* the Supreme Court explained that because the purpose of 12 U.S.C. 36 is to maintain competitive equality, it is relevant in construing the term ''branch'' to consider whether the facility gives the bank an advantage in its competition for customers. *First National Bank in Plant City* v. *Dickinson,* 396 U.S. 122, 136–137 (1969).

[15] *See* OCC Interpretive Letter No. 635 (July 23, 1993). *See also* 61 FR 60342, 60347 (Nov. 27, 1996).

[16] *See* OCC Interpretive Letter No. 814 (Nov. 3, 1997).

[17] OCC Interpretive Letter No. 634 (July 23, 1993).

[18] *Id.;* OCC Interpretive Letter No. 667 (Oct. 12, 1994).

[19] OCC Interpretive Letter No. 667 (Oct. 12, 1994).

lending related activities without violating branching statutes, and that it did not view a lending related activity that falls outside the scope of § 7.1004, as with § 7.1005 regarding the making of credit decisions, as necessarily violating branching statutes.[20]

The OCC is proposing to amend § 7.1004 so that it reflects the broader permissibility provided by current § 7.1005, to describe the permitted activities as ''loan production activities,'' and to remove § 7.1005 to simplify and streamline its rules. As proposed, paragraph (a) of § 7.1004 would provide that a national bank or its operating subsidiary may engage in loan production activities at a site other than the main office or a branch office of the bank. The proposal would permit a national bank or its operating subsidiary to solicit loan customers, market loan products, assist persons in completing application forms and related documents to obtain a loan, originate and approve loans, make credit decisions regarding a loan application, and offer other lending-related services such as loan information and applications at a loan production office without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that ''money'' is not deemed to be ''lent'' at that site within the meaning of § 7.1003 and the site does not accept deposits or pay withdrawals. This description of activities is not intended to alter the description of ''money lent'' in § 7.1003 nor affect the scope of activities that are permissible for a national bank to perform at a non-branch location. Rather, the OCC is proposing this description to provide greater clarity to what activities a national bank may conduct at a loan production office. As a technical change, the OCC would redesignate former paragraph (a) as paragraph (b) and amend it to reference loan production activities instead of originating loans.

Loan Agreement Providing for a National Bank Share In Profits, Income, or Earnings or for Stock Warrants (§ 7.1006)

The OCC is proposing to amend § 7.1006 to include Federal savings associations. Section 7.1006 permits a national bank to take as consideration for a loan: (1) A share in the profit, income, or earnings from a business enterprise of a borrower or (2) a stock warrant issued by the business enterprise of a borrower provided the bank does not exercise the warrant. This arrangement is known as an ''equity kicker.'' Section 7.1006 further provides that the national bank may take the share or stock warrant in addition to, or in lieu of, interest. However, the national bank may not condition the borrower's ability to repay principal on the value of the profit, income, earnings of the business enterprise or upon the value of the warrant received.

The former OTS and its predecessor, the Federal Home Loan Bank Board, permitted a Federal savings association to take a share of profit, income, or earnings as consideration for a loan as not inconsistent with Federal savings association lending authority under HOLA [21] to maintain parity with the commercial lending practices of national banks.[22] In addition, the former OTS permitted a Federal savings association to acquire warrants as an incidental power of its authority to make secured loans for commercial, corporate, or business purposes under HOLA and applied the same restrictions on exercising those warrants as applied to national banks.[23] By amending § 7.1006 to include Federal savings associations, the proposed rule would codify these interpretations to clarify this authority and to better provide parity with national banks.

National Bank Holding Collateral Stock as Nominee (§ 7.1009)

Current § 7.1009 permits a national bank to transfer stock it has received as collateral for a loan into the bank's name as nominee.[24] The OCC believes this provision is unnecessary and is proposing to delete it. The OCC permits a bank to perfect its security interests in collateral under applicable State laws consistent with the Uniform Commercial Code.[25] In situations where a bank holds stock as collateral, typically one method to perfect that interest under State law is to list the bank as nominee on the stock certificate. However, recent versions of the Uniform Commercial Code [26] provide other potentially less burdensome methods to perfect an interest in securities collateral, for example, by obtaining control over a brokerage account holding the stock. Therefore, the OCC believes that § 7.1009 is not necessary. Removing this provision would streamline OCC regulations while not substantively changing the methods national banks may use to perfect their interests in stock or other securities obtained as collateral for loans, which continue to include being listed as nominee if permitted under State law.

Postal Services by National Banks and Federal Savings Associations (§ 7.1010)

Section 7.1010 provides that a national bank may operate a postal substation on banking premises and receive income from it. It describes the types of services permitted and states that a bank may advertise them to attract customers to the bank. It also requires the bank to operate the substation in accordance with the rules and regulations of the United States Postal Service (USPS) and to keep books and records on it, which are subject to inspection by the USPS, separate from those of other banking operations.

The OCC is proposing to amend § 7.1010 to also apply to Federal savings associations, consistent with the position taken in agency guidance.[27] The OCC also proposes to replace the words ''operate a postal substation'' with ''provide postal services'' because the term ''Postal substation'' is no longer used in USPS regulations. This change in terminology would clarify that national banks and Federal savings associations may offer a limited menu of postal services and are not required to operate full-service post offices.

National Bank Receipt of Stock From a Small Business Investment Company (§ 7.1015)

Fifteen U.S.C. 682(b)(1) permits a national bank to invest in one or more small business investment companies (SBICs) or in any entity established solely to invest in SBICs, provided that the total amount of all SBIC investments does not exceed five percent of the bank's capital and surplus.[28] Section 7.1015 provides that a national bank may purchase stock of a SBIC and receive benefits of such stock ownership. This section further provides that the receipt and retention of a dividend from a SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24(Seventh).

The OCC is proposing to amend § 7.1015 to provide that a national bank

[20] 61 FR 4849, 4851 (Feb. 9, 1996).

[21] 12 U.S.C. 1464(c)(2).

[22] Unpublished letter from Jordan Luke, Gen. Couns., Federal Home Loan Bank Board (Dec. 19, 1988), *available on Westlaw:* 1988 WL 1022319 (O.T.S.).

[23] *Id.*

[24] *See* 12 U.S.C. 24(Seventh).

[25] *See* OCC, Comptroller's Handbook: Asset-Based Lending at 21–22 (2017).

[26] Primarily Articles 8 and 9, which have been substantively adopted by all U.S. jurisdictions. *See https://www.uniformlaws.org/acts/ucc.*

[27] The former OTS previously concluded that Federal savings associations are authorized to operate a postal substation on premises. *See* OTS Op. Acting Ch. Couns., Mar. 25, 1994.

[28] National banks also may invest in SBICs pursuant to their community development investment authority *See* 12 U.S.C. 24(Eleventh) and 12 CFR part 24.

may invest in a SBIC or in any entity established solely to invest in SBICs, and that purchasing stock in a SBIC is one example of this type of investment. This amendment would more closely align § 7.1015 to 15 U.S.C. 682(b). In addition, the OCC is proposing to amend § 7.1015 to provide that a national bank's SBIC investments are subject to appropriate capital limitations.

Fifteen U.S.C. 682(b)(2) provides a Federal savings association with similar authority to invest in SBICs.[29] This authority is codified in OCC regulations at 12 CFR 160.30. To clarify this authority, the OCC is proposing to add a reference to Federal savings association SBIC authority in § 7.1015 and cross-reference to 12 CFR 160.30.

The OCC also is proposing to amend § 7.1015 to clarify that a national bank or Federal savings association may invest in a SBIC that is either (1) already organized and has obtained a license from the Small Business Administration, or (2) in the process of being organized. The OCC has previously interpreted this authority to permit a national bank to invest in a SBIC that is in the process of being organized.[30]

Letters of Credit and Independent Undertakings (§ 7.1016)

The OCC proposes to amend 12 CFR 7.1016, which provides that a national bank may issue letters of credit and other independent undertakings to customers, to include Federal savings associations. Section 7.1016 provides that a national bank entering into an independent undertaking should not expose itself to undue risk and also outlines certain safety and soundness considerations for these activities. Specifically, § 7.1016 provides that a national bank should consider at a minimum: (1) Whether the terms make clear the independence of the undertaking; (2) whether the amount of the undertaking is limited; (3) whether the undertaking is limited in duration or, if not, whether the bank has an ability to end the undertaking or demand cash collateral from the applicant; and (4) whether the undertaking will be collateralized or include a reimbursement right. Section 7.1016 also provides that certain undertakings require particular protections against credit, operational, and market risk and outlines the protections a bank should or must take in specific circumstances.[31] Section 7.1016 further provides that the national bank should possess operational expertise that is commensurate with the sophistication of its independent undertaking activities. Finally, § 7.1016 requires a bank to accurately reflect its undertakings in its records.

Pursuant to § 160.50, a Federal savings association may issue letters of credit and may issue other independent undertakings as are approved by the OCC, subject to the restrictions in § 160.120. Section 160.120 contains provisions that are largely similar to the provisions applicable to national banks in § 7.1016.[32] However, §§ 160.50 and 160.120 provide that, unless it is a letter of credit, a Federal savings association only may issue independent undertakings that have been approved by the OCC. The OTS explained when it updated its regulation that Federal savings associations were not traditionally involved in international banking transactions, which utilized these independent undertakings, as were national banks.[33] The OTS stated that the approval requirement provided ''the appropriate balance between giving thrifts greater flexibility to potentially engage in new types of transactions while at the same time ensuring that thrifts have properly evaluated the risks posed by a particular transaction consistent with prudent banking practice.'' [34]

The OCC is proposing to amend § 7.1016 to apply it to Federal savings associations, and to remove §§ 160.50 and 160.120, because of the similarities between the national bank and Federal savings association independent undertaking regulations. As a result, a Federal savings association would no longer be limited to issuing non-letter of credit independent undertakings approved by the OCC. The industry's rules of practice have improved since the former OTS promulgated the regulation in 1996. In addition, the operations of Federal savings associations have evolved over the past two decades and those Federal savings associations that issue independent undertakings are familiar with non-letters of credit independent undertakings and related supervisory expectations. Furthermore, the OCC expects national banks and Federal savings associations to have operational expertise commensurate with the sophistication of its letters of credit or independent undertaking activities.[35] The OCC believes that this expectation is sufficient to ensure that all OCC-supervised institutions properly evaluate the risks associated with these activities. For these reasons, the OCC finds that the OCC approval requirement for non-letter of credit independent undertakings issued by Federal savings associations is no longer necessary.

The OCC also is proposing to clarify that Federal branches and agencies of foreign banks may issue letters of credit and other independent undertakings, consistent with the conditions outlined in § 7.1016.[36] Finally, the OCC is proposing technical changes to the footnote to reflect updates to the laws and rules of practice cited.

National Bank Participation in Financial Literacy Programs (§ 7.1021)

Twelve CFR 7.1021 provides that a national bank may participate in a financial literacy program on the premises of, or at a facility used by, a school. Section 7.1021 also provides that the school premises or facility will not be considered a branch of the bank if: (1) The bank does not establish and operate the school premises or facility on which the financial literacy program is conducted; and (2) the principal purposes of the program is educational.

The OCC is proposing to amend § 7.1021 to clarify that the purpose of this section is whether the facilities or premises used for such a program would be considered a branch of the national bank under 12 U.S.C. 36. Facilities or premises are only considered to be branches of a national bank if they are established and operated by the national bank. The proposal also would provide that the OCC considers the establishment and operation in this

[29] As with national banks, Federal savings associations also may invest in SBICs pursuant to their community development investment authority. *See* 12 U.S.C. 1464(c)(4)(B) and 12 CFR 5.59 (Service corporations of Federal savings associations).

[30] *See* OCC Interpretive Letter No. 832 (June 18, 1998).

[31] Specifically, § 7.1016(b)(2) provides that: (1) If the undertaking is to honor by delivery of an item of value other than money, the bank should ensure that market fluctuations affecting the value of the item will not cause the bank to assume undue market risk; (2) if the undertaking provides for automatic renewal, the terms for renewal should be consistent with the bank's ability to make any necessary credit assessments prior to renewal; and (3) if a bank issues an undertaking for its own account, the underlying transaction for which it is issued must be within the bank's authority and must comply with any safety and soundness requirements applicable to that transaction.

[32] *See* 61 FR 50951, 50958 (Sept. 30, 1996).

[33] *Id.*

[34] *Id.*

[35] 12 CFR 7.1016(b)(3) and 12 CFR 160.120(b)(3).

[36] Section 4(b) of the International Banking Act, 12 U.S.C. 3102(b) (Pub. L. 95–369) provides that the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location. *See also* 12 CFR 28.13.

context on a case by case basis, considering the facts and circumstances. However, the OCC has previously determined [37] that whether a financial literacy program is a branch under section 36 may be evaluated under the safe harbor test for messenger services established by third parties set forth in § 7.1012(c)(2) and that a premises or facility used for a school savings program is clearly established by a third party if it meets this safe harbor test. The proposal would codify this interpretation by providing that a premises is not a branch of the national bank if the safe harbor test in § 7.1012(c)(2) applicable to messenger services established by third parties is satisfied and that the factor discussed in § 7.1012(c)(2)(i), regarding whether the bank employs the person who provide the service, can be met if bank employee participation in the financial literacy program consists of managing the program or conducting or engaging in financial education activities provided the school or other community organization retains control over the program and over the premises or facilities at which the program is held. The OCC believes that this should provide clarity with respect to the meaning of ''establish and operate'' in § 7.1021.

Consistent with current practice, the OCC also is expanding the scope of financial literacy programs beyond schools to encompass other community-based organizations, such as non-profit organizations, that provide financial literacy programs. In addition, the OCC is moving the definition of financial literacy program to the beginning of the section to clarify that, while a financial literacy program is a program for which the primary purpose is educational, this is not a factor in determining whether the premises or facility is a branch for purposes of section 36.

The OCC is not adding Federal savings associations to this section because they are not subject to the branching requirements in section 36. However, the OCC notes that participation in financial literacy programs is a permissible activity for both national banks and Federal savings associations.

National Banks' Authority To Buy and Sell Exchange, Coin, And Bullion (§ 7.1022)

Federal Savings Associations, Prohibition on Industrial or Commercial Metal Dealing or Investing (§ 7.1023)

The OCC also is proposing a technical change to §§ 7.1022 and 7.1023. Section 7.1022 prohibits a national bank from acquiring or selling industrial or commercial metal for purposes of dealing or investing. Section 7.1022 excludes industrial and commercial metals from the national bank authority to ''buy and sell exchange, coin, and bullion.'' Section 7.1023 similarly prohibits a Federal savings association from dealing or investing in industrial or commercial metal. Both sections require a national bank and a Federal savings association to dispose of any industrial or commercial metal held as a result of dealing or investing in that metal as soon as practicable, but not later than one year from the effective date of the regulation. The OCC may grant up to four separate one-year extensions if the bank makes a good faith effort to dispose of the metal and the retention of the metal for an additional year is not inconsistent with the safe and sound operation of the bank. The OCC is proposing a technical change to both sections to replace the words ''one year from the effective date of this regulation'' with the actual effective date of that final rule, April 1, 2018.

Tax Equity Finance Transactions (New § 7.1025)

The OCC and the courts have long held that a national bank may use its 12 U.S.C. 24(Seventh) lending authority to engage in transactions that do not take the form of a traditional loan to accommodate the demands of the market, provided the transaction is the functional equivalent of a loan.[38] The OCC has interpreted this authority to permit a national bank to engage in tax equity finance (TEF) transactions.[39] Although the OCC has not previously addressed the permissibility of TEF transactions for a Federal savings association, OCC regulations authorize a Federal savings association to engage in loan equivalent transactions pursuant to 12 U.S.C. 1464,[40] and the former OTS permitted a Federal savings association to participate in certain transactions in order to receive tax credits and other tax benefits.[41] The OCC is proposing to codify and clarify these interpretations of 12 U.S.C. 24(Seventh) and 1464 in new § 7.1025.[42]

Proposed § 7.1025(a) would permit a national bank and Federal savings association to engage in a TEF transaction pursuant to 12 U.S.C. 24(Seventh) and 1464 if the transaction is the functional equivalent of a loan, as provided in proposed paragraph (c), and if a TEF transaction satisfies the requirements of proposed paragraph (d).

Proposed § 7.1025(b) would define a ''tax equity finance transaction'' as a transaction in which a national bank or Federal savings association provides equity financing to fund a project that generates tax credits and other tax benefits and the use of an equity-based structure allows the transfer of those credits to the bank or savings association. Paragraph (b) also would define ''capital and surplus'' by cross-referencing to its definition in the OCC's lending limit rule, 12 CFR 32.[43] As defined in the lending limit rule, for qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at 12 CFR part 3, ''capital and surplus'' means a qualifying community banking organization's tier 1 capital, as used under 12 CFR 3.12, plus a qualifying community banking organization's allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the Consolidated Reports of Condition and Income (Call Report). For all other national banks and Federal savings associations, ''capital and surplus'' means a national bank's or savings association's tier 1 and tier 2 capital, calculated under the risk-based capital standards applicable to the institution as reported in the Call Report, plus the

[37] *See* OCC Interpretive Letter No. 839 (August 3, 1998).

[38] *See M & M Leasing Corp.* v. *Seattle First Nat'l Bank*, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978). *See also* OCC Interpretive Letter No. 1048 (Dec. 21, 2005); Corporate Decision 99–07 (March 26, 1999); Corporate Decision 98–17 (March 27, 1998); Interpretive Letter No. 867 (June 1, 1999).

[39] *See* OCC Interpretive Letter No. 1048 (Dec. 21, 2005), OCC Interpretive Letter No. 1139 (Nov. 13, 2013), OCC Interpretive Letter No. 1141 (Apr. 22, 2014). *See* also 26 U.S.C. 48 (energy ITC) and 26 U.S.C. 45 (energy PTC). Internal Revenue Service (IRS) rules govern tax credit availability.

[40] 12 CFR 160.41 (Leasing).

[41] *See, e.g.,* OTS Op. Ch. Couns. (Feb. 9, 2004) (New Market Tax Credit Program) and OTS Op. Ch. Couns. (Nov. 10, 1994) (low-income housing tax credit partnership).

[42] A national bank or Federal savings association may be able to participate in TEF transactions under an alternative authority, including community development and public welfare investment authority under 12 U.S.C. 24(Eleventh) and 12 CFR 24.

[43] The OCC recently amended the definition of ''capital and surplus'' in 12 CFR 32.2 in its recent community bank leverage ratio rule. *See* 84 FR 61776 (November 13, 2019).

balance of a national bank's or Federal savings association's allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, not included in the bank's or savings association's tier 2 capital, for purposes of the calculation of risk-based capital, as reported in the national bank's or savings association's Call Report.

Under proposed paragraph (c), a TEF transaction would qualify as the functional equivalent of a loan if it meets eight requirements that derive from OCC interpretations. First, the TEF transaction structure must be necessary for making the tax credits and other tax benefits available to the national bank or Federal savings association. The OCC requests comment on whether national banks or Federal savings associations routinely obtain legal opinions regarding the availability of tax credits in connection with these types of finance transactions.

Second, the TEF transaction must be of limited tenure and not indefinite. Under this requirement, a national bank or Federal savings association would need to be able to achieve its targeted return in a reasonable time, and the TEF transaction would need to have a defined termination point. A national bank or Federal savings association could satisfy this requirement if the TEF transaction will terminate within a reasonable time of the transaction's initiation or if a project sponsor has an option to purchase a national bank's or Federal savings association's interest at or near fair market value. The national bank or Federal savings association cannot control whether it retains the interest indefinitely. The proposed rule would permit a national bank or Federal savings association to retain a limited investment interest if that interest is required by law to obtain continuing tax benefits from the TEF transaction.

Third, the tax benefits and other payments received by the national bank or Federal savings association from the TEF transaction must repay the investment and provide an implied rate of return. As a result of this proposed requirement, the national bank's or Federal savings association's underwriting could not place undue reliance on the value of any residual stake in the project and the proceeds of disposition following the expiration of the tax credits' compliance period.

Fourth, the national bank or Federal savings association must not rely on appreciation of value in the project or property rights underlying the project for repayment. As discussed in OCC Interpretive Letter 1139, wind turbines, solar panels, and other ancillary equipment are not considered real property under 12 U.S.C. 29, and acquisition of interests in real estate incidental to the provision of financing is not inconsistent with 12 U.S.C. 29.

Fifth, the national bank or Federal savings association must use underwriting and credit approval criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for a traditional commercial loan. To comply with this requirement, the documents governing the TEF transaction should contain terms and conditions equivalent to those found in documents governing typical lending relationships and transactions.

Sixth, the national bank or Federal savings association must be a passive investor in the transaction and must be unable to direct the affairs of the project company. This means that the national bank or Federal savings association would not be able to direct day-to-day operations of the project. However, the OCC would not consider temporary management activities in the context of foreclosure or similar proceedings as violating this requirement.

Seventh, the national bank or Federal savings association must appropriately account for the transaction initially and on an ongoing basis and document contemporaneously its accounting assessment and conclusion. Although TEF transactions can be the functional equivalent of loans pursuant to a national bank's or Federal savings association's lending authority, the accounting treatment of tax equity investments may differ from being a loan.

Proposed paragraph (d) would provide that a national bank or Federal savings association only could engage in TEF transactions if it meets the following four additional requirements. First, the national bank or Federal savings association cannot control the sale of energy, if any, from the project. To satisfy this requirement, a national bank or Federal savings association could enter into a long-term contract with creditworthy counterparties to sell energy from the project, as articulated in OCC Interpretive Letter 1139, or have the project sponsor bear responsibility for selling generated power into the energy market so long as those sales are stabilized by a hedge contract that provides reasonable price and cash flow certainty, as articulated in OCC Interpretive Letter 1141.

Second, the national bank or Federal savings association must limit the total dollar amount of TEF transactions to no more than five percent of its capital and surplus unless the OCC determines, by written approval of a written request by the national bank or Federal savings association to exceed the five percent limit, that a higher aggregate limit will not pose an unreasonable risk to the national bank or Federal savings association and that the tax equity finance transactions in the national bank's or Federal savings association's portfolio will not be conducted in an unsafe or unsound manner. In no case may a bank's or FSA's total dollar amount of TEF transactions exceed fifteen percent of its capital and surplus. As provided for public welfare investments under 12 U.S.C. 24(Eleventh) and 12 CFR 24, a national bank is generally subject to a five percent aggregate investment limit and this limit encourages a national bank to maintain appropriate risk diversification.[44] The OCC specifically requests comment on whether the OCC should use an alternate measure when calculating the aggregate investment limit and whether the proposed five percent aggregate investment limit is appropriate.

Third, the national bank or Federal savings association has provided written notification to the OCC prior to engaging in each TEF transaction that includes its evaluation of the risks posed by the transaction.

Fourth, the national bank or Federal savings association can identify, measure, monitor, and control the associated risks of its tax equity finance transaction activities individually and as a whole on an ongoing basis to ensure that it conducts such activities in a safe and sound manner.

Proposed paragraph (e) would provide that the TEF transaction must be subject to the substantive legal requirements of a loan, including the lending limits prescribed by 12 U.S.C. 84, as implemented by 12 CFR 32, and, if the active investor or project sponsor of the transaction is an affiliate of the national bank or Federal savings association, the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1, as implemented by 12 CFR 223. If a national bank or Federal savings association is relying on its lending authority to participate in a TEF transaction, the TEF transaction would be subject to regulatory requirements applicable to loans, including any applicable legal lending limits and affiliate transaction restrictions to the extent applicable. However, the regulatory capital treatment of a national bank or Federal savings association's participation in a TEF transaction would be determined

[44] 12 U.S.C. 24(Eleventh); 12 CFR 24.4(a).

according to the regulatory capital rule (12 CFR part 3).

The OCC specifically requests comment on whether the final rule should prohibit a national bank or Federal savings association from entering into TEF transactions for projects involving residential installation TEF transactions not involving utility-scale standalone power-generation facilities. The OCC also requests comment on whether the final rule should permit national banks or Federal savings associations to invest in TEF transactions involving detached single-family residences, multi-family residences, or non-utility commercial buildings. Further, the OCC requests comment on whether national banks and Federal savings associations should have other contractual remedies available before entering into a TEF transaction. For example, should the final rule require national banks or Federal savings associations to have the option to replace the sponsor or manager of a project under certain conditions or be required to have indemnifications for breaches of tax representations or other legal risks? In the alternative, should a final rule require a project sponsor or the sponsor's parent to make or guarantee such an indemnification? The OCC also requests comment on whether national banks and Federal savings associations are currently participating in TEF transactions through fund-based structures, and, if not, whether national banks and Federal savings associations want to participate in TEF transactions through fund-based structures. Further, the OCC requests comment on whether there are additional issues related to fund-based structures and whether the final rule should include additional safeguards related to fund-based structures.

Payment System Memberships (New § 7.1026)

Section 7.1026 Payment System Memberships. The OCC has long recognized the authority of national banks to become members of payment systems.[45] Similarly, OTS precedent permits Federal savings associations to join payment systems.[46] In 2014, the OCC published a legal interpretive letter clarifying that national banks may join payment systems with approval from the OCC even when the national bank would be exposed to potentially open-ended liability as a member of the payment system.[47] This interpretive letter also outlined the approval process for this membership. In a subsequent interpretive letter, the OCC modified the process to remove the approval requirement.[48] To provide additional clarity to national banks, the OCC is proposing to add a new § 7.1026 to part 7 that would codify the current process for joining a payment system. The OCC also is proposing to apply this section to Federal savings associations to provide equal treatment to Federal savings associations. The OCC continues to support national banks and Federal savings associations performing their critical roles in payment systems—including as members and architects. The proposal reminds national banks and Federal savings associations of their responsibility for ensuring that payment system membership is conducted in a safe and sound manner.

Definitions. Proposed § 7.1026(a) would provide definitions for several terms used throughout the proposed new section. First, the proposal would define ''appropriate OCC supervisory office'' as the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4.

Second, because different payment systems may use different terminology, the OCC is proposing to define ''member'' to include a national bank or Federal savings association designated as a ''member,'' a ''participant,'' or other similar role by a payment system, including by a payment system that requires the national bank or Federal savings association to share in operational losses or maintain reserves with the payment system to offset potential liability for operational losses. The OCC requests comment on whether the definition of ''member'' should include national banks and Federal savings associations who are indirect members of a payment system.

Third, the rules of some payment systems may not place a cap on the operational liability of its members, but a member's operational liability may be capped in some other way. For example, a jurisdiction could have a law that does not permit open-ended liability. If that law applies to the payment system, it could effectively cap a member's operational liability. In other situations, a member may negotiate a separate agreement with a payment system that allows the member to limit its potential liability and, as a result, the risks of membership in that payment system. To address these situations, the OCC is proposing to define ''open-ended liability'' as liability for operational losses that is not capped under the rules of the payment system and includes indemnifications provided to third parties as a condition of membership in the payment system. For example, national banks and Federal savings associations may provide open-ended indemnifications to Federal Reserve Banks as a condition of membership in particular payment systems.[49] This proposed definition is consistent with the definition of open-ended liability in OCC Interpretive Letter 1140.

Fourth, although memberships in payment systems expose national banks and Federal savings associations to a variety of risks, OCC legal precedent only has addressed whether a national bank may assume open-ended liability for operational losses at the payment system. Thus, the OCC is proposing to define ''operational loss'' as a charge resulting from sources other than defaults by other members of the payment system. Examples of these operational losses would be losses that are due to: Employee misconduct, fraud, misjudgment, or human error; management failure; information systems failures; disruptions from internal or external events that result in the degradation or failure of services provided by the payment system; or payment or settlement delays, constrained liquidity, contagious disruptions, and resulting litigation. These examples are listed in OCC Interpretive Letter 1140.[50] The OCC requests comment as to whether these examples should be included in this definition. If these examples should be included, the OCC also requests comment as to whether the examples listed are appropriate and whether the list is sufficiently comprehensive or whether other examples should be included.

Finally, the OCC recognizes that payment systems transfer funds for a variety of purposes and in varying amounts. For example, wholesale payment systems typically process large dollar transfers while retail payment systems may process a higher volume of transactions at a lower average dollar figure.[51] The OCC proposes to define ''payment system'' in § 7.1026 to mean a ''financial market utility'' as defined

[45] *See, e.g.,* OCC Conditional Approval Letter No. 220 (Dec. 2, 1996); OCC Interpretive Letter No. 993 (May 16, 1997).

[46] *See, e.g.,* 12 CFR 145.17; OTS Op. Ch. Couns. (Sept. 15, 1995); OTS Op. Ch. Couns. (Dec. 22, 1995).

[47] OCC Interpretive Letter No. 1140 (Jan. 13, 2014).

[48] OCC Interpretive Letter No. 1157 (Nov. 12, 2017).

[49] *Id.*

[50] OCC Interpretive Letter No. 1140.

[51] FFIEC IT Examination Handbook, Retail Payment Systems at 2 (Apr. 2016).

in 12 U.S.C. 5462(6), wherever it operates. This definition would therefore include payment systems that operate either in the U.S. or in a foreign jurisdiction. Section 5462(6) provides that ''a financial market utility'' means ''any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person'' with certain exclusions.[52] but would exclude derivatives clearing organizations registered under the Commodity Exchange Act and clearing agencies registered under the Securities Exchange Act of 1934, and foreign organizations that would be considered a derivatives clearing organization or clearing agency were it operating in the United States. The OCC requests comment on whether to include a definition of payment system and, if so, whether this definition and the three exclusions listed are appropriate. The OCC also requests comment on whether the definition appropriately encompasses both foreign and domestic payment systems that national banks and Federal savings associations may join, including whether the proposed language properly excludes foreign equivalents of U.S.-registered derivatives clearing organizations and U.S.-registered clearing agencies.

Notice requirements. Proposed § 7.1026(c) would require a national bank or Federal savings association to provide written notice to the appropriate OCC supervisory office 30 days prior to joining a payment system that would expose it to open-ended liability. If the payment system does not expose the national bank or Federal savings association to open-ended liability, the proposed rule would require the national bank or Federal savings association instead to provide after-the-fact written notice within 30 days of becoming a member of the payment system. The OCC believes membership in a payment system that exposes members to open-ended liability creates additional risks for national banks and Federal savings associations. Thus, the OCC believes prior notice to the OCC is appropriate in these situations.[53]

Content of notice. Proposed § 7.1026(d) would provide that all notices filed under § 7.1026 must include representations that the national bank or Federal savings association has complied with the safety and soundness review required by proposed § 7.1026(e)(1) before joining the payment system and will comply with the safety and soundness review and the notification requirements in proposed § 7.1026(e)(2) and (e)(3) after joining the system. For after-the-fact notices pursuant to paragraph (c)(2), the proposed rule would require a national bank or Federal savings association to include a representation that either the rules of the payment system do not impose liability for operational losses on members or that the national bank's or Federal savings association's liability for operational losses is limited by the rules of the payment system to specific and appropriate limits that do not exceed the legal lending limit specified by 12 CFR part 32 or a lower limit established for the national bank or Federal savings association by the OCC.

Safety and soundness procedures. The OCC relies upon a number of resources to communicate in detail its safety and soundness guidance for national bank and Federal savings association memberships in payment systems.[54] At a minimum, the OCC believes a national bank or Federal savings association must be able to identify, evaluate, and control its risks from membership in a particular payment system both before joining the system and on an ongoing basis.[55] Proposed § 7.1026(e) would require as a prerequisite to joining a payment system and on a continual basis after joining that the national bank or Federal savings association: (1) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability is limited, and (2) measure, monitor, and control those risks. To assist with these requirements in paragraph (e), national banks and Federal savings associations should review the standards outlined in OCC Interpretive Letter 1140 and OCC Banking Circular 235. The proposal also requires a national bank or Federal savings association to notify the appropriate OCC supervisory office if its ongoing risk management identifies a safety and soundness concern, such as a material change to the bank's or savings association's liability or indemnification responsibilities, as soon as that concern is identified and to take appropriate actions to remediate the risk. The OCC requests comment on whether to include any of the criteria outlined in OCC Interpretive Letter 1140 and OCC Banking Circular 235 related to the analysis of: (1) The payment system and its membership criteria and (2) criteria for an effective risk management program to the safety and soundness requirements in paragraph (e).

The OCC recognizes that a national bank's or Federal savings association's liability will vary from payment system to payment system. For example, the rules of some payment systems may expose members to open-ended liability for operational losses but, in reality, the national bank's or Federal savings association's liability is limited by separately negotiated agreements, controlling laws of the jurisdiction, or some other means. Therefore, the proposal also would permit a national bank or Federal savings association to consider its open-ended liability to a particular payment system to be limited for purposes of the review required by proposed § 7.1026(e)(1) and (2) if the

[52] Financial market utility ''does not include: designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered'' nor ''any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.'' 12 U.S.C. 5462(6)(B).

[53] The proposed notice requirement would not apply to existing payment system memberships. However, as explained below, the proposed rule would require national banks and Federal savings associations to continuously inform the OCC of changes to bank operations that would affect the institution's risk profile. Thus, the OCC would be made aware of any payment system membership at a bank or savings association even though the specific timing and information required by this proposed rule would not apply to existing payment systems memberships.

[54] *See, e.g.,* FFIEC IT Examination Handbook on Retail Payment Systems (Apr. 2016); FFIEC IT Examination Handbook on Wholesale Payment Systems (July 2004); Comptroller's Handbook: Payment Systems and Funds Transfer Activities (March 1990); OCC Banking Circular 235 (May 10, 1989).

[55] For example, OCC Banking Circular 235 states ''Management of each national bank is responsible for assessing risk in each payment, clearing, and settlement system in which the bank participates. Management must adopt adequate policies, procedures, and controls with respect to these activities.'' The OCC applied this Banking Circular to Federal savings associations on Oct. 1, 2014.

bank or savings association obtains an independent legal opinion prior to joining the payment system. That legal opinion must describe how the payment system allocates liability for operational losses and conclude the potential liability for the national bank or Federal savings association is limited to specific and appropriate limits that do not exceed the legal lending limit specified by 12 CFR part 32 or a lower limit established for the national bank or Federal savings association by the OCC. This legal opinion would enable the OCC to verify that the liability of the national bank or Federal savings association is limited even though the rules of the payment system do not provide any limits. If there are material changes to the liability or indemnification requirements of the national bank or Federal savings association after the bank or savings association joins the payment system, it can no longer rely on that legal opinion to demonstrate that its liability is limited and must notify the OCC and remediate its risks as described in § 7.1026(e)(3).

Establishment and Operation of a Remote Service Unit by a National Bank (New § 7.1027/§ 7.4003)

Section 7.4003 provides that a bank can establish and operate a remote service unit (RSU) pursuant to 12 U.S.C. 24(Seventh). This section further states that an RSU does not constitute a branch under 12 U.S.C. 36(j) and is not subject to State geographic or operational restrictions or licensing laws. Section 7.4003 defines an RSU as an automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money. This section provides examples of an RSU, specifically listing an automated teller machine (ATMs), automated loan machine, automated device for receiving deposits, personal computer, telephone, and other similar electronic devices. Finally, this section notes that an RSU may be equipped with a telephone or tele-video device that allows contact with bank personnel.

The OCC has historically treated drop boxes as branches based on the 1969 Supreme Court case *First National Bank in Plant City, Florida* v. *Dickinson,* 396 U.S. 122 (1969) (*Plant City*). In *Plant City,* the Supreme Court ruled that a drop box operated by a national bank constituted a branch under 12 U.S.C. 36(j) because it was a place ''at which deposits are received.'' [56] However, in 1996, Congress amended the definition of ''branch'' in 12 U.S.C. 36(j) to provide that ''[t]he term 'branch,' as used in this section, does not include an automated teller machine or a remote service unit.'' [57] Thus, the holding in *Plant City* is legislatively overruled with respect to any banking facility that is an ATM or an RSU.

As noted, the current definition of ''RSU'' in § 7.4003 requires an RSU to be automated.[58] However, upon further consideration, the OCC believes that interpreting both the terms ATM and RSU to require automation leads to incongruous results whereby a non-automated facility such as a drop box is considered a branch whereas an automated facility such as an ATM is not, despite a drop box functioning less like a full branch than an ATM. Furthermore, the OCC finds that drop boxes have more in common with the types of devices already considered RSUs than with full-service branches and therefore are more appropriately classified as RSUs. Accordingly, the OCC is proposing to amend § 7.4003 to expand the definition of an RSU to include either an automated or unstaffed facility and to add drop boxes to the list of RSU examples. This would allow unstaffed facilities, such as drop boxes, to receive the same branching treatment as ATMs and other devices already classified as RSUs such as computers and automated loan machines. This amendment would provide national banks with a significant degree of flexibility and burden relief in the establishment of drop boxes. We note that if the OCC finalizes this amendment, it also will amend 12 CFR 5.30(d) to remove ''drop box'' from the definition of ''branch.'' Because the OCC is proposing changes to this definition in another rulemaking,[59] the OCC has not proposed this technical amendment in this proposed rule.

The OCC also is proposing to move § 7.4003 to subpart A of part 7 as new § 7.1027. This change would place it in the same subpart as other interpretations regarding branching and non-branching functions, thereby improving the organization of part 7.

Establishment and Operation of a Deposit Production Office by a National Bank (New § 7.1028/§ 7.4004)

Section 7.4004 provides that a national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank, and further provides that a deposit production office (DPO) may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. Section 7.4004 specifically states that a DPO is not a branch so long as the site does not receive deposits, pay withdrawals, or make loans. It further states that all deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank or by mail, electronic transfer, or a similar method of transfer. Finally, this section states that a national bank may use the services of persons not employed by the bank in its deposit production activities. As with § 7.4003, the OCC is proposing to move § 7.4004 to subpart A of part 7 as new § 7.1028 to place it in the same subpart as other interpretations regarding branching and non-branching functions. This change would improve the organization of part 7. The OCC is proposing no other changes to this section except for a non-substantive change to its wording.

Combination of National Bank Loan Production Office, Deposit Production Office, and Remote Service Unit (New § 7.1029/§ 7.4005)

Section 7.4005 provides that a location at which a national bank operates a loan production office (LPO), a DPO, and an RSU is not a ''branch'' within the meaning of 12 U.S.C. 36(j) by virtue of that combination of operations because none of these locations individually constitutes a branch.

The OCC is proposing to add language regarding the extent of the permissible interaction between bank personnel and the RSU at a facility that combines a loan production office or a deposit production office with an RSU. The proposed addition provides that an RSU at a combined location must be primarily operated by the customer with at most delimited assistance from bank personnel. This language is based on published OCC precedent.[60]

As with §§ 7.4003 and 7.4004, the OCC also is proposing to move § 7.4005 to subpart A of part 7, as new § 7.1029.

[56] *Plant City,* 396 U.S. 122 at 137.

[57] Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), Public Law 104–208, 110 Stat. 3009, Section 2204 (1996).

[58] In 1997, the OCC issued an interpretive letter which explained that the OCC did not view a drop box to be an RSU because they are not automated. OCC Interpretive Letter No. 772 (March 6, 1997).

[59] *See* Articles of Association, Charters, and Bylaw Amendments (Forms), Comptroller's Licensing Manual (June 19, 2017).

[60] OCC Interpretive Letter No. 1165 (June 28, 2019).

This change would place this section in the same subpart as other interpretations regarding branching and non-branching functions. This change would improve the organization of part 7.

Permissible Derivatives Activities for National Banks (New § 7.1030)

Certain derivatives activities are permissible for national banks under 12 U.S.C. 24(Seventh). A national bank may engage in derivatives activities that reference certain rates or assets that are permissible for bank investment. In addition, a national bank may use derivatives to hedge the risks of its permissible banking activities. Finally, with prior notification to the bank's examiner-in-charge (EIC), a national bank may engage as a financial intermediary in customer-driven derivatives activities. Congress has recognized national banks' authority to engage in derivatives activities in various statutes.[61]

The OCC is proposing to issue a new § 7.1030 addressing derivatives activities permissible for national banks. This new section would incorporate and streamline the framework in OCC interpretive letters discussing bank-permissible derivatives activities. The proposed rule addresses five functional categories of permissible derivatives activities: (1) Derivatives referencing underlyings a national bank may purchase directly as an investment; (2) derivatives with any underlying to hedge the risks arising from bank-permissible activities; (3) derivatives with any underlying that are customer-driven, cash-settled and either perfectly-matched or portfolio-hedged; (4) derivatives with any underlying that are customer-driven and physically-settled by transitory title transfer; and (5) derivatives with any underlying that are customer-driven, physically-settled (other than by transitory title transfer), and physically-hedged.

The proposed rule also would include a requirement that a national bank provide written notice to its EIC prior to engaging in certain derivatives activities. This requirement would be consistent with prior OCC interpretations that have, in connection with affirming the permissibility of a derivatives activity in which a bank has sought to engage, directed the bank to notify its EIC of the details of the bank's business and management practices for performing that particular derivatives activity as a financial intermediary. As with all permissible activities within the business of banking, derivative activities are subject to all other applicable laws and regulations, as well as prudential safety and soundness standards.

The proposal is intended to describe the derivatives activities that are legally permissible for a national bank, including activities that require a bank to provide notice to the OCC prior to engaging in the activity. Providing this information in a regulation is expected to promote clarity and transparency and, ultimately, reduce compliance burden. These proposed changes also can help ensure consistent practices across institutions when a national bank seeks to commence or expand derivatives activities. OCC rules for Federal savings associations are currently set forth at 12 CFR 163.172. This rule provides that a Federal savings association may engage in a transaction involving a financial derivative provided that the savings association is authorized to invest in the assets underlying the derivative, the transaction is safe and sound, and the association's board of directors and management satisfy certain prudential requirements. It also states that, in general, a Federal savings association should engage in a financial derivative transaction only to reduce its risk exposure. Because Federal savings associations have different statutory authority for derivative activities, the OCC has not proposed to include Federal savings associations in § 7.1030. However, the OCC is considering moving § 163.172 to part 7 so that the derivative rules for both charters are located in the same part. This move would better organize OCC rules. The specifics of the proposal are discussed below.

Authority. Paragraph (a) of new § 7.1030 would specify that the section is issued pursuant to 12 U.S.C. 24 (Seventh). Paragraph (a) would further specify that a national bank may only engage in derivatives transactions in accordance with the requirements of this section.

Definitions. In paragraph (b), the proposed rule incorporates several terms that are commonly used in OCC derivatives interpretive letters. The proposed rule also defines certain terms for the first time to promote transparency and consistency among institutions.

- *Customer-driven.* The proposed rule would define ''customer-driven'' to mean a transaction entered into for a customer's valid and independent business purpose. This approach is consistent with OCC interpretive letters.[62] This focus on the customer recognizes that a number of derivatives activities are permissible for a national bank because the bank is acting as a financial intermediary for the customer. A customer-driven transaction would not include a transaction entered into for the purpose of speculating in derivative, currency, commodity, or security prices.[63] Similarly, a customer-driven transaction would not include a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly.

- *Perfectly-matched.* OCC interpretive letters have permitted national banks to engage in various customer-driven, cash settled derivatives transactions if they are perfectly-matched. In determining that national banks may engage in perfectly-matched derivatives, the OCC found it material that the bank would be exposed only to credit risk.[64] OCC interpretive letters have typically used ''perfectly-matched'' to describe two back-to-back transactions in which all economic terms match and in which the bank's primary exposure is credit risk because the matched transactions offset one another's market risk.[65] The OCC proposes to incorporate a substantially similar definition into the rule, with certain clarifications. Specifically, the OCC proposes to define perfectly-matched to mean two back-to-back transactions that offset risk with respect to all economic terms (*e.g.,* amount, maturity, duration, and underlying). Consistent with OCC interpretive letters, this definition would allow transactions to be considered ''perfectly-matched'' despite a difference in price between two derivatives when that difference

[61] *See, e.g.,* 12 U.S.C. 84 (incorporating credit exposure from derivatives into the legal lending limit); Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338, section 206(a)(6) (defining ''identified banking product'' to include any swap agreement except an equity swap with a retail customer); 12 U.S.C. 371c (defining ''covered transaction'' between a bank and its affiliates to include a derivative transaction); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376, (Dodd-Frank Act) section 716 (15 U.S.C. 8305); Dodd-Frank Act section 731 (7 U.S.C. 6s); Dodd-Frank Act section 764 (15 U.S.C. 78o–10).

[62] *E.g.,* OCC Interpretive Letter No. 1160 (Aug. 22, 2018).

[63] OCC interpretations have specified that customer-driven derivatives transactions do not include transactions entered into for the purpose of speculating in the underlying commodity or security prices. *See e.g.,* OCC Interpretive Letter No. 1033 (Jun. 14, 2015); OCC Interpretive Letter No. 892 (September 13, 2000); OCC Interpretive Letter No. 684 (Aug. 4, 1995); OCC No-Objection Letter 90–1 (Feb. 16, 1990).

[64] *See e.g.,* OCC No-Objection Letter No. 87–5 (Jul. 20, 1987).

[65] *See e.g.,* OCC Interpretive Letter No. 1039 (Sept. 13, 2005).

reflects the bank's intermediation fee (in the form of a spread).[66]

• *Portfolio-hedged.* OCC interpretive letters have discussed the permissibility of portfolio hedging with respect to specified types of underlyings. These letters have typically used ''portfolio-hedged'' to describe the practice of hedging the net residual risk position in a portfolio of positions.[67] This method of hedging can reduce transactional costs and operational risks because fewer transactions need to be executed relative to perfectly-matched hedging (in which the bank must offset each transaction on an individual basis).[68] The OCC proposes to incorporate into the rule a substantially similar definition with certain clarifications. Specifically, the OCC proposes to define ''portfolio-hedged'' to mean that a portfolio of transactions is hedged based on net unmatched positions or exposures in the portfolio. The proposed definition refers to unmatched ''positions or exposures'' to clarify that hedging on a portfolio basis may involve hedging based on various risk exposures with different instruments in accordance with applicable policies and procedures and risk limits of the bank.

• *Physical hedging or physically-hedged.* The OCC has issued guidance recognizing that it is permissible for national banks to utilize physical positions, including physical positions in certain commodities, to hedge their customer-driven derivatives activities under certain conditions.[69] The OCC proposes to define ''physical hedging'' and ''physically-hedged'' to mean holding title to or acquiring ownership of an asset (for example, by warehouse receipt or book entry) to manage the risks arising out of permissible derivatives transactions. This definition is intended to be consistent with the description of commodities physical hedging activities that the OCC has identified as permissible in prior interpretive letters and in OCC Bulletin 2015–35. This definition would also apply to physical hedging of customer-driven derivatives referencing securities. As described further below, OCC interpretive letters have recognized the permissibility of physical hedging of customer-driven derivatives with securities (*i.e.,* taking ownership of the relevant security to hedge the customer-driven transaction), including securities that a national bank could not purchase as an investment under 12 CFR part 1.[70] In this context, consistent with prior OCC interpretations,[71] ''physical hedging'' involving securities would include taking ownership of a security, by book-entry or otherwise. Section 7.1030(e) of the proposed rule includes additional requirements applicable to physical hedging activities.[72]

• *Physical settlement or physically-settled.* OCC interpretive letters recognize the permissibility of physical settlement conducted as part of a national bank's derivatives financial intermediation activities in limited circumstances. Under existing interpretive letters and the proposed rule, engaging in physical settlement with respect to an underlying would entail providing a notice to the OCC.[73] The OCC proposes to define ''physical settlement'' and ''physically-settled'' to mean a transaction is settled by accepting title to or acquiring ownership of the underlying asset (whether a commodity, security, or emissions allowance). Physical settlement stands in contrast to cash-settled transactions. In cash-settled transactions, counterparties do not exchange the underlying assets. Rather, they exchange cash payments based on the price of the underlying. For purposes of the proposed rule, physical settlement includes transitory title transfer, which is discussed below.

• *Transitory title transfer.* OCC interpretive letters recognize the permissibility of settling a derivatives transaction by transitory title transfer of the underlying asset in limited circumstances. Transitory title transfer is a means of physical settlement in which a counterparty only briefly holds title to the underlying asset. Consistent with prior OCC interpretive letters,[74] the OCC proposes to define ''transitory title transfer'' to mean a transaction is settled by accepting and immediately relinquishing title to an asset. Transitory title transfer does not entail a bank taking physical possession of a commodity.[75]

• *Underlying.* OCC interpretive letters have long analyzed derivatives transactions based on the underlying reference asset, rate, obligation, index, etc. The OCC proposes to define ''underlying'' as the reference asset, rate, obligation, or index on which the payment obligation(s) between counterparties to a derivatives transaction is based.

The OCC specifically requests comment on whether the proposed definitions accurately reflect the terms used in OCC interpretive letters and whether any of these terms, in particular ''perfectly-matched'' and ''portfolio-hedged,'' would benefit from further clarification. Further, the OCC requests comment on whether national banks would be able to determine effectively which activities meet these definitions and, specifically, whether the OCC should elaborate on the characteristics of transactions that will be considered perfectly-matched or portfolio-hedged. The OCC requests comment on whether it should include a definition of the term ''derivative'' in the final rule and whether a definition of this term would be necessary to appropriately scope the proposed provision and whether any definition would be workable in practice. To the extent a definition of ''derivative'' is necessary, the OCC suggests that it be defined as follows:

A contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indexes, or other assets, except a derivative does not include a:

(1) Retail forex transaction, as defined in 12 CFR 48.2;

(2) Security;

(3) Loan or loan participation;

(4) Deposit;

(5) Banker's acceptance; or

(6) Letter of credit.

The OCC requests comment on this possible definition.

Permissible Derivatives Activities Generally. The proposed rule would address five categories of permissible derivatives activities. These categories are discussed below.

[66] OCC Interpretive Letter No. 1110 (Jan. 30, 2009).

[67] *See e.g.,* OCC Interpretive Letter No. 1073 (Oct. 19, 2006); OCC Interpretive Letter No. 1060 (Apr. 26, 2006).

[68] *See e.g.,* OCC Interpretive Letter No. 1073; OCC Interpretive Letter No. 1060.

[69] OCC Bulletin 2015–35, Quantitative Limits on Physical Commodity Transactions (Aug. 4, 2015); *see also* OCC Interpretive Letter No. 1040 (Sept. 15, 2005); OCC Interpretive Letter No. 935 (May 14, 2002); OCC Interpretive Letter No. 684; OCC Interpretive Letter No. 632 (Jun. 30, 1993).

[70] *See, e.g.,* OCC Interpretive Letter No. 1090 (Oct. 25, 2007); OCC Interpretive Letter No. 1064 (Jul. 13, 2006); OCC Interpretive Letter No. 1018 (Feb. 10, 2005); OCC Interpretive Letter No. 935; OCC Interpretive Letter No. 892.

[71] *See, e.g.,* OCC Interpretive Letter No. 1090; OCC Interpretive Letter No. 1064; OCC Interpretive Letter No. 1018; OCC Interpretive Letter No. 935; OCC Interpretive Letter No. 892.

[72] *See* proposed rule § 7.1030(e).

[73] *See, e.g.,* OCC Interpretive Letter No. 1040; OCC Interpretive Letter No. 935; OCC Interpretive Letter No. 684; OCC Interpretive Letter No. 632.

[74] *See, e.g.,* OCC Interpretive Letter No. 962 (Apr. 21, 2003).

[75] *See, e.g.,* OCC Interpretive Letter No. 1073; OCC Interpretive Letter No. 1060; OCC Interpretive Letter No. 1025 (Apr. 25, 2005); OCC Interpretive Letter No. 962; OCC Interpretive Letter No. 684. *See also* 81 FR 96355 (Dec. 30, 2016) (explaining ''transitory title transfer typically does not entail physical possession of a commodity; the ownership occurs solely to facilitate the underlying transaction and lasts only for a moment in time.'').

• *Derivatives Referencing Underlyings in which a National Bank May Invest Directly.* OCC interpretive letters have recognized that national banks may engage in derivatives activities where the derivative references assets that a national bank could purchase directly as an investment.[76] For example, to manage its investment portfolio, a national bank may use derivatives tied to interest rates, foreign exchange and currency, credit, precious metals, and investment securities. Section 7.1030(c)(1) of the proposed rule would reflect this authority by specifying that a national bank may engage in derivatives transactions with payments based on underlyings that a national bank is permitted to purchase directly as an investment. Paragraph (c)(1) would address only derivatives on underlyings that a national bank would be permitted to purchase directly as principal. For example, an underlying that a national bank could hold only as a nonconforming investment under 12 CFR part 1 or only in satisfaction of debts previously contracted would not be a permissible underlying under this paragraph.

• *Hedging Bank-Permissible Activities with Derivatives.*

Under 12 U.S.C. 24 (Seventh), a national bank may engage in activities that are part of, or incidental to, the business of banking. Risk management activities, such as hedging risks arising from bank activities, are part of the business of banking.[77] Entering into deposit, loan, and other contracts with customers and engaging in other bank-permissible activities involve risks that a bank must manage as part of the business of banking. A bank must manage the risk of those activities to operate profitably and in a safe and sound manner.[78] A bank may engage in hedging activities to manage these risks.[79] The OCC has long recognized that a national bank may hedge its risk using derivatives on underlyings that a national bank would be permitted to invest in directly. For example, a national bank may use futures contracts on exchange, coin, or bullion to hedge activities conducted pursuant to a national bank's statutory authority to buy and sell exchange, coin, or bullion. Similarly, a national bank may use futures to hedge against the risk of loss due to the interest rate fluctuations inherent in bank loan operations, U.S. Treasury Bills, and certificates of deposit.

• *Hedging with Derivatives Referencing Underlyings in which a National Bank May Not Invest Directly.*

The OCC also has recognized that a national bank may hedge the risks of bank-permissible activities using derivatives on underlyings in which a national bank may not invest directly. For example, in OCC Interpretive Letter 896, the OCC recognized that a national bank may purchase cash-settled options on commodity futures contracts to hedge the risk of a commodity that served as collateral on an agricultural loan.[80] Similarly, the OCC has recognized that it is permissible for a trust bank to hedge the market risk associated with the fees it received from its investment advisory activities using equity derivatives.[81] Likewise, the OCC has determined that a national bank may purchase certain equity derivatives to hedge the risks of a deposit account that paid interest based, in part, upon changes in the Standard & Poor's 500 Composite Stock Index.[82] The OCC also has recognized that it is permissible for a national bank to use commodity derivatives to hedge commodity price risk associated with a production payment loan.[83]

The proposed rule would recognize a national bank's authority to hedge bank-permissible activities using derivatives on underlyings in which a bank could not invest directly. Section 7.1030(c)(2) of the proposed rule would provide that a national bank may engage in derivatives transactions with any underlying to hedge the risks arising from bank-permissible activities after providing notice to its EIC.[84]

• *Derivatives Financial Intermediation for Customers.*

OCC interpretive letters have long recognized that a national bank may act as a financial intermediary in customer-driven[85] derivatives transactions on a variety of reference assets as part of the business of banking.[86] These letters have recognized national banks' authority to enter into cash-settled, customer-driven derivatives transactions both on a perfectly-matched[87] and portfolio-hedged basis.[88] The OCC has explained that these derivatives activities ''are, at their essence, modern forms of financial intermediation'' because ''through intermediated exchanges of payments, banks facilitate the flow of funds within our economy and serve important financial risk management and other financial needs of bank customers.''[89]

[76] *See, e.g.,* OCC Interpretive Letter No. 494 (Dec. 20, 1989); OCC Interpretive Letter No. 422 (Apr. 11, 1988); OCC No Objection Letter No. 86–13 (Aug. 8, 1986). *See also,* ''Report to Congress and the Financial Stability Oversight Council Pursuant to Section 620 of the Dodd-Frank Act'' at 86–90 (September 2016), *available at https://www.occ.treas.gov/publications-and-resources/publications/banker-education/files/pub-report-to-congress-sec-620-dodd-frank.pdf* (Section 620 Report).

[77] *See Decision of the Office of the Comptroller of the Currency on the Request by Chase Manhattan Bank, N.A. to Offer the Chase Market Index Investment Deposit* (1988) (MII Deposit); *Investment Company Institute* v. *Ludwig,* 884 F. Supp. 4 (D.D.C. 1995) (upholding Comptroller's decision that the hedged deposit in MII Deposit is a bank-permissible product that did not violate the Glass-Steagall Act).

[78] *See generally* MII Deposit; OCC Interpretive Letter No. 892.

[79] *See* OCC Interpretive Letter No. 896 (Aug. 21, 2000); OCC Interpretive Letter No. 892.

[80] *See* OCC Interpretive Letter No. 896.

[81] *See* OCC Interpretive Letter No. 1037 (Aug. 9, 2005).

[82] *See* MII Deposit.

[83] *See* OCC Interpretive Letter No. 1117 (May 19, 2009).

[84] In contrast, if a national bank engaged in hedging using derivatives on underlyings in which a national bank could invest directly, the bank would not need to provide notice under the proposed rule because this activity could be conducted under proposed rule § 7.1030(c)(1). *See* proposed rule § 7.1030(c)(1), (d).

[85] A ''customer-driven'' transaction is one entered into for a customer's valid and independent business purposes. *See, e.g.,* OCC Interpretive Letter No. 1160; OCC Interpretive Letter No. 892. This definition is addressed in § 7.1030(b) of the proposed rule.

[86] *See, e.g.,* OCC Interpretive Letter No. 937 (Jun. 27, 2002); OCC Interpretive Letter No. 892; No-Objection Letter 87–5.

[87] *See, e.g.,* OCC Interpretive Letter No. 1110 (longevity indexes); OCC Interpretive Letter No. 1101 (Jul. 7, 2008) (certain risk indexes); OCC Interpretive Letter No. 1089 (Oct. 15, 2007); (specific property indexes); OCC Interpretive Letter No. 1081 (May 15, 2007) (specific property indexes); OCC Interpretive Letter No. 1079 (Apr. 19, 2007) (inflation indexes); OCC Interpretive Letter No. 1065 (Jul. 24, 2006) (petroleum products, agricultural oils, grains and grain derivatives, seeds, fibers, foodstuffs, livestock/meat products, metals, wood products, plastics and fertilizer); OCC Interpretive Letter No. 1063 (Jun. 1, 2006) (hogs, lean hogs, pork bellies, lumber, corrugated cardboard, and polystyrene); OCC Interpretive Letter No. 1059 (Apr. 13, 2006) (old corrugated cardboard #11, polypropylene: injection molding (copoly), polypropylene: all grades, Dow Jones AIG Commodity Index); OCC Interpretive Letter No. 1056 (Mar. 29, 2006) (frozen concentrate orange juice, polypropylene); OCC Interpretive Letter No. 1039 (crude oil, natural gas, heating oil, natural gasoline, gasoline, unleaded gas, gasoil, diesel, jet fuel, jet-kerosene, residual fuel oil, naphtha, ethane, propane, butane, isobutane, crack spreads, lightends, liquefied petroleum gases, natural gas liquids, distillates, oil products, coal, emissions allowances, benzene, dairy, cattle, wheat, corn, soybeans, soybean meal, soybean oil, cocoa, coffee, cotton, orange juice, sugar, paper, rubber, steel, aluminum, zinc, lead, nickel, tin, cobalt, iridium, rhodium, freight, high density polyethylene (plastic), ethanol, methanol, newsprint, paper (linerboard), pulp (kraft), and recovered paper (newsprint)).

[88] *See, e.g.,* OCC Interpretive Letter No. 1073 (aluminum, nickel, lead, zinc, and tin); OCC Interpretive Letter No. 1060 (coal); OCC Interpretive Letter No. 1040 (emissions allowances); OCC Interpretive Letter No. 937 (electricity).

[89] OCC Interpretive Letter No. 1110; OCC Interpretive Letter No. 1101; OCC Interpretive Letter No. 1079.

The OCC has also recognized in this context the permissibility of physical settlement by transitory title transfer.[90] As described above, transitory title transfer is a particular means of physical settlement in which a counterparty only briefly holds title to the underlying asset. Transitory title transfer does not entail a bank taking physical possession of a commodity.[91] Further, the OCC has recognized that a national bank may engage in customer-driven financial intermediation derivatives activities that are physically-settled (other than by transitory title transfer) and to physically hedge those derivatives in certain circumstances.[92] OCC interpretive letters have explained that physical delivery can help to reduce the risk in customer-driven commodity derivatives transactions if the activity is conducted in accordance with safe and sound banking practices and would achieve a more accurate and precise hedge than a cash-settled transaction.[93] The OCC subsequently provided guidance on safe and sound practices with respect to physical hedges of commodity-linked financial transactions.[94]

The OCC proposes to incorporate and streamline the framework contained in its interpretive letters addressing derivatives financial intermediation activities in § 7.1030(c)(3) through (5).

First, under the proposed rule, a national bank may engage in customer-driven, cash-settled derivatives transactions on any underlying on a perfectly-matched or portfolio-hedged basis.

Second, the proposed rule would permit a national bank to engage in customer-driven, perfectly-matched or portfolio-hedged derivatives transactions on any underlying that is settled by transitory title transfer.

Third, the proposed rule would permit physically settled and physically hedged transactions that are either perfectly-matched or portfolio-hedged, provided that the national bank does not take physical delivery of any commodity by receipt of physical quantities of the commodity on bank premises and the physical hedging activities meet the requirements in paragraph (e) of the proposed rule. As discussed below, a national bank would need to provide a written notice to its EIC before engaging in financial intermediation activities with derivatives on underlyings in which a national bank could not invest directly.

Relative to prior OCC interpretations, the proposed rule would make fewer distinctions based on the particular underlying or how the national bank hedges its derivatives financial intermediation activity. While prior interpretations typically analyzed both the underlying and the bank's method for hedging the customer-driven derivative (*i.e.,* perfectly matched versus portfolio hedged), the proposal would permit customer-driven, cash-settled derivatives transactions on any underlying, whether perfectly-matched or portfolio-hedged. The OCC recognizes that financial intermediation in derivatives continues to evolve and that the markets for derivatives on underlyings that the OCC has not previously addressed may have sufficient liquidity and depth to allow a bank to conduct the activity as a financial intermediary. Similarly, the OCC recognizes that these same factors may allow a national bank to hedge its customer-driven derivatives activities in evolving ways—whether by portfolio hedging or physical hedging—consistent with conducting the activity as a financial intermediary.

As with any bank-permissible activity, safety and soundness standards apply to derivatives financial intermediation activities. The proposal would include additional requirements for physical hedging activities in § 7.1020(e). The OCC requests comment on whether the rule should reflect any additional standards regarding the underlyings that are permissible for financial intermediation in derivatives and how national banks may hedge these activities. For example, the OCC requests comment on whether the regulation should include additional language relating to the liquidity of the market for permissible customer-driven derivatives activities.

Notice requirement. OCC interpretations have often included a process in which the national bank provides notice to its EIC about the business and management practices the bank will employ in performing the derivatives activity as financial intermediation. Consistent with prior interpretive letters addressing derivatives hedging or financial intermediation activities, proposed § 7.1020(d) would require a national bank to provide written notice to its EIC prior to engaging in activity using derivatives referencing assets that a national bank could not invest in directly.

OCC Interpretive Letter 1160 contemplates that a bank would provide written notification to its EIC prior to commencing a derivatives financial intermediation business for a reference asset addressed in prior OCC interpretive letters. This process replaced the no-objection process that was typically included in prior OCC interpretive letters.[95] The proposal would require a national bank to provide a notice to its EIC prior to commencing a financial intermediation activity in derivatives on underlyings in which a national bank could not invest directly or expanding its financial intermediation activities to include a new category of underlyings.[96]

In addition, OCC interpretive letters have contemplated that a national bank would obtain a no-objection before engaging in hedging activities using derivatives on underlyings in which a national bank could not invest directly.[97] The OCC is not proposing to incorporate an EIC no-objection in connection with these hedging activities, and the proposal would instead create a regulatory requirement to provide notice to the national bank's EIC for these hedging activities recognized in § 7.1030(c)(2) through the proposed notice requirement in §§ 7.1030(d)(1)(i)–(ii). The OCC expects that transitioning from the no-objection process for derivatives hedging activities to the notice process will enhance prudential supervision of bank derivatives activities by ensuring that banks evaluate the risks of the activities both at inception and on an ongoing basis.

Under the proposed rule, the notice procedures and requirements in proposed § 7.1030(d)(2) would be the same for hedging activities and financial intermediation activities. The proposed rule would require the written notice to include information that is substantially similar to the information that is discussed in Interpretive Letter 1160. Specifically, the written notice must

[90] *See* OCC Interpretive Letter No. 1073 (aluminum, nickel, lead, zinc, and tin); OCC Interpretive Letter No. 1060 (coal); OCC Interpretive Letter No. 1025 (electricity); Interpretive Letter No. 962 (electricity). The term ''transitory title transfer'' means accepting and instantaneously relinquishing title to the commodity, as a party in a ''chain of title'' transfer. OCC Interpretive Letter No. 1025.

[91] *See, e.g.,* OCC Interpretive Letter No. 1060; OCC Interpretive Letter No. 684. *See also* 81 FR 96355 (Dec. 30, 2016) (explaining ''transitory title transfer typically does not entail physical possession of a commodity; the ownership occurs solely to facilitate the underlying transaction and lasts only for a moment in time.'').

[92] *See, e.g.,* OCC Interpretive Letter No. 1040; OCC Interpretive Letter 892; OCC Interpretive Letter No. 684.

[93] *E.g.,* OCC Interpretive Letter No. 684.

[94] *See* OCC Bulletin 2015–35.

[95] *See, e.g.,* OCC Interpretive Letter No. 1065.

[96] National banks that have provided notice to or received statements of no-objection from their EICs for particular derivatives activities consistent with the process in OCC interpretive letters would not be required to submit new notices for those activities.

[97] *See* OCC Interpretive Letter No. 896.

include a detailed description of the proposed activity, including the relevant underlying(s); the anticipated start date of activity; and a detailed description of the bank's risk management system (policies, processes, personnel, and control systems) for identifying, measuring, monitoring, and controlling the risks of the activity. The proposed rule does not include the requirement from Interpretive Letter 1160 that the bank submitting the notice identify an OCC interpretive letter confirming the permissibility of transactions involving the underlying and hedging activity. If the proposed rule is finalized, derivatives hedging and financial intermediation activities would be conducted pursuant to the regulation, without reference to prior OCC interpretations. Therefore, the OCC does not believe it would be necessary for a national bank to identify a prior OCC interpretation. The OCC believes that this framework could ultimately reduce the compliance burden associated with national bank derivatives activities.

The proposed prior notice does not impose a prior approval requirement. Rather, the notice is designed to make OCC supervisor aware of a bank's derivatives activities so that such activities can be appropriately scoped into OCC's ongoing supervision and oversight of the bank's safety and soundness. In addition, having awareness of bank's derivatives activities will enable the OCC to raise questions as to whether the derivatives activity can be conducted in a safe and sound manner, or whether the derivatives activity is within the scope of those legally authorized for a national bank, before the bank activities commence or at any time, as is the case with any other permissible bank activities.

Section 7.1030(d)(1) of the proposed rule would require a national bank to provide EIC notice prior to engaging in any of the derivatives hedging or financial intermediation activities described in § 7.1030(c)(2) through (5) for the first time. This notice requirement would apply, for example, if a bank has previously engaged in cash-settled derivatives with respect to a particular underlying as described in § 7.1030(c)(3) but seeks to begin physically settling transactions as described in § 7.1030(c)(4) or (5). Likewise, a national bank would need to provide notice prior to first engaging in derivatives hedging activities pursuant to § 7.1030(c)(2) or expanding the bank's derivatives hedging activities to include a new category of underlying. Under proposed § 7.1030(d)(2), the bank must submit written notice at least 30 days before the national bank commences the derivatives activity. The OCC specifically requests comment on whether it is sufficiently clear when a notice would be required and what would constitute a ''new category of underlying.'' Prior OCC interpretations have addressed several categories of permissible underlyings for national bank derivatives transactions.[98] The OCC requests comments on whether the regulation text should list these categories. If the regulation were to list these categories, the OCC requests comment on whether the regulation should specify that any new derivatives activities not falling within one of the specified categories also requires notice.

The OCC believes that the proposed notice process will provide an efficient notice standard for national banks engaging in derivatives activities. The notice requirement is expected to enhance supervision by providing bank supervisors with comprehensive, up-to-date information on the activities in which the bank is engaged. This information will assist OCC supervisors by ensuring they have an opportunity to assess a bank's ability to engage in derivatives activities in a safe and sound manner prior to the bank commencing the activity and provide them ongoing information as those activities expand to new categories. The OCC believes this objective is particularly important in the case of derivatives hedging and financial intermediation activities because these activities continue to evolve.

The OCC specifically requests comment on whether the final rule should provide additional specificity regarding the notice process and whether any additional information should be included in the notice.

Additional requirements for physical hedging activities. The OCC has elaborated in interpretive letters and guidance on practices with respect to physical hedging with securities and commodities.[99] The OCC proposes to incorporate these practices into proposed § 7.1030(e) with certain modifications to promote consistency in the practices national banks employ with respect to physical hedging activities. Specifically, the OCC proposes to apply the framework in interpretive letters addressing physical hedging using securities to all physical hedging activities involving underlyings in which a national bank could not invest directly. Under the proposed rule, a national bank could engage in physical hedging only if: (1) The national bank holds the underlying solely to hedge risks arising from derivatives transactions originated by customers for the customers' valid and independent business purposes; (2) the physical hedging activities offer a cost-effective means to hedge risks arising from permissible banking activities; (3) the national bank does not take anticipatory or maintain residual positions in the underlying except as necessary for the orderly establishment or unwinding of a hedging position; and (4) the national bank does not acquire equity securities for hedging purposes that constitute more than five percent of a class of voting securities of any issuer.[100]

Consistent with OCC interpretive letters and guidance concerning physical hedging with commodities in which a national bank could not invest directly,[101] the proposed rule would impose additional requirements on physical hedging with commodities. Under the proposed rule, a national bank may engage in physical hedging with commodities only if the national bank's commodity position (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size) is no more than five percent of the gross notional value of the national bank's derivatives that: (1) Are in that same particular commodity and (2) allow for physical settlement within 30 days. Title to commodities acquired and immediately sold in a transitory title transaction would not count against this five percent limit.[102] Consistent with OCC interpretive letters,[103] the proposed rule would permit physical hedging involving commodities only if the physical position more effectively reduces risk than a cash-settled hedge

[98] *See e.g., supra,* note 27.

[99] *See* OCC Bulletin 2015–35; OCC Interpretive Letter No. 935; OCC Interpretive Letter No. 892; OCC Interpretive Letter No. 684.

[100] Certain of the practices described in prior OCC interpretive letters are not included in the proposed rule text because they are generally-applicable safety and soundness standards that can be evaluated and addressed under other existing sources of law, including, as applicable, 12 U.S.C. 1818. For example, several interpretive letters discuss that a national bank should have appropriate risk management policies and procedures for its physical hedging activities. In addition, several interpretive letters have also specified that a bank may not engage in physical hedging activities for the purpose of speculating in security or commodity prices. As described above, customer-driven financial intermediation as defined in the proposal would not include activities entered into for the purpose of speculation.

[101] *See* OCC Bulletin 2015–35; OCC Interpretive Letter No. 684.

[102] Consistent with OCC Interpretive Letter No. 1040, this 5 percent limit would not apply to physical hedging using emissions allowances.

[103] *See* OCC Interpretive Letter No. 684; OCC Interpretive Letter No. 632.

involving the same commodity. As discussed above, a national bank may not take physical delivery of any commodity by receipt of physical quantities of the commodity on bank premises. The proposed rule would apply these requirements to physical hedging activities involving commodities due to the unique risks of physical commodity activities.[104]

Subpart B—National Bank Corporate Practices

Corporate Governance (§ 7.2000)

As noted, the OCC continually seeks to update its regulations to stay current with industry changes and technological advances, subject to Federal law and consistent with the safe and sound operation of the banking system. As part of this process, the OCC is proposing to update and modernize § 7.2000, which provides a regulatory framework for national bank corporate governance. As described by the OCC in various conditional approvals,[105] ''corporate governance procedures'' generally refer to requirements involving the operation and mechanics of the internal organization of a national bank, including relations among owners-investors, directors, and officers, and do not include requirements that relate to the banking powers or activities of a national bank or relationships between a national bank and customers or third parties. Examples of corporate governance procedures include, but are not limited to, share exchanges, anti-takeover provisions, and the use of blank check procedures in issuing preferred stock. The OCC issued § 7.2000 in 1996 to provide national banks with increased flexibility to structure their corporate governance procedures consistent with the particular needs of the bank while providing shareholders and others with adequate notice of the corporate standards on which a bank will rely.[106] The OCC has not substantively changed § 7.2000 since its adoption.[107]

Section 7.2000 currently provides that a national bank proposing to engage in a corporate governance procedure must comply with applicable Federal banking statutes and regulations and safe and sound banking practices. In addition, § 7.2000 provides that to the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the State in which the main office of the bank is located, the law of the State in which the holding company of the bank is incorporated, Delaware General Corporation Law, or the Model Business Corporation Act. Further, § 7.2000 requires that a national bank designate in its bylaws the body of law selected for its corporate governance procedures. Finally, § 7.2000 describes the process for obtaining OCC staff positions on the ability of a national bank to engage in a particular corporate governance procedure.

The OCC is proposing to amend § 7.2000 to reduce burden, provide greater clarity, and modernize the national bank charter with respect to corporate governance provisions. These proposed amendments also would address anomalous results that may arise when a national bank eliminates its holding company. As a general matter, the OCC is proposing to change the term ''corporate governance procedure'' used in § 7.2000 to ''corporate governance provisions'' and to revise paragraph (a) of § 7.2000 accordingly. The OCC believes that ''corporate governance procedure'' may be construed too narrowly than intended and omit corporate governance practices that are not procedural in nature. Revised paragraph (a) would provide that the corporate governance provisions in a national bank's articles of association and bylaws and the bank's conduct of its corporate governance affairs must comply with applicable Federal banking statutes and regulations and safe and sound banking practices. The OCC does not intend this change to affect the application of prior OCC interpretations of corporate governance procedures to § 7.2000.

The proposal would preserve the current ability of a national bank to use the corporate governance provisions of the State in which the main office of the bank is located, the State in which the bank's holding company is located, the Delaware General Corporation Law, or the Model Business Corporation Act. The proposal, however, would increase flexibility in three ways. First, the proposal would revise paragraph (b) of § 7.2000 to authorize a national bank to elect the corporate governance provisions of the law of any State in which any branch of the bank is located in addition to the law of the State in which the bank's main office is located, to the extent not inconsistent with applicable Federal banking statutes or regulations or safety and soundness. Accordingly, a national bank would no longer be limited to using the corporate governance provisions of the State where its main office is located. For example, a national bank with its main office in State A and branches in State B and State C could elect to use the corporate governance provisions of the law of State A, State B, or State C.

Second, the proposal would revise paragraph (b) to authorize the national bank to use the law of the State where a holding company of the bank is incorporated. The proposal would expressly recognize the possibility that a national bank may be controlled by more than one holding company and that those holding companies may be incorporated by different States.

Third, the proposal would add a new paragraph (c) that would allow a national bank to continue to use the corporate governance provisions of the law of the State where its holding company is incorporated even if the holding company is later eliminated or no longer controls the bank, and the national bank is not located in that State. This change would remove an impediment to a national bank that may choose to eliminate its holding company or is no longer controlled by that holding company but wishes to retain longstanding and familiar corporate governance provisions.

The OCC seeks comment on whether a national bank also should be able to adopt a combination of corporate governance provisions from the laws of several different States where the national bank and any holding companies are located, thus potentially resulting in a national bank following corporate governance provisions that derive from a combination of States' laws, or whether a national bank should be limited to electing and using the corporate governance provisions of a single State. If the OCC permits a national bank to follow the corporate governance provisions from more than one State, the OCC seeks comment on how to ensure that shareholders and others are made aware of the provisions that the bank has chosen.

The OCC also requests comment on whether it should make, to the extent appropriate, similar revisions to the regulations pertaining to corporate governance provisions for Federal savings associations in 12 CFR 5.21 and 5.22, so that Federal savings associations may elect to use the corporate governance provisions of: (1) Any State in which the Federal savings association is located and (2) in the case of Federal stock savings associations,

[104] *See* Section 620 Report (describing the price risks and operational risks specific to physical commodities activities).

[105] *See e.g.,* OCC Conditional Approval No. 859 (June 13, 2008) and OCC Conditional Approval No. 696 (June 9, 2005).

[106] 61 FR 4849, 4854 (Feb. 9, 1996).

[107] Non-substantive amendments to § 7.2000 changed the address and telephone number of the OCC Communications Office. *See* 79 FR 15641 (March 21, 2014) and 80 FR 28345 (May 18, 2015).

the law of the State in which the association's former holding company was incorporated. In addition, the OCC requests comment on whether the final rule should change the term ''corporate governance procedures'' to ''corporate governance provisions'' in §§ 5.21 and 5.22 to be consistent with the change in terminology proposed for § 7.2000.

The proposal also would revise current paragraph (c) of § 7.2000 (proposed to be redesignated as § 7.2000(d)). Current paragraph (c) provides that the OCC considers requests for the OCC staff's position on the ability of a national bank to engage in a particular State corporate governance provision in accordance with the no-objection procedures set forth in OCC Banking Circular 205 or any subsequently published agency procedures, and that requests should demonstrate how the proposed practice is not inconsistent with applicable Federal statutes or regulations and is consistent with bank safety and soundness. The OCC issued Banking Circular 205 on July 26, 1985 and has not modified it since. However, a national bank also may request the views of the OCC on an interpretation of national banking statutes and regulations through an interpretive letter, which has been the more common approach since 1985. In order to update this paragraph, the proposal would remove the requirement that requests for the OCC's views on State corporate governance provisions use the no-objection procedure. The proposal also lists the information that a request must contain. This information, similar to what is set forth in OCC Banking Circular 205, would include: (1) The name of the bank; (2) citations to the State statutes or regulations involved; (3) a discussion whether a similarly situated State bank is subject to or may adopt the corporate governance provision; (4) identification of all Federal banking statutes or regulations that are on the same subject as, or otherwise have a bearing on, the subject of the proposed State corporate governance provision; and (5) an analysis of how the proposed corporate governance provision is not inconsistent with applicable Federal statutes or regulations nor with bank safety and soundness. The OCC notes that this provision would not preclude a national bank from seeking informal consultation with OCC staff. However, if the bank wants to receive a written response from OCC staff, it should follow the procedure in this proposed paragraph (d).

Finally, the OCC requests comment on whether it should revise the standard it uses to apply the requirement in § 7.2000 that the State corporate governance provision be ''not inconsistent with applicable Federal banking statutes or regulations'' to be more flexible. The OCC has historically viewed the standard as meaning that State corporate governance provisions may be used unless Federal law has a different standard than State law, in which case Federal law controls. That is, if Federal law addresses a particular corporate governance matter, then a national bank must follow Federal law on the matter and cannot supplement it with State law. However, the ''not inconsistent'' language could be interpreted in a more flexible manner. One could view a State provision that imposed higher or more stringent requirements as ''not inconsistent'' with Federal law because a bank can comply with both if it meets the State's higher requirement. Thus, the OCC could permit a bank to adopt a State corporate governance provision under § 7.2000 that imposed a higher or more stringent standard than Federal law, as long as in complying with the State provision the bank also would meet the requirements in Federal law. The OCC requests comment on whether this change in the interpretation of the ''not inconsistent'' standard would be helpful.

National Bank Adoption of Anti-Takeover Provisions (7.2001)

The OCC is proposing to add a new section § 7.2001 that would address the extent to which a national bank may include anti-takeover provisions in its articles of association or bylaws.[108] Anti-takeover provisions are examples of corporate governance procedures [109] covered by 12 CFR 7.2000. As discussed above, under current § 7.2000(b) a national bank may elect to follow the corporate governance procedures of specified State law to the extent it is (1) not inconsistent with applicable Federal banking statutes or regulation and (2) not inconsistent with bank safety and soundness.

The purpose of proposed § 7.2001 is to provide the OCC's views about the permissibility of several types of anti-takeover provisions. Specifically, proposed paragraph (a) of § 7.2001 would provide that a national bank may, pursuant to 12 CFR 7.2000(b), adopt anti-takeover provisions included in State corporate governance law if the provisions are not inconsistent with Federal banking statutes or regulations and not inconsistent with bank safety and soundness.

Proposed paragraph (b) would set forth the type of anti-takeover provisions in State corporate governance provisions that the OCC specifically has determined are not inconsistent with Federal banking statutes or regulations.[110] This list is not exclusive and the OCC may find that other State anti-takeover laws are not inconsistent with Federal banking statutes or regulations. A national bank could elect to follow these provisions, subject to the bank safety and soundness limitation discussed below.

Restrictions on business combinations with interested shareholders. These State provisions prohibit, or permit the corporation to prohibit in its certificate of incorporation or other governing document, the corporation from engaging in a business combination with an interested shareholder or any related entity for a specified period of time (*e.g.,* three years) from the date on which the shareholder first becomes an interested shareholder (subject to certain exceptions, such as board approval). An interested shareholder is one that owns an amount of stock specified in the State statute, *e.g.,* at least fifteen percent. Federal banking statutes and regulations do not address, directly or indirectly, this type of restriction for national banks. Although Federal banking statutes authorize national banks to engage in specified consolidations and mergers,[111] this authorization does not preclude a bank's shareholders from adopting a provision that limits the consolidations and mergers into which the bank would enter. Therefore, State restrictions on business combinations with interested shareholders are not inconsistent with Federal law.

Poison pills. A ''poison pill'' is a State statutory provision that provides, or that permits the corporation to provide in its certificate of incorporation or other governing document, that all shareholders, other than the hostile acquiror, have the right to purchase additional stock at a substantial discount upon the occurrence of a triggering event. Because no Federal banking statutes or regulations directly or indirectly address these shareholder

[108] OCC regulations currently include provisions addressing adoption of anti-takeover provisions by stock Federal savings associations. *See* 12 CFR 5.22(g)(7), (h) and (j)(2)(i)(A). The OCC is not proposing to amend those provisions.

[109] The proposed rule would change this terminology in § 7.2000 to ''corporate governance provisions.''

[110] Permitting the use of staggered boards is another anti-takeover provision. The proposed new section does not include staggered boards because they are now expressly permitted under the National Bank Act. 12 U.S.C. 71; 12 CFR 2024.

[111] *See* 12 U.S.C 215, 215a, 215a–1, 215a–3, and 215c.

purchase rights, State poison pill laws are not inconsistent with Federal law.[112]

Requiring all shareholder actions to be taken at a meeting. These State provisions provide, or permit the corporation to provide in its certificate of incorporation or other governing document, that all actions to be taken by shareholders must occur at a meeting and prohibit shareholders from taking action by written consent. Certain Federal banking statutes require shareholder approval to be taken at a meeting[113] while other sections require shareholder approval but do not specify a meeting.[114] There is no provision in Federal law authorizing national bank shareholders to take action by written consent in lieu of a meeting. Furthermore, nothing in Federal law precludes a national bank's articles of association from requiring a meeting for any action. Therefore, this type of State provision is not inconsistent with Federal law.

Limits on shareholders' authority to call special meetings. These State provisions provide, or permit the corporation to provide in its certificate of incorporation or other governing document, that only the board of directors, and not shareholders, have the right to call special meetings of the shareholders or, if shareholders have the right, require a high percentage of shareholders to call the meeting. Because Federal banking statutes or regulations do not address, directly or indirectly, the right of shareholders of a national bank to call special meetings, these type of State laws are not inconsistent with Federal law.

Shareholder removal of a director only for cause. These State provisions provide, or permit the corporation to provide in its certificate of incorporation or other governing document, that shareholders may remove a director only for cause, rather than both for cause and without cause. The National Bank Act and OCC regulations do not have a specific provision addressing director removal by shareholders. Removal only for cause is consistent with the OCC's model national bank Articles of Association, which provide for removal for cause and for failure to meet statutory director qualifications.[115] Therefore, State provisions requiring shareholder removal of a director only for cause are not inconsistent with Federal law.

Proposed paragraph (c) would set forth the type of anti-takeover provisions in State corporate governance provisions that the OCC has determined are inconsistent with Federal banking statutes or regulations. A national bank could not elect to follow these provisions. These provisions are set forth below.

Supermajority voting requirements. These State statutory provisions require, or permit the corporation to require in its certificate of incorporation or other governing document, that a supermajority of the shareholders approve specified matters. A requirement that a supermajority vote of shareholders must approve some transactions is inconsistent with Federal law when applied to transactions for which a Federal statute or regulation includes an express specific shareholder approval level. Certain provisions of the National Bank Act specify shareholder approval by a two-thirds vote[116] and other provisions require majority shareholder approval.[117] When a provision in the National Bank Act specifies the level of shareholder vote required for approval, it is inconsistent with Federal law to follow a State corporate governance provision that permits or requires a different level or an additional shareholder approval requirement for a subset of shareholders.

Restrictions on a shareholder's right to vote all the shares it owns. These State statutory provisions prohibit, or permit the corporation in its certificate of incorporation or other governing document to prohibit, a person from voting shares acquired that increase their percentage of ownership of the company's stock above a certain level. This type of provision is inconsistent with the National Bank Act, which expressly provides that each shareholder is entitled to one vote on each share of stock held by the shareholder on all matters other than elections for directors, where cumulative voting may be allowed if so provided in the articles of association.[118] A State corporate governance provision that interferes with this express right to vote is inconsistent with Federal law.

As indicated above, § 7.2000(b) permits a national bank to elect to follow a State corporate governance provision only if it is not inconsistent with Federal law and bank safety and soundness. Proposed paragraph (d) of § 7.2001 addresses the impact of bank safety and soundness on adoption of anti-takeover provisions.

Anti-takeover provisions could make it harder for a bank to be acquired by another bank or by investors or to raise capital by discouraging share purchases by a potential acquiror. Thus, when a bank is in a weak condition, anti-takeover provisions the OCC has determined are not inconsistent with Federal law nevertheless would be inconsistent with bank safety and soundness if they would impair the possibility of restoring the bank to sound condition. These provisions would then be impermissible.

Accordingly, proposed paragraph (d) would provide that any State corporate governance provision, including anti-takeover provisions, that would render more difficult or discourage an injection of capital by purchase of bank stock, a merger, the acquisition of the bank, a tender offer, a proxy contest, the assumption of control by a holder of a large block of the bank's stock, or the removal of the incumbent board of directors or management is inconsistent with bank safety and soundness if: (1) The bank is less than adequately capitalized (as defined in 12 CFR part 6); (2) the bank is in troubled condition (as defined in 12 CFR 5.51(c)(7)); (3) grounds for the appointment of a receiver under 12 U.S.C. 191 are present; or (4) the bank is otherwise in less than satisfactory condition, as determined by the OCC.

However, proposed paragraph (d) also provides that an anti-takeover provision is not inconsistent with bank safety and soundness if, at the time it adopts the provision, the national bank: (1) Is not subject to any of the foregoing conditions and (2) includes along with the provision a limitation that the provision is not effective if one or more of the foregoing conditions occur or if the OCC otherwise directs the bank not to follow the provision for supervisory reasons.

Proposed paragraph (e) provides for OCC case-by-case review of anti-takeover provisions. The OCC reviewed each type of State anti-takeover provision described in proposed paragraph (b) for consistency with Federal banking statutes and regulations only at a general level, without

[112] However, shareholders, including the hostile acquiror, should consider the implications under the Change in Bank Control Act or Bank Holding Company Act if a shareholder, or shareholders acting in concert, acquire sufficient shares to constitute ''control.''

[113] *See* 12 U.S.C. 71, 214a, 215, 215a, and 215a–2.

[114] *See* 12 U.S.C. 30, 51a, 57, and 59. However, 12 U.S.C. 21a provides that any action requiring approval of the stockholders be obtained by approval by a majority vote of the voting shares at a meeting, unless the statutory provision addressing the action requires greater level of approval.

[115] *See* Articles of Association, Charters, and Bylaw Amendments (Forms), Comptroller's Licensing Manual (June 19, 2017) (Model Articles of Association, Article Fourth, last paragraph).

[116] *See* 12 U.S.C. 30, 57, 59, 181, 214a, 215, 215a, and 215a–2.

[117] *See* 12 U.S.C. 21a and 51a.

[118] 12 U.S.C. 61.

reviewing the specific terms of a proposed provision to be adopted by a particular bank. While the OCC has concluded that the types of provisions set out in paragraph (b) are not inconsistent with Federal banking statutes and regulations in general, the specific provision a particular bank adopts may contain features that could change the result of the OCC's review. Similarly, some anti-takeover provisions may be inconsistent with bank safety and soundness for a particular national bank because of its individual circumstances, even if it is not subject to the conditions listed in proposed paragraph (d).

In order to address the need for individual determinations when appropriate, proposed paragraph (e) would provide that the OCC may determine that a State anti-takeover provision, as proposed or adopted by an individual national bank, is: (1) Inconsistent with Federal banking statutes or regulations, even if it is of a type included in paragraph (b) or (2) inconsistent with bank safety and soundness other than as provided in paragraph (d). The OCC could begin a case-by-case review on its own initiative. In addition, a bank that wishes the OCC to review the permissibility of the specific State anti-takeover provisions it has adopted or proposes to adopt may request the OCC's review, under the procedures set forth at 12 CFR 7.2000(d).

Finally, proposed paragraph (f) addresses the method a national bank, its shareholders, and its directors would use to adopt each anti-takeover provision. In general, the bank would follow the requirements for board of director and shareholder approval set out in the State corporate governance statute it is electing to follow. However, if the provision is included in the bank's articles of association, the bank's shareholders would be required to approve the amendment of the articles pursuant to 12 U.S.C. 21a, even if the State law does not require approval by the shareholders. Further, if the State corporate governance law requires the provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, the national bank must include the provision in its articles of association. If the State corporate governance law does not require the provision to be in the company's articles of incorporation, certificate of incorporation, or similar document but allows it to be in the bylaws, then the national bank could include the provision in its articles of association or in its bylaws. However, if the State corporate governance law requires shareholder approval for changes to the corporation's bylaws, then the national bank must include the provision in its articles of association.

Director or Attorney as Proxy (§ 7.2002)

Twelve U.S.C. 61 prohibits an officer, clerk, teller, or bookkeeper of the bank from acting as proxy for shareholder voting. Section 7.2002 codifies this prohibition in OCC regulations, and provides that any person or group of persons, except the bank's officers, clerks, tellers, or bookkeepers, may be designated to act as proxy. The OCC is proposing to amend this section to clarify that the proxy referenced in the section is for shareholder voting, as provided in the statute. The OCC intends no substantive change with this amendment.

President as Director; Senior Executive Officer (§ 7.2012)

Twelve U.S.C. 76 provides that the president of the bank must be a member of the board and be chairman thereof, but that the board may designate a director in lieu of the president to be chairman, who must perform duties as assigned by the board. Section 7.2012 codifies this statutory requirement in the OCC's rules by providing that pursuant to 12 U.S.C. 76, the president of a national bank must be a member of the board of directors, but a director other than the president may be elected chairman of the board. This section further provides that a person other than the president may serve as the chief executive officer, and that this person is not required to be a director of the bank. When first proposing this rule, the OCC acknowledged that it was adding this second sentence to provide that a person other than the president or a director may serve as chief executive officer of a bank.[119]

The OCC is proposing two substantive changes to this section. First, the OCC is proposing that the person serving as, or in the function of, president of a national bank, regardless of title, must be a member of the board of directors. This change would align the regulation with the OCC's view that the bank officer positions in 12 U.S.C. 76 and other provisions of the National Bank Act refer to functions rather than required titles. If a national bank does not have an individual serving in the position of president but does have another officer serving the function of president, the individual serving in the function of president must be a member of the board of directors. The person serving the function of president is generally the individual appointed to oversee the national bank's day-to-day activities.[120] This change would provide national banks with flexibility in employee titles and management organization. The OCC notes that 12 U.S.C. 24(Fifth) provides national banks with the authority to set the duties of their officers. National banks should ensure that their employee titles do not create unnecessary confusion.

Second, the OCC is proposing to remove the provision in § 7.2012 that states that a person other than the president may serve as chief executive officer, and this person is not required to be a director of the bank. This provision is unnecessary. The position of chief executive officer is not referenced in statute and, as indicated above, national banks have discretion to set the duties of their officers. Further, this provision would conflict with the first proposed revision. Because function rather than title would govern under the proposal, a chief executive officer that serves the function of president would be required to be a member of the board.[121]

The OCC requests comment on whether the proposed changes would provide national banks with flexibility in their organization of management or introduce complexity given the current practices at national banks.

Indemnification of Institution-Affiliated Parties (§§ 7.2014, 145.121)

The OCC is proposing to amend and reorganize § 7.2014, Indemnification of institution-affiliate parties (by national banks), apply revised § 7.2014 to Federal savings associations, and remove § 145.121, Indemnification of directors, officers and employees (by Federal savings associations). Twelve CFR 7.2014 addresses indemnification of institution-affiliated parties (IAPs) by national banks in cases involving an administrative proceeding or civil action initiated by a Federal banking agency, as well as cases that do not involve a Federal banking agency. Under § 7.2014(a), a national bank only may make or agree to make indemnification payments to an IAP with respect to an administrative proceeding or civil action initiated by a Federal banking agency if those

[119] 60 FR 11924 (March 3, 1995). This rule was finalized in 1996. 61 FR 4849 (Feb. 9, 1996).

[120] *See* OCC, ''The Director's Book: Role of Directors for National Banks and Federal Savings Associations'' (July 2016), available at *www.OCC.gov* (Director's Book).

[121] The Director's Book uses the terms ''president'' and ''chief executive officer'' interchangeably to refer to the individual appointed by the board of directors to oversee the day-to-day activities of a national bank.

payments are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and the implementing regulations thereunder. Pursuant to section 1828(k), the Federal Deposit Insurance Corporation (FDIC) may prohibit, by regulation or order, any indemnification payment made with regard to an administrative proceeding or civil action instituted by the appropriate Federal banking agency that results in a final order under which the IAP: (1) Is assessed a civil money penalty; (2) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or (3) is required to take certain affirmative actions in regards to an insured depository institution.[122] Section 1828(k) defines ''indemnification payment'' to mean any payment (or any agreement to make any payment) by any insured depository institution to pay or reimburse an IAP for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency that results in a final order under which the IAP: (1) Is assessed a civil money penalty; (2) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or (3) is required to take certain affirmative actions in regards to an insured depository institution.[123] Section 7.2014(a) defines ''institution-affiliated party'' by reference to 12 U.S.C. 1813(u).

Section 7.2014(b)(1) permits a national bank to indemnify IAPs for damages and expenses, including the advancement of legal fees and expenses, in cases involving an administrative proceeding or civil action that is not initiated by a Federal banking agency in accordance with the law of the State in which the main office of the bank is located, the law of the State in which the bank's holding company is incorporated, or the relevant provisions of the Model Business Corporation Act or Delaware General Corporation Law, provided such payments are consistent with safe and sound banking practices.

Additionally, pursuant to § 7.2014(b)(2), a national bank may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of IAPs to the extent that these costs could be indemnified under administrative proceedings or civil actions not initiated by a Federal banking agency, as provided in § 7.2014(b)(1).

Twelve CFR 145.121 addresses indemnification of directors, officers and employees by Federal savings associations. Section 145.121(b) requires a Federal savings association to indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the association. This indemnification is subject to the requirements of § 145.121(c) and (g). Section 145.121(c) provides that indemnification only may be made available to the IAP if there is a final judgment on the merits in the IAP's favor; or, in the case of settlement, final judgment against the IAP, or final judgment in the IAP's favor other than on the merits, if a majority of the disinterested directors of the Federal savings association determine that the IAP was acting in good faith. It also provides that the association give the OCC at least 60 days' notice of its intention to indemnify an IAP and provides that the association may not indemnify the IAP if the OCC advises the savings association in writing that the OCC objects. Section 145.121(g) makes the indemnification subject to 12 U.S.C. 1821(k).

Pursuant to § 145.121(d), a Federal savings association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims for acts committed in their capacity as directors, officers, or employees. However, a Federal savings association may not obtain insurance that provides for payment of losses incurred as a consequence of willful or criminal misconduct.

Pursuant to § 145.121(e), if a majority of the directors of a Federal savings association conclude that, in connection with an action, a person may become entitled to indemnification, the directors may authorize payment of reasonable costs and expenses arising from the defense or settlement of the action. Before making advance payment of expenses, the savings association is required to obtain an agreement that the savings association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to the indemnification.

Pursuant to § 145.121(f), an association that has a bylaw in effect relating to indemnification of its personnel must be governed solely by that bylaw, except that its authority to obtain insurance must be governed by § 145.121(d), which, as described above, authorizes the purchase of indemnification insurance unless the insurance pays for losses created by willful or criminal misconduct. Section 145.121(g) states that the indemnification provided for in § 145.121 for Federal savings associations is subject to and qualified by 12 U.S.C. 1821(k), which addresses personal liability for directors and officers in certain civil actions.

The OCC is proposing to add Federal savings associations to § 7.2014 so that both charters would be required to comply with § 7.2014. Because § 7.2014 applies to IAPs and not only officers, directors, and employees as does § 145.121, the scope of indemnification rules for Federal savings associations would be broader, applying also to certain Federal savings association controlling shareholders, independent contractors, consultants, and other persons identified in 12 U.S.C. 1813(u).

The OCC also is proposing changes to § 7.2014. First, the proposal would amend current § 7.2014(b)(1), redesignated in this proposal as § 7.2014(a) and retitled, to provide that State law on indemnification may apply to all administrative proceedings or civil actions for which an IAP can be indemnified, not just actions that are initiated by a person or entity not a Federal banking agency as under the current rule. This would clarify the application of State law on indemnification to actions initiated by Federal banking agencies. However, current § 7.2014(a), redesignated by this proposal as § 7.2014(b), would still apply. Specifically, under redesignated § 7.2014(b), with respect to proceedings or civil actions initiated by a Federal banking agency, a national bank or Federal savings association only may make or agree to make indemnification payments to an IAP that are reasonable and consistent with the requirements of section 1828(k) and implementing regulations thereunder.[124]

The OCC also is proposing a technical change to redesignated § 7.2014(a). As

[122] In prohibiting such payments, the FDIC may take into account several factors listed in the statute, such as whether there is a reasonable basis to believe the IAP has committed fraud, breached a fiduciary duty, or committed insider abuse; is substantially responsible for the insolvency of the depository institution; has violated any Federal or State banking law or regulation that has had a material effect on the financial condition of the institution; or was in a position of managerial or fiduciary responsibility. *See* 12 U.S.C. 1828(k)(2). The FDIC has forbidden certain indemnification payments by regulation. *See* 12 CFR 359.1(l)(1) (definition of ''prohibited indemnification payment''); 12 CFR 359.3 (forbidding prohibited indemnification payments, except as provided in part 359).

[123] *See* 12 U.S.C. 1828(k)(5)(A); *see also* 12 U.S.C. 1818(b)(6) (defining affirmative actions that an IAP may be required to take in regard to insured depository institutions for purposes of section 1828(k)(5)(A)).

[124] The OCC also proposes to move the cross-reference to the definition of IAP in redesignated § 7.2014(b) to redesignated paragraph (a) and to make stylistic changes to the wording of redesignated § 7.2014(b).

indicated above, the current rule states that in cases involving an administrative proceeding or civil action not initiated by a Federal banking agency, a national bank may indemnify an IAP in accordance with the law of the State in which the main office of the bank is located, the law of the State in which the bank's holding company is incorporated, or the relevant provisions of the Model Business Corporation Act or Delaware General Corporation Law, provided such payments are consistent with safe and sound banking practices. Because these sources of law are identical to the law a national bank may elect to follow pursuant to § 7.2000(b) or the law a Federal savings association may elect to follow pursuant to §§ 5.21 or 5.22, the OCC proposes to replace the language on sources of State law in this provision with a statement that the bank or savings association may indemnify an IAP for damages and expenses in accordance with the law of the State the bank or savings association has designated for its corporate governance under the provisions of §§ 7.2000, 5.21, or 5.22, as applicable.[125]

Second, the OCC is proposing to amend § 7.2014(b)(2), redesignated as § 7.2014(d) in the proposal, to allow a national bank or Federal savings association to provide for the payment of reasonable insurance premiums in connection with all actions involving an IAP that could be indemnified under § 7.2014, whether or not initiated by a Federal banking agency. The OCC believes this change would resolve confusion regarding how current § 7.2014(b)(2) is applied. This proposed change also would better align OCC regulations on the payment of insurance premiums with the FDIC's regulations and 12 U.S.C. 1828(k).[126]

Third, the OCC is proposing to add a new paragraph (c) that would require a national bank or Federal savings association, before advancing funds to an IAP under § 7.2014, to obtain a written agreement that the IAP will reimburse the bank for any portion of indemnification that the IAP is ultimately found not to be entitled to under 12 U.S.C. 1828(k) and implementing regulations, except to the extent the bank's expenses have been reimbursed by an insurance policy or fidelity bond.[127] This requirement is similar to the requirement in § 145.121(e) currently applicable to Federal savings associations and therefore would not impose any additional burdens on Federal savings associations. Further, FDIC regulations,[128] State law,[129] and the Model Business Corporation Act[130] contain similar requirements for IAPs to reimburse institutions for funds to which they are later found not to be entitled. As most national banks are subject to the FDIC's indemnification regulations or have elected under 12 CFR 7.2000(b) to follow State corporate law imposing reimbursement requirements for advancement of funds, the OCC believes that this proposed change would not impose any additional burden on national banks and would merely codify existing practices. This proposed change also will ensure that national banks, and Federal savings associations, do not provide indemnification to IAPs that is ultimately in contravention of the statutory limits of section 1828(k).

The OCC believes that proposed § 7.2014 incorporates the provisions of current § 145.121 that should be applicable to both national banks and Federal savings associations, while maintaining appropriate flexibility for both types of institutions. Specifically, the proposal would apply § 7.2014 to actions brought by a Federal banking agency and actions not brought by a Federal banking agency, as in § 145.121, while retaining the statutory limits of section 1828(k).[131] The proposal also includes the reimbursement agreement requirement, as in § 145.121(e). However, the proposed rule does not include the provision in § 145.121 that *requires* Federal savings associations to indemnify persons against whom an action is brought under certain circumstances, such as if they are successful on the merits of the action, nor[132] the provision requiring a board vote to authorize indemnification under certain circumstances.[133] In place of these requirements, proposed § 7.2014 would permit Federal savings associations to incorporate State law on indemnification. Because State law governing indemnification generally incorporates these aspects of current § 145.121, the OCC expects that Federal savings associations will continue to be subject to similar provisions governing indemnification as before. For example, State law generally requires mandatory indemnification if an employee is successful on the merits,[134] as well as a board vote authorizing indemnification in almost all circumstances.[135] Because national banks also may incorporate State indemnification law, they would be subject to these State indemnification provisions as well. The OCC specifically requests comment on whether, instead of relying on State law, the final rule should include the requirement from § 145.121 that, in the case of settlement, final judgment against the IAP, or final judgment in the IAP's favor other than on the merits, a majority of the disinterested directors determine that the IAP was acting in good faith before the instruction may indemnify the IAP.

The proposed rule also does not include the provision in § 145.121 that requires a 60-day prior notice to the OCC before making an indemnification.[136] The OCC is not proposing to retain this provision because it believes it is burdensome and unnecessary. However, the OCC requests comment on whether the final rule should include this prior notice requirement and, if so, what benefits prior approval would provide that would outweigh any additional regulatory burden.

[125] As explained *supra,* the OCC is proposing to amend § 7.2000 to also allow national banks to follow the corporate governance provisions of the law of any State in which any branch of the bank is located or where a holding company of the bank is incorporated even if the holding company is later eliminated or no longer controls the bank and the national bank is not located in that State. The OCC is requesting comment on making the same change to §§ 5.21 and 5.22.

[126] The FDIC's implementing regulations under section 1828(k), 12 CFR part 359, explicitly allow the payment of insurance premiums in anticipation of actions brought by a Federal banking agency, provided the insurance is not used to reimburse the cost of a judgment or civil monetary penalty. *See* 12 CFR 359.1(l)(2).

[127] National banks are required to purchase fidelity coverage by 12 CFR 7.2013.

[128] *See* 12 CFR 359.5(a)(4).

[129] *See, e.g.,* 8 Del. C. § 145(e); Utah Code § 16–10a–904; 805 Ill. Comp. Stat. 5/8.75(e); *see also* N.Y. Bus. Corp. Law § 725(a) (requiring repayment, but not explicitly requiring a written agreement).

[130] *See* Model Bus. Corp. Act § 8.53(a).

[131] Section 145.121(g) subjects and qualifies the indemnification provided for by current § 145.121 to 12 U.S.C. 1821(k). In contrast, current § 7.2014 explicitly subjects national bank indemnification to the restrictions of 12 U.S.C. 1828(k). Section 1828(k) directly addresses indemnification and is applicable to any insured depository institution. *See* 12 U.S.C. 1828(k)(5)(A). Section 1821(k) addresses personal liability for directors and officers and is also applicable to any insured depository institution. Both of these statutes apply, and will continue to apply to national banks and Federal savings associations but proposed § 7.2014 retains the citation to section 1828(k) as the more relevant citation for indemnification purposes.

[132] *See* § 145.121(b).

[133] *See* § 145.121(c)(1)(ii)(C)).

[134] *See, e.g.,* 8 Del. C. 145(c); New York BCL § 723(a); 805 ILCS 5/8.75(c); Model Bus. Corp. Act, § 8.52 (2016).

[135] *See, e.g.,* 8 Del. C. 145(d); New York BCL § 723(b); 805 ILCS 5/8.75(d); Model Bus. Corp. Act, §§ 8.53(c), 8.55 (2016).

[136] *See* § 145.121(c)(2)).

Restricting Transfer of Stock and Record Dates; Stock Certificates (§ 7.2016)

Facsimile Signatures on Bank Stock Certificates (§ 7.2017)

Lost Stock Certificates (§ 7.2018)

Sections 12 CFR 7.2016, 7.2017, and 7.2018 contain specific requirements related to national bank stock transfers and stock certificates. Many of these requirements are mandated by 12 U.S.C. 52. However, some of these requirements are outdated because national banks today rarely issue physical stock certificates.

Section 7.2016(a) states that, pursuant section 52, a national bank may impose conditions on the transfer of its stock reasonably calculated to simplify the work of the bank with respect to stock transfers, voting at shareholders' meetings, and related matters and to protect the bank against fraudulent transfers. Consistent with the statute, § 7.2016(b) allows a national bank to close its stock records for a reasonable period to ascertain shareholders for voting purposes. The board also may fix record dates, which should be reasonable in proximity to the date notice is given to shareholders of the meeting. Section 7.2017 states that the president and cashier of the bank, or other officers authorized by the bank's bylaws, shall sign each stock certificate. These signatures may be manual or facsimile and may be electronic. Each certificate also must be sealed with the seal of the bank.

To streamline OCC rules, the OCC is proposing to combine §§ 7.2016 and 7.2017 into one section, § 7.2016, that would apply to both stock transfers and stock certificate requirements. The OCC also is proposing to make OCC rules on stock certificates more flexible. As noted above, section 12 U.S.C. 52 requires certain officers of the association to sign every bank stock certificate and for it to be sealed with the seal of the association. However, banks now generally hold stock in ''book-entry'' form, which is not a format that supports signatures or stamps. Although section 52 places requirements on physical stock certificates, the OCC does not believe that the language of that section requires banks to actually issue stock in certificated form.

Notably, section 52 also states that ''[t]he capital stock of each association shall be . . . transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association.'' [137] This language allows banks to provide for book-entry transfer in their by-laws or articles of association, even if this type of transfer is incompatible with the use of signatures and seals. Therefore, the OCC is proposing to state that a national bank may prescribe the manner in which its stock shall be transferred in its by-laws or articles of association. The OCC also is proposing to specify that a national bank that does issue stock in certificate form must comply with the requirements of section 52, including: (1) The name and location of the bank; (2) name and holder of record of the stock; (3) the number and class of shares which the certificate represents; (4) if the bank issues more than one class of stock, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations, and qualifications of each class of stock issued (unless incorporated by reference to the articles of association); (5) signatures of the president and cashier of the bank, or such other officers as the bylaws of the bank provide; and (6) the seal of the bank. The OCC is proposing to continue allowing banks to meet the signature requirements of section 52 through the use of electronic means or by facsimiles, as is permitted by current § 7.2017.

Finally, the OCC is proposing to remove § 7.2018 as unnecessary. Section 7.2018 states that if the bank's articles of association or bylaws do not provide for replacing lost, stolen, or destroyed stock certificates, the bank may adopt procedures under 12 CFR 7.2000. Section 7.2000 generally permits national banks to adopt corporate governance procedures [138] in accordance with State law, to the extent not inconsistent with applicable Federal laws and regulations or with bank safety and soundness. Therefore, this provision is unnecessary.

Acquisition and Holding of Shares as Treasury Stock (§ 7.2020)

The OCC is proposing to remove 12 CFR 7.2020. Currently, § 7.2020 provides that a national bank may repurchase its outstanding shares and hold them as treasury stock as a capital reduction under 12 U.S.C. 59 if the repurchase and retention is for a ''legitimate corporate purpose'' and not for speculative purposes. The OCC issued § 7.2020 in 1996 as an exception to the provision in 12 U.S.C. 83 that prohibited a national bank from being the ''purchaser or holder'' of its own shares. However, in 2000, Congress amended section 83 to remove this prohibition.[139] Therefore, § 7.2020 is unnecessary. The OCC notes that removing § 7.2020 would not limit the OCC's authority over share repurchases. Share repurchases are considered reductions in capital and would continue to be subject to OCC and shareholder approval under 12 U.S.C. 59 and 12 CFR 5.46.

Capital Stock-Related Activities of a National Bank (New § 7.2025)

The OCC is proposing a new section, § 7.2025, that would codify various OCC interpretations of the National Bank Act involving capital stock issuances and repurchases. Specifically, proposed § 7.2025 would explain the shareholder approval requirements for the issuance of authorized common stock; the issuance, repurchase, and redemption of preferred stock pursuant to blank check procedures; and share repurchase programs. Generally, an increase or decrease in the amount of a national bank's common or preferred stock is a change in permanent capital subject to the notice and approval requirements of 12 CFR 5.46 and applicable law.[140] Proposed § 7.2025(a) sets forth the general requirements for changes in permanent capital. Paragraphs (b) through (d) of proposed § 7.2025 provide more specific requirements for shareholder approval of various types of issuances and repurchases. Section 7.2025(e) would identify certain permissible features for preferred stock.

Issuance of previously approved and authorized common stock. The issuance of common stock is governed by 12 U.S.C. 57, which provides that a national bank ''may, with the approval of the [OCC], and by a vote of shareholders owning two-thirds of the stock of such [bank], increase its capital stock to any sum.'' The OCC has interpreted 12 U.S.C. 57 to require a two-thirds shareholder vote to amend the articles of association to increase the number of authorized shares.[141] The OCC also has long interpreted section 57 to permit a national bank's board of directors to issue common stock without obtaining additional shareholder approval at the time of the issuance so long as the issuance does not exceed the amount of common stock previously

[137] *See* 12 U.S.C. 52, first paragraph.

[138] The proposed rule would change this terminology in § 7.2000 to ''corporate governance provisions.''

[139] Public Law 106–569, Title XII, section 1207(a), 114 Stat. 3034 (American Homeownership and Economic Opportunity Act of 2000).

[140] *See generally* 12 U.S.C. 51a, (preferred stock issuance), 57 (increase in capital), and 59 (reduction of capital).

[141] *See, e.g.,* Articles of Association, Charter, and Bylaw Amendments, Comptroller's Licensing Manual (June 2017), p. 3 (indicating that two-thirds of a national bank's shareholders must vote to increase or decrease the authorized number of common shares in the articles of association).

approved and authorized by shareholders.[142] Proposed 7.2025(b) would codify this interpretation. Specifically, paragraph (b) would provide that, in compliance with 12 U.S.C. 57, a national bank may issue common stock up to an amount previously approved and authorized in the national bank's articles of association by holders of two-thirds of the national bank's shares without obtaining additional shareholder approval for each subsequent issuance within the authorized amount.

Issuance, repurchase, and redemption of preferred stock pursuant to certain procedures. Twelve U.S.C. 51a requires a majority of shareholders vote to approve a national bank's issuance of preferred stock. However, the statute does not specify when in the process the bank must obtain shareholder approval. In OCC Interpretive Letter 921, the OCC determined that a national bank could adopt, subject to required shareholder approval, a provision in its articles of association or an amendment to its articles authorizing the bank's board of directors to issue preferred stock using blank check procedures (''blank check preferred stock'').[143] Blank check preferred stock refers to preferred stock for which the board is empowered to issue and determine the terms of authorized and unissued preferred stock. To be permissible, blank check preferred stock must be permitted by the corporate governance procedures adopted by the bank under § 7.2000.[144]

The OCC also determined that shareholders' adoption or approval of a blank check preferred stock article constitutes the shareholder action required by 12 U.S.C. 51a and 51b to issue and establish the terms of preferred stock. The subsequent issuance of the preferred stock within the authorized limits would not require additional shareholder approval. Interpretive Letter 921 did not specifically address blank check preferred procedures that include the authority, and the shareholder action required, to repurchase and redeem blank check preferred stock.

The redemption or repurchase of preferred stock is a reduction in capital. Twelve U.S.C. 59 requires the approval of two-thirds of shareholders for a national bank to reduce capital, but it does not specify when in the process the bank must obtain shareholder approval. In Interpretive Letter 1162, the OCC determined that the holders of two-thirds of a national bank's shares may approve in advance redemptions of blank check preferred stock by voting to amend the articles of association to authorize the issuance and redemption of blank check preferred shares.[145]

Proposed § 7.2025(c) would codify these interpretations and permit blank check procedures, if approved in advance by the bank's shareholders, that authorize the issuance, repurchase, and redemption of preferred stock without additional shareholder approval at the time of issuance, repurchase, or redemption, if certain conditions are met. Proposed paragraph (c) would provide that, subject to the requirements of 12 U.S.C. 51a, 51b, and 59, a national bank may adopt procedures to authorize the board of directors to issue, determine the terms of, repurchase, or redeem one or more series of preferred stock, if permitted by the corporate governance provisions adopted by the bank under 12 CFR 7.2000. This proposed provision further provides that, to satisfy the shareholder approval requirements of 12 U.S.C. 51a and 59, shareholders must approve the adoption of these procedures in advance through an amendment to the national bank's articles of association, and that any amendment that authorizes both the issuance and the repurchase and redemption of shares must be approved by holders of two-thirds of the national bank's shares.

Share repurchase programs. In Interpretive Letter 1162, the OCC determined that the shareholder approval requirement in 12 U.S.C. 59 may be satisfied by a two-thirds shareholder vote approving an amendment to the bank's articles of association authorizing the board of directors to implement share repurchase programs. A share repurchase program authorizes the board of directors to repurchase the national bank's common or preferred stock from time to time under board-determined parameters that can limit the frequency, type, aggregate limit, or purchase price of repurchases, without obtaining additional shareholder approval at the time the shares are repurchased. Proposed § 7.2025(d) would codify this interpretation by providing that, subject to the requirements of 12 U.S.C. 59, a national bank may establish a program for the repurchase, from time to time, of the national bank's common or preferred stock, if permitted by the corporate governance provisions adopted by the bank under 12 CFR 7.2000. Proposed paragraph (d) also provides that, to satisfy the shareholder approval requirement of 12 U.S.C. 59, the repurchase program must be approved in advance by the holders of two-thirds of the national bank's shares, including through an amendment to the national bank's articles of association that authorizes the board of directors to implement share repurchase programs from time to time under board-determined parameters that can limit the frequency, type, aggregate limit, or purchase price of repurchases.

Preferred stock features. Proposed § 7.2025(e) would clarify that a national bank may issue and maintain noncumulative preferred stock under 12 U.S.C. 51b. This provision would codify a longstanding OCC interpretation that section 51b, by its terms, describes limitations on the portion of the preferred stock dividend which may be cumulative. It does not require that preferred stock dividends must always be cumulative.[146] Specifically, proposed § 7.2025(e) would provide that a national bank's preferred stock may be cumulative or non-cumulative and may or may not have voting rights on one or more series.

Subpart C— National Bank and Federal Savings Association Operations

National Bank and Federal Savings Association Hours and Closings (§ 7.3000)

The OCC is proposing to amend § 7.3000, National bank hours and closings, to include Federal savings associations, to update it, and to make technical and clarifying changes.

Twelve U.S.C. 95(b)(1) specifically authorizes the Comptroller to designate a legal holiday because of emergency conditions occurring in any State or part of a State for national banks located in that State or affected area. Section 95(b)(1) also provides that when a State or State official authorized by law designates any day as a legal holiday for

[142] A previous version of § 5.46 (1981) provided that shareholder approval would not be required to increase common stock through the issuance of a class of common up to an amount previously approved by shareholders. Subsequent amendments to § 5.46, which the OCC intended to simplify 12 CFR part 5, omitted this language but did not change this interpretation.

[143] OCC Interpretive Letter No. 921 (Dec. 13, 2001).

[144] The proposed rule would change this terminology in § 7.2000 to ''corporate governance provisions.''

[145] OCC Interpretive Letter No. 1162 (July 6, 2018).

[146] In part, section 51b provides that preferred shareholders ''shall be entitled to receive such cumulative dividends . . . as may be provided in the articles of association . . . and no dividends shall be declared or paid on common stock until cumulative dividends on preferred stock have been paid in full. . . . '' The OCC has previously interpreted section 51a as providing national banks with broad authority to issue preferred stock, including preferred stock bearing noncumulative dividends, notwithstanding the language of section 51b. *See* OCC Letter from Martin Goodman, OCC Assoc. Ch. Couns. (Oct. 3, 1977).

ceremonial or emergency reasons, that day is a legal holiday and a national bank located in that State or affected part of the State may close or remain open unless the Comptroller directs otherwise by written order.

The OCC has implemented this statutory provision in 12 CFR 7.3000. Specifically, § 7.3000(b) provides that when the Comptroller, a State, or a legally authorized State official declares a day a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend its operations at its affected offices. Alternatively, the bank may continue its operations, unless the Comptroller directs otherwise by written order. This rule provides that emergency conditions include natural disasters and civil and municipal emergencies, such as severe flooding or a power emergency declared by a local power company or government requesting that businesses in the affected area close. Section 7.3000(c) states that a State or a legally authorized State official may declare a day a legal holiday for ceremonial reasons and provides that when a State legal holiday is declared for ceremonial reasons, a national bank may choose to remain open or to close. Section 7.3000(d) provides that a national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied, *e.g.,* notice to depositors about funds availability pursuant to 12 CFR 229.13(g)(4).

There is no equivalent statute or corresponding regulation for Federal savings associations. However, a former OTS regulation at 12 CFR 510.2(b) permitted the OTS to waive or relax any limitations pertaining to the operations of a Federal savings associations in any area affected by a determination by the President of the United States that a major disaster or emergency had occurred. Amending § 7.300 to include Federal savings associations would clarify for these institutions how a legal holiday is declared and the implications of a legal holiday declaration, as well as provide consistency between national bank and Federal savings association operations on legal holidays. We note that the Comptroller is directed under section 4 of the HOLA (12 U.S.C. 1463(a)(1)(A)) to provide for the ''safe and sound operation'' of Federal savings associations.[147] The OTS relied on this HOLA authority when it issued § 510.2(b)[148] and this proposed rule furthers that objective.

The OCC also is proposing a number of changes to clarify and update the emergency closing provisions of § 7.3000. First, the OCC is proposing to clarify that § 7.3000 also applies to Federal branches and agencies of foreign banks. Although current § 7.3000 applies to Federal branches and agencies pursuant to section 4(b) of the International Banking Act, 12 U.S.C. 3102(b), the OCC believes it is appropriate to specify this application in the rule.[149]

Second, the proposal would provide that the Comptroller may declare ''any day'' a legal holiday, instead of ''a day,'' to more accurately reflect the statutory language and to clarify that the Comptroller may declare more than one day due to the emergency condition as a legal holiday.

Third, the proposed rule would amend § 7.3000(b) to state that emergency conditions could be ''caused by acts of nature or of man.'' This amendment mirrors the language in 12 U.S.C. 95(b)(1) and would clarify the broad scope of possible emergency conditions that could justify a legal holiday.

Fourth, the proposal updates the types of emergency conditions listed in the rule to include disasters other than natural disasters, public health or safety emergencies, and cyber threats or other unauthorized intrusions, and updates the list of examples to include pandemics, terrorist attacks, and cyber-attacks on bank systems.

Fifth, the proposal provides that the Comptroller may issue a declaration of a legal holiday in anticipation of the emergency condition, in addition to at the time of the emergency or soon thereafter. This codifies the current practice of the Comptroller in most cases, which permits national banks, Federal savings associations, and Federal branches and agencies to better plan for the possible closing.

Sixth, the proposal provides that in the absence of a Comptroller declaration of a bank holiday, a national bank, Federal savings associations, or Federal branch or agency may choose to temporarily close offices in response to an emergency condition. The bank, savings associations, or branch or agency would need to notify the OCC of such temporary closure as soon as feasible. This provision would provide additional flexibility to OCC-regulated institutions during emergency conditions and would codify similar language currently included in the OCC's Licensing Manual.[150]

Seventh, the proposal clarifies in § 7.3000(c) that a State legal holiday may be for the entire State or part of the State, as indicated in 12 U.S.C. 95(b)(1).

Eighth, as provided in the statute, the proposal provides in § 7.3000(c) that the Comptroller may by written order direct the affected institution to close or remain open during a State legal holiday declared for ceremonial reasons, as with a State legal holiday declared due to an emergency.

Finally, the proposed rule adds a new paragraph, § 7.3000(e), to provide a definition of ''State'' that is consistent with the definition in 12 U.S.C. 95(b)(2).

In addition, the OCC is proposing a number of technical changes to § 7.3000. The proposal would replace the word ''country'' with ''United States'' in the phrase describing affected geographic area to make this phrase more precise; delete the superfluous citation to 12 U.S.C. 95 in § 7.3000(b); and delete the superfluous first sentence of current § 7.3000(c), which states that a State or a legally authorized State official may declare a day a legal holiday for ceremonial reasons.

In proposing these changes, the OCC is reorganizing § 7.3000(b) and (c) so that all provisions relating to Comptroller declared legal holidays for emergency conditions are in § 7.3000(b) and all provisions related to State declared legal holidays for emergency and ceremonial reasons are in § 7.3000(c). This reorganization more clearly sets forth the standards for Comptroller and State declared legal holidays and corresponds better with the statutory text.

Section 7.3000 also provides, in paragraph (a), that a national bank's board of directors should review its banking hours and, independently of any other bank, take appropriate actions to establishing a schedule of its banking hours. The OCC is proposing to update this provision by replacing ''banking hours'' with ''hours of operations for customers.'' Furthermore, the OCC is proposing to include Federal savings associations and Federal branches and agencies in this provision. Because Federal branches and agencies typically

[147] *See also* 12 U.S.C. 1(a) (charging the OCC with assuring the safety and soundness of institutions subject to its jurisdiction).

[148] *See* 54 FR 49411, at 49456 (Nov. 30, 1989).

[149] As indicated previously in this preamble, section 4(b) of the International Banking Act, 12 U.S.C. 3102(b), provides that the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location. *See also* 12 CFR 28.13.

[150] *See* Comptroller's Licensing Manual, Branch Closings (June 2017).

do not have a board of directors, proposed § 7.3000(a) would provide that an equivalent person or committee for a Federal branch or agency should review that entity's operating hours and take appropriate action to establish a schedule of operating hours for customers.

Sharing National Bank or Federal Savings Association Space and Employees (§ 7.3001)

Section 7.3001 permits national banks and Federal savings associations to lease excess space on bank or savings association premises to other businesses, share space jointly held with other businesses, offer its services in space owned by or leased to other businesses, and share employees when sharing space. The OCC proposes to add a cross-reference to redesignated § 7.1024, National bank or Federal savings association ownership of property, in § 7.3001(a)(1) to clarify that the requirements of § 7.1024 apply to the sharing of office space and employees pursuant to § 7.3001.

General Technical Changes

In addition to the technical changes discussed above, the OCC proposes numerous technical changes throughout 12 CFR part 7. Specifically, the proposed rule would:

- Replace the word ''shall'' with ''must,'' ''will,'' or other appropriate language, which is the more current rule writing convention for imposing an obligation and is the recommended drafting style of the **Federal Register**;
- Uniformly capitalize the words ''State'' and ''Federal'' in conformance with **Federal Register** drafting style;
- Replace the term ''bank'' and ''savings association'' with ''national bank'' or ''Federal savings association,'' respectively, where appropriate;
- Clarify punctuation and update or conform spelling of various terms; and
- Conform paragraph heading style.

III. Request for Comments

The OCC requests comment on any aspect of this proposal, in addition to those specific requests noted in the **SUPLEMENTARY INFORMATION**. Further, the COVID 19 emergency has required banks in many cases to consider changes to the way they do business and may potentially result in longer term changes in industry practices. The OCC requests comment on whether it should consider other amendments to part 7 to address issues that may have arisen due to the COVID–19 pandemic. If so, please provide suggestions for specific amendments and not general requests for changes.[151]

IV. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rulemaking contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC reviewed the proposed rulemaking and determined that it revises certain information collection requirements previously cleared by OMB under OMB Control No. 1557–0204. The OCC has submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320).

Current Actions

The information collection requirements are as follows:

- *Tax Equity Finance Transactions*—Written requests are required to increase the aggregate limit on tax equity finance transactions. Prior written notification to OCC is required for each tax equity finance transaction. § 7.1025.
- *Payment Systems*—Thirty (30) days advance written notice is required before joining a payment system that would expose the institution to open-end liability. An after-the-fact written notice must be filed within 30 days of becoming a member of a payment system that does not expose the institution to open-end liabilities with certain representations. Both notices must include safety and soundness representations. § 7.1026.
- *Derivatives Activities*—Thirty (30) days prior written notice is required before engaging in certain derivatives hedging activities, expanding derivatives hedging activities to include a new category of underlying, engaging in certain customer-driven financial intermediation derivatives activities, and expanding customer-driven financial intermediation derivatives activities to include a new category of underlying. § 7.1030.
- *State Corporate Governance*—Requests for OCC's staff position on the ability of national bank to engage in particular State corporate governance provision must include name, citations, discussion of similarly suited State banks, identification of Federal banking statutes and regulations, and analysis of consistency with statutes, regulations, and safety and soundness. § 7.2000.
- *Indemnification of institution-affiliated parties—Administrative proceeding or civil actions not initiated by a Federal banking agency*—A written agreement that an IAP will reimburse the institution for any portion of non-reimbursed indemnification that the IAP is found not entitled to is required before advancing funds to an IAP. Federal savings associations no longer required to provide OCC prior notice of indemnification. § 7.2014.
- *Issuing Stock in Certificate Form*—National banks must include certain information, signatures and seal when issuing stock in certificate form. § 7.2016.

Title of Information Collection: Bank Activities and Operations.

Frequency: Event generated.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 213.

Total estimated annual burden: 586 hours.

Comments are invited on:

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

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. Written comments and

[151] As indicated previously in this Supplementary Information section, the OCC has issued an interim final rule that amends 12 CFR 7.1001 and 7.1003 to provide for remote participation at shareholder and board of director meetings to allow national banks to hold these meetings without violating social distancing restrictions imposed in response to the COVID–19 emergency. *See* 85 FR 31943 (May 28, 2020).

recommendations for the information collection should be sent within 60 days of publication of this notice of proposed rulemaking 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.

B. Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million of less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 1,185 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks, collectively banks), of which 782 are small entities.[152] Because the rule applies to all OCC-supervised depository institutions, the proposed rule would affect all small OCC-supervised entities and thus, a substantial number of them. However, almost all of the provisions in the final rule clarify or codify existing requirements, loosen existing requirements, increase flexibility, or reduce burden. One provision in the proposed rule, § 7.2012, which would require a bank president to be a member of the bank's board of directors, could impose a new requirement on banks subject to the prior notice requirement for any change in directors pursuant to 12 CFR 5.51. However, the number of banks that are subject to this prior notice requirement that do not currently have a president serving on the board of directors is limited. As a result, the proposed rule, if implemented, would not impose new mandates on more than a limited number of banks. Therefore, the OCC believes the costs associated with the proposed rule, if any, would be minimal and thus the proposed rule would not have a significant economic impact on any small OCC-supervised entities. For these reasons, the OCC certifies that, if adopted, the proposed rule would not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, an Initial Regulatory Flexibility Analysis is not required.

C. Unfunded Mandates Reform Act of 1995

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.* Under this analysis the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($154 million as adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

As discussed above, the proposed rule, if implemented, would not impose new mandates on more than a limited number of banks. Therefore, the OCC concludes that if implemented, the proposed rule would not result in an expenditure of $154 million or more annually by State, local, and tribal governments, or by the private sector. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with principles of safety and soundness and the public interest: (1) Any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rule. The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule.

List of Subjects

12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds

12 CFR Part 145

Electronic funds transfers, Public deposits, Federal savings associations

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set out in the preamble, the OCC proposes to amend 12 CFR chapter I as follows:

PART 7—ACTIVITIES AND OPERATIONS

■ 1. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m), 3102(b), and 5412(b)(2)(B).

§ 7.1000 [Redesignated]

■ 2. Redesignate § 7.1000 as § 7.1024.

■ 3. Add § 7.1000 to read as follows:

§ 7.1000 Activities that are part of, or incidental to, the business of banking.

(a) *Purpose.* This section identifies the criteria that the Office of the Comptroller of the Currency (OCC) uses to determine whether an activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh) or other statutory authority.

(b) *Restrictions and conditions on activities.* The OCC may determine that activities are permissible under 12 U.S.C. 24(Seventh) or other statutory authority only if they are subject to standards or conditions designed to provide that the activities function as intended and are conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

[152] Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an institution as a small entity. The OCC used December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

(c) *Activities that are part of the business of banking.*

(1) An activity is permissible for national banks as part of the business of banking if the activity is authorized under 12 U.S.C. 24(Seventh) or other statutory authority. In determining whether an activity that is not specifically included in 12 U.S.C. 24(Seventh) or other statutory authority is part of the business of banking, the OCC considers the following factors:

(i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;

(ii) Whether the activity strengthens the bank by benefiting its customers or its business;

(iii) Whether the activity involves risks similar in nature to those already assumed by banks; and

(iv) Whether the activity is authorized for State-chartered banks.

(2) The weight accorded each factor set out in paragraph (c)(1) of this section depends on the facts and circumstances of each case.

(d) *Activities that are incidental to the business of banking.*

(1) An activity is authorized for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking. In determining whether an activity is convenient or useful to such activities, the OCC considers the following factors:

(i) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and

(ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste.

(2) The weight accorded each factor set out in paragraph (d)(1) of this section depends on the facts and circumstances of each case.

■ 4. Amend § 7.1002 by:

■ a. Revising the heading in paragraph (a);

■ b. In paragraph (b)(6), removing the word ''and'';

■ c. In paragraph (b)(7)(ii), removing the period after ''specific transaction'' and adding in its place ''; and''; and

d. Adding paragraph (b)(8).

The revision and addition reads as follows:

§ 7.1002 National bank acting as finder.

(a) *In general.* * * *

* * * * *

(b) * * *

(8) Acting as an electronic finder pursuant to § 7.5002(a)(1).

* * * * *

■ 5. Amend § 7.1003 by:

■ a. Revising the section heading;

■ b. Revising the paragraph heading in paragraph (a); and

■ c. Adding paragraph (c).

The revisions and addition read as follows:

§ 7.1003 Money lent at banking offices or at facilities other than banking offices.

(a) *In general.* * * *

* * * * *

(c) *Services on equivalent terms to those offered customers of unrelated banks.* An operating subsidiary owned by a national bank may distribute loan proceeds from its own funds or bank funds directly to the borrower in person at offices the operating subsidiary has established without violating 12 U.S.C. 36, 12 U.S.C. 81 and 12 CFR 5.30, provided that the operating subsidiary provides similar services on substantially similar terms and conditions to customers of unaffiliated entities including unaffiliated banks.

■ 6. Revise 7.1004 to read as follows:

§ 7.1004 Establishment of a loan production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in loan production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit loan customers, market loan products, assist persons in completing application forms and related documents to obtain a loan, originate and approve loans, make credit decisions regarding a loan application, and offer other lending-related services such as loan information and applications at a loan production office without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that ''money'' is not deemed to be ''lent'' at that site within the meaning of § 7.1003 and the site does not accept deposits or pay withdrawals.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its loan production activities.

§ 7.1005 [Removed and Reserved]

■ 7. Remove and reserve § 7.1005.

§ 7.1006 [Amended]

■ 8. Amend § 7.1006 by:

■ a. Revising the section heading by removing the words ''national bank'';

■ b. Adding the words ''or Federal savings association'' after the words ''national bank'' wherever it appears in the first and second sentences; and

■ c. Adding the words ''or savings association'' after the words ''provided that the bank'' in the second sentence.

§ 7.1009 [Removed and Reserved]

■ 9. Remove and reserve § 7.1009.

■ 10. Revise § 7.1010 to read as follows:

§ 7.1010 Postal services by national banks and Federal savings associations.

(a) *In general.* A national bank or Federal savings association may provide postal services and receive income from those services. The services performed are those permitted under applicable rules of the United States Postal Service. These may include meter stamping of letters and packages and the sale of related insurance. The national bank or Federal savings association may advertise, develop, and extend the services to attract customers to the institution.

(b) *Postal regulations.* A national bank or Federal savings association providing postal services must do so in accordance with the rules and regulations of the United States Postal Service. The national bank or Federal savings association must keep the books and records of the postal services separate from those of other banking operations. Under 39 U.S.C. 404 and any regulations issued under that statute, the United States Postal Service may inspect the books and records pertaining to the postal services.

§ 7.1012 [Amended]

■ 11. Amend § 7.1012 by:

■ a. In paragraph (c)(1), removing the words ''pick up from, and deliver'' and adding in its place the words ''pick up from and deliver''; and

■ b. In paragraph (c)(2)(vi), removing the words ''back office'' and adding in its place the words ''back-office''.

■ 12. Revise § 7.1015 to read as follows:

§ 7.1015 National bank and Federal savings association investments in small business investment companies.

(a) *National banks.* A national bank may invest in a small business investment company (SBIC) or in any entity established solely to invest in SBICs, including purchasing the stock of a SBIC, subject to appropriate capital limitations (*see e.g.,* 15 U.S.C. 682(b)), and may receive the benefits of such stock ownership (*e.g.,* stock dividends). The receipt and retention of a dividend by a national bank from a SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock

within the meaning of 12 U.S.C. 24(Seventh).

(b) *Federal savings associations.* Federal savings associations may invest in a SBIC or in any entity established solely to invest in SBICs as provided in 12 CFR 160.30.

(c) *Qualifying SBIC.* A national bank or Federal savings association may invest in a SBIC that is either (1) already organized and has obtained a license from the Small Business Administration, or (2) in the process of being organized.

■ 13. Amend § 7.1016 by:
■ a. Revising the section heading;
■ b. Revising paragraph (a);
■ c. In paragraph (b)(1) introductory text, removing the word ''banks'' wherever it appears and adding in its place the words ''national banks and Federal savings associations'';
■ d. Revising paragraph (b)(1)(iv);
■ e. In paragraph (b)(2)(ii), removing the word ''bank's'' and adding in its place the words ''national bank's or Federal savings association's'';
■ f. In paragraphs (b)(1)(iii)(B), (1)(iii)(C), (2)(i), (2)(iii), (3), and (4), removing the word ''bank'' and adding in its place the words ''national bank or Federal savings association'';
■ g. In paragraphs (b)(1)(iii)(B), (2)(iii) and (4), adding the words ''or savings association's'' after the word ''bank's''; and
■ h. In paragraph(b)(2)(i), adding the words ''or savings association'' after the word ''bank'' wherever it appears.

The revisions read as follows:

§ 7.1016 Independent undertakings issued by a national bank or Federal savings association to pay against documents.

(a) *In general.* A national bank or Federal savings association may issue and commit to issue letters of credit and other independent undertakings within the scope of applicable laws or rules of practice recognized by law.[1] Under such independent undertakings, the national bank's or Federal savings association's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank or Federal savings association may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules. As used in this section, the term national bank includes Federal branches and agencies of a foreign bank.

(b) * * * (1) * * *

* * * * *

(iv) The national bank or Federal savings association either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the national bank's or Federal savings association's undertaking is to purchase documents of title, securities, or other valuable documents, the bank or savings association should obtain a first priority right to realize on the documents if the bank or savings association is not otherwise to be reimbursed.

* * * * *

■ 14. Revise § 7.1021 to read as follows:

§ 7.1021 Financial literacy programs not branches of national banks

A financial literacy program is a program the principal purpose of which is to be educational for members of the community. The premises of, or a facility used by, a school or other organization at which a national bank participates in a financial literacy program is not a branch for purposes of 12 U.S.C. 36 provided the bank does not establish and operate the premises or facility. The OCC considers establishment and operation in this context on a case by case basis, considering the facts and circumstances. However, the premises or facility is not a branch of the national bank if the safe harbor test in 12 CFR 7.1012(c)(2) applicable to messenger services established by third parties is satisfied. The factor discussed in § 7.1012(c)(2)(i) can be met if bank employee participation in the financial literacy program consists of managing the program or conducting or engaging in financial education activities provided the school or other organization retains control over the program and over the premises or facilities at which the program is held.

§ 7.1022 [Amended]

■ 15. Amend § 7.1022 by:
■ a. In paragraph (d), removing the word ''shall'' and adding in its place the word ''may'' wherever it appears; and
■ b. In paragraph (e), removing the word ''shall'' and adding in its place the word ''must'' and removing the words ''the effective date of this regulation'' and adding in its place the words ''April 1, 2018''.

§ 7.1023 [Amended]

■ 16. Amend § 7.1023 by:
■ a. In paragraph (c), removing the word ''shall'' and adding in its place the word ''may'' and removing the words ''federal savings association'' and adding in its place the words ''Federal savings association''; and
■ b. In paragraph (d):
■ i. Removing the word ''shall'' and adding in its place the word ''must'';
■ ii. Removing the words ''the effective date of this regulation'' and adding in its place the words ''April 1, 2018''; and
■ iii. Removing the words ''federal savings association'' and adding in its place the words ''Federal savings association''.

§ 7.1024 [Amended]

■ 17. Amend redesignated § 7.1024 by:
■ a. In paragraphs (c)(2)(i) and(ii), and (d), removing the word ''shall'' and adding in its place the word ''must'' wherever it appears; and
■ b. In paragraph (e), removing the word ''shall'' and adding in its place the word ''may''.
■ 18. Add § 7.1025 to read as follows:

§ 7.1025 Tax equity finance transactions.

(a) *Tax equity finance transactions.* A national bank or Federal savings association may engage in a tax equity finance transaction pursuant to 12 U.S.C. 24(Seventh) and 1464 only if the transaction is the functional equivalent of a loan, as provided in paragraph (c) of this section, and the transaction satisfies applicable conditions in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section:

(1) *Tax equity finance transaction* means a transaction in which a national bank or Federal savings association provides equity financing to fund a project that generates tax credits and other tax benefits and the use of an equity-based structure allows the transfer of those credits and other tax benefits to the national bank or Federal savings association.

(2) *Capital and surplus* has the same meaning that this term has in 12 CFR 32.2.

(c) *Functional equivalent of a loan.* A tax equity finance transaction is the functional equivalent of a loan if:

[1] Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600 or any applicable prior version); the Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0, 1.1, & 2.0) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation); International Standby Practices (ISP98) (ICC Publication No. 590); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 725).

(1) The structure of the transaction is necessary for making the tax credits and other tax benefits available to the national bank or Federal savings association;

(2) The transaction is of limited tenure and is not indefinite, such as a limited investment interest required by law to obtain continuing tax benefits;

(3) The tax benefits and other payments received by the national bank or Federal savings association from the transaction repay the investment and provide the implied rate of return;

(4) Consistent with paragraph (c)(3) of this section, the national bank or Federal savings association does not rely on appreciation of value in the project or property rights underlying the project for repayment;

(5) The national bank or Federal savings association uses underwriting and credit approval criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for a traditional commercial loan;

(6) The national bank or Federal savings association is a passive investor in the transaction and is unable to direct the affairs of the project company; and

(7) The national bank or Federal savings association appropriately accounts for the transaction initially and on an ongoing basis and has documented contemporaneously its accounting assessment and conclusion.

(d) *Conditions on tax equity finance transactions.* A national bank or Federal savings association may engage in tax equity finance transactions only if:

(1) The national bank or Federal savings association cannot control the sale of energy, if any, from the project;

(2) The national bank or Federal savings association limits the total dollar amount of tax equity finance transactions undertaken pursuant to this section to no more than five percent of its capital and surplus, unless the OCC determines, by written approval of a written request by the national bank or Federal savings association to exceed the five percent limit, that a higher aggregate limit will not pose an unreasonable risk to the national bank or Federal savings association and that the tax equity finance transactions in the national bank's or Federal savings association's portfolio will not be conducted in an unsafe or unsound manner; provided, however, that in no case may a national bank or Federal savings association's total dollar amount of tax equity finance transactions undertaken pursuant to this section exceed 15 percent of its capital and surplus;

(3) The national bank or Federal savings association has provided written notification to the OCC prior to engaging in each tax equity finance transaction that includes its evaluation of the risks posed by the transaction; and

(4) The national bank or Federal savings association can identify, measure, monitor, and control the associated risks of its tax equity finance transaction activities individually and as a whole on an ongoing basis to ensure that such activities are conducted in a safe and sound manner.

(e) *Applicable legal requirements.* The transaction is subject to the substantive legal requirements of a loan, including the lending limits prescribed by 12 U.S.C. 84 and 12 U.S.C. 1464(u), as appropriate, as implemented by 12 CFR 32, and if the active investor or project sponsor of the transaction is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1, as implemented by 12 CFR 223.

■ 19. Add § 7.1026 to read as follows:

§ 7.1026 Payment systems memberships.

(a) *In general.* National banks and Federal savings associations may become members of payment systems, subject to the requirements of this section.

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

(1) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4;

(2) *Member* includes a national bank or Federal savings association designated as a ''member,'' or ''participant,'' or other similar role by a payment system, including by a payment system that requires the national bank or Federal savings association to share in operational losses or maintain a reserve with the payment system to offset potential liability for operational losses;

(3) *Open-ended liability* refers to liability for operational losses that is not capped under the rules of the payment system and includes indemnifications provided to third parties as a condition of membership in the payment system;

(4) *Operational loss* means a charge resulting from sources other than defaults by other members of the payment system; and

(5) *Payment system* means ''financial market utility'' as defined in 12 U.S.C. 5462(6), wherever operating, and includes both retail and wholesale payment systems. Payment system does not include a derivatives clearing organization registered under the Commodity Exchange Act, a clearing agency registered under the Securities Exchange Act of 1934, or foreign organization that would be considered a derivatives clearing organization or clearing agency were it operating in the United States.

(c) *Notice requirements.*

(1) *Prior notice required.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office at least 30 days prior to joining a payment system that exposes it to open-ended liability.

(2) *After-the-fact notice.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office within 30 days of joining a payment system that does not expose it to open-ended liability.

(d) *Content of notice.*

(1) *In general.* A notice required by paragraph (c) of this section must include representations that the national bank or Federal savings association:

(i) Has complied with the safety and soundness review requirements in paragraph (e)(1) of this section; and

(ii) Will comply with the safety and soundness review and notification requirements in paragraphs (e)(2) and (3) of this section.

(2) *Payment system limits on liability or no liability.* A notice filed under paragraph (c)(2) of this section also must include a representation that either:

(i) The rules of the payment system do not impose liability for operational losses on members; or

(ii) The national bank's or Federal savings association's liability for operational losses is limited by the rules of the payment system to specific and appropriate limits that do not exceed the lower of:

(A) the legal lending limit under 12 CFR 32; or

(B) the limit set for the bank or savings association by the OCC.

(e) *Safety and soundness procedures.*

(1) Prior to joining a payment system, a national bank or Federal savings association must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Ensure that it can measure, monitor, and control the risks identified pursuant to paragraph (e)(1)(i) of this section.

(2) After joining a payment system, a national bank or Federal savings association must manage the risks of the payment system on an ongoing basis. This ongoing risk management must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Measure, monitor, and control the risks identified pursuant to paragraph (e)(2)(i) of this section.

(3) If the national bank or Federal savings association identifies risks during the ongoing risk management required by paragraph (e)(2) of this section that raise safety and soundness concerns, such as a material change to the bank's liability or indemnification responsibilities, the national bank or Federal savings association must:

(i) Notify the appropriate OCC supervisory office as soon as the safety and soundness concern is identified; and

(ii) Take appropriate actions to remediate the risk.

(4) A national bank or Federal savings association that believes its open-ended liability is otherwise limited (*e.g.,* by negotiated agreements or laws of an appropriate jurisdiction) may consider its liability to be limited for purposes of the reviews required by paragraphs (e)(1) and (2) of this section so long as:

(i) Prior to joining the payment system, the bank or savings association obtains an independent legal opinion that:

(A) Describes how the payment system allocates liability for operational losses; and

(B) Concludes the potential liability for operational losses for the national bank or Federal savings association is in fact limited to specific and appropriate limits that do not exceed the lower of:

(*1*) The legal lending limit under 12 CFR 32; or

(*2*) The limit set for the bank or savings association by the OCC; and

(ii) There are no material changes to the liability or indemnification requirements of the bank or savings association since the issuance of the independent legal opinion.

■ 20. Add § 7.1027 to read as follows:

§ 7.1027 Establishment and operation of a remote service unit by a national bank.

A remote service unit (RSU) is an automated or unstaffed facility, operated by a customer of a bank with at most delimited assistance from bank personnel, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. 24(Seventh). An RSU includes an automated teller machine, automated loan machine, automated device for receiving deposits, personal computer, telephone, other similar electronic devices, and drop boxes. An RSU may be equipped with a telephone or tele-video device that allows contact with bank personnel. An RSU is not a ''branch'' within the meaning of 12 U.S.C. 36(j), and is not subject to State geographic or operational restrictions or licensing laws.

■ 21. Add § 7.1028 to read as follows:

§ 7.1028 Establishment and operation of a deposit production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account at a deposit production office (DPO). A DPO is not a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30(d)(1) so long as it does not receive deposits, pay withdrawals, or make loans. All deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities.

■ 22. Add § 7.1029 to read as follows:

§ 7.1029 Combination of national bank loan production office, deposit production office, and remote service unit.

A location at which a national bank operates a loan production office (LPO), a deposit production office (DPO), and a remote service unit (RSU) is not a ''branch'' within the meaning of 12 U.S.C. 36(j) by virtue of that combination. Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), any combination of these facilities at one location does not create a branch. The RSU at such a combined location must be primarily operated by the customer with at most delimited assistance from bank personnel.

■ 23. Add § 7.1030 to read as follows:

§ 7.1030 Permissible derivatives activities for national banks.

(a) *Authority.* This section is issued pursuant to 12 U.S.C. 24 (Seventh). A national bank may only engage in derivatives transactions in accordance with the requirements of this section.

(b) *Definitions.* For purposes of this section:

(1) *Customer-driven* means a transaction is entered into for a customer's valid and independent business purpose (and a customer-driven transaction does not include a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly);

(2) *Perfectly-matched* means two back-to back derivatives transactions that offset risk with respect to all economic terms (*e.g.,* amount, maturity, duration, and underlying);

(3) *Portfolio-hedged* means a portfolio of derivatives transactions that are hedged based on net unmatched positions or exposures in the portfolio;

(4) *Physical hedging* or *physically-hedged* means holding title to or acquiring ownership of an asset (for example, by warehouse receipt or book-entry) solely to manage the risks arising out of permissible customer-driven derivatives transactions;

(5) *Physical settlement* or *physically-settled* means accepting title to or acquiring ownership of an asset;

(6) *Transitory title transfer* means accepting and immediately relinquishing title to an asset; and

(7) *Underlying* means the reference asset, rate, obligation, or index on which the payment obligation(s) between counterparties to a derivative transaction is based.

(c) *In general.* A national bank may engage in the following derivatives transactions after notice in accordance with paragraph (d) of this section, as applicable:

(1) Derivatives transactions with payments based on underlyings a national bank is permitted to purchase directly as an investment;

(2) Derivatives transactions with any underlying to hedge the risks arising from bank-permissible activities;

(3) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, cash-settled, and either perfectly-matched or portfolio-hedged;

(4) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, physically-settled by transitory title transfer, and either perfectly-matched or portfolio-hedged; and

(5) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, physically-settled (other than by transitory title transfer), physically-hedged, and either perfectly-matched or portfolio-hedged, and provided that (i) the national bank does not take physical

delivery of any commodity by receipt of physical quantities of the commodity on bank premises and (ii) physical hedging activities meet the requirements of paragraph (e) of this section.

(d) *Notice procedure.* (1) A national bank must provide notice to its Examiner-in-Charge prior to engaging in any of the following with respect to derivatives transactions with payments based on underlyings that a national bank is not permitted to purchase directly as an investment:

(i) Engaging in derivatives hedging activities pursuant to paragraph (c)(2) of this section;

(ii) Expanding the bank's derivatives hedging activities pursuant to paragraph (c)(2) of this section to include a new category of underlying for derivatives transactions;

(iii) Engaging in customer-driven financial intermediation derivatives activities pursuant to paragraphs (c)(3), (4) or (5) of this section; and

(iv) Expanding the bank's customer-driven financial intermediation derivatives activities pursuant to paragraphs (c)(3), (4) or (5) of this section to include any new category of underlyings.

(2) The notice pursuant to paragraph (d)(1) of this section must be submitted in writing at least 30 days before the national bank commences the activity and include the following information:

(i) A detailed description of the proposed activity, including the relevant underlyings;

(ii) The anticipated start date of the activity; and

(iii) A detailed description of the bank's risk management system (policies, processes, personnel, and control systems) for identifying, measuring, monitoring, and controlling the risks of the activity.

(e) *Additional requirements for physical hedging activities.* (1) A national bank engaging in physical hedging activities pursuant to paragraph (c)(5) of this section must hold the underlying solely to hedge risks arising from derivatives transactions originated by customers for the customers' valid and independent business purposes.

(2) The physical hedging activities must offer a cost-effective means to hedge risks arising from permissible banking activities.

(3) The national bank must not take anticipatory or maintain residual positions in the underlying except as necessary for the orderly establishment or unwinding of a hedging position.

(4) The national bank must not acquire equity securities for hedging purposes that constitute more than 5 percent of a class of voting securities of any issuer.

(5) With respect to physical hedging involving commodities:

(i) A national bank's physical position in a particular physical commodity (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size) must not be more that 5 percent of the gross notional value of the bank's derivatives that are in that particular physical commodity and allow for physical settlement within 30 days. Title to commodities acquired and immediately sold by a transitory title transfer does not count against the 5 percent limit; and

(ii) The physical position must more effectively reduce risk than a cash-settled hedge referencing the same commodity.

■ 24. Amend § 7.2000 by:

■ a. Revising the section heading;

■ b. Revising paragraph (a);

■ c. In paragraph (b):

■ i. Removing the word ''procedures'' wherever it appears and adding in its place the word ''provisions'';

■ ii. Removing the words ''the state in which the main office of the bank'' and adding in its place the words ''any State in which the main office or any branch of the bank'';

■ iii. Removing the words ''the state in which the holding company of the bank'' and adding in its place the words ''the State in which a holding company of the bank''; and

■ iv. Removing the word ''shall'' and adding in its place the word ''must'';

■ d. Redesignating paragraph (c) as paragraph (d) and revising it; and

■ e. Adding a new paragraph (c).

The addition and revisions are set forth below.

§ 7.2000 Corporate governance.

(a) *In general.* The corporate governance provisions in a national bank's articles of association and bylaws and the bank's conduct of its corporate governance affairs must comply with applicable Federal banking statutes and regulations and safe and sound banking practices.

* * * * *

(c) *Continued use of former holding company State.* A national bank that has elected to follow the corporate governance provisions of the law of the State in which its holding company is incorporated may continue to use those provisions even if the bank is no longer controlled by that holding company.

(d) *Request for OCC staff position.* A national bank may request the views of OCC staff on the permissibility of a national bank's adoption of a particular State corporate governance provision. Requests must include the following information:

(1) The name of the national bank;

(2) Citation to the State statutes or regulations involved;

(3) A discussion as to whether a similarly situated State bank is subject to or may adopt the corporate governance provision;

(4) Identification of all Federal banking statutes or regulations that are on the same subject as, or otherwise have a bearing on, the subject of the proposed State corporate governance provision; and

(5) An analysis of how the proposed practice is not inconsistent with applicable Federal statutes or regulations and is not inconsistent with bank safety and soundness.

■ 25. Add § 7.2001 to read as follows:

§ 7.2001 National bank adoption of anti-takeover provisions.

(a) *In general.* Pursuant to 12 CFR 7.2000(b), a national bank may adopt anti-takeover provisions included in State corporate governance law if the provisions are not inconsistent with Federal banking statutes or regulations and not inconsistent with bank safety and soundness.

(b) *State anti-takeover provisions that are not inconsistent with Federal banking statutes or regulations.* State anti-takeover provisions that are not inconsistent with Federal banking statues or regulations include the following:

(1) *Restriction on business combinations with interested shareholders.* State provisions that prohibit, or that permit the corporation to prohibit in its certificate of incorporation or other governing document, the corporation from engaging in a business combination with an interested shareholder or any related entity for a specified period of time from the date on which the shareholder first becomes an interested shareholder, subject to certain exceptions such as board approval. An interested shareholder is one that owns an amount of stock specified in the State provision.

(2) *Poison pill.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that all the shareholders, other than the hostile acquiror, have the right to purchase additional stock at a substantial discount upon the occurrence of a triggering event.

(3) *Requiring all shareholder action to be taken at a meeting.* State provisions that provide, or that permit the corporation to provide in its certificate

of incorporation or other governing document, that all actions to be taken by shareholders must occur at a meeting and that shareholders may not take action by written consent.

(4) *Limits on shareholders' authority to call special meetings.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that:

(i) Only the board of directors, and not the shareholders, have the right to call special meetings of the shareholders; or

(ii) If shareholders have the right to call special meetings, a high percentage of shareholders is needed to call the meeting.

(5) *Shareholder removal of a director only for cause.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that shareholders may remove a director only for cause, and not both for cause and without cause.

(c) *State anti-takeover provisions that are inconsistent with Federal banking statutes or regulations.* The following State anti-takeover provisions are inconsistent with Federal banking statutes or regulations:

(1) *Supermajority voting requirements.* State provisions that require, or that permit the corporation to require in its certificate of incorporation or other governing document, a supermajority of the shareholders to approve specified matters are inconsistent when applied to matters for which Federal banking statutes or regulations specify the required level of shareholder approval.

(2) *Restrictions on a shareholder's right to vote all the shares it owns.* State provisions that prohibit, or that permit the corporation in its certificate of incorporation or other governing document to prohibit, a person from voting shares acquired that increase their percentage of ownership of the company's stock above a certain level are inconsistent when applied to shareholder votes governed by 12 U.S.C. 61.

(d) *Bank safety and soundness.* (1) *In general.* Except as provided in paragraph (d)(2) of this section, any State corporate governance provision, including anti-takeover provisions, that would render more difficult or discourage an injection of capital by purchase of bank stock, a merger, the acquisition of the bank, a tender offer, a proxy contest, the assumption of control by a holder of a large block of the bank's stock, or the removal of the incumbent board of directors or management is inconsistent with bank safety and soundness if:

(i) The bank is less than adequately capitalized (as defined in 12 CFR part 6);

(ii) The bank is in troubled condition (as defined in 12 CFR 5.51(c)(7));

(iii) Grounds for the appointment of a receiver under 12 U.S.C. 191 are present; or

(iv) The bank is otherwise in less than satisfactory condition, as determined by the OCC.

(2) *Exception.* Anti-takeover provisions are not inconsistent with bank safety and soundness if, at the time the bank adopts the provisions:

(i) The bank is not subject to any of the conditions in paragraph (d)(1) of this section; and

(ii) The bank includes, in its articles of association or its bylaws, as applicable pursuant to paragraph (f) of this section, a limitation that would make the provisions ineffective if:

(A) The conditions in paragraph (d)(1) of this section exist; or

(B) The OCC otherwise directs the bank not to follow the provision for supervisory reasons.

(e) *Case-by-case review.* (1) *OCC Determination.* Based on the substance of the provision or the individual circumstances of a national bank, the OCC may determine that a State anti-takeover provision, as proposed or adopted by a bank, is:

(i) Inconsistent with Federal banking statutes or regulations, notwithstanding paragraph (b) of this section; or

(ii) Inconsistent with bank safety and soundness other than as provided in paragraph (d) of this section.

(2) *Review.* The OCC may initiate a review, or a bank may request OCC review pursuant to 12 CFR 7.2000(d), of a State anti-takeover provision.

(f) *Method of adoption for anti-takeover provisions.* (1) *Board and shareholder approval.* A national bank must follow the provisions for approval by the board of directors and approval of shareholders for the adoption of an anti-takeover provision in the State corporate governance law it has elected to follow. However, if the provision is included in the bank's articles of association, the bank's shareholders must approve the amendment of the articles pursuant to 12 U.S.C. 21a, even if the State law does not require approval by the shareholders.

(2) *Documentation.* If the State corporate governance law requires the anti-takeover provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, the national bank must include the provision in its articles of association. If the State corporate governance law does not require the provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, but allows it to be in the bylaws, then the national bank must include the provision in either its articles of association or in its bylaws, provided, however, that if the State corporate governance law requires shareholder approval for changes to the corporation's bylaws, then the national bank must include the provision in its articles of association.

§ 7.2002 [Amended]

■ 26. Amend § 7.2002 by adding the words ''for shareholder voting'' after the word ''proxy'' wherever it appears.

■ 27. Amend § 7.2005 by:

■ a. Revising the heading in paragraph (a); and

■ b. Removing in paragraph (c)(3)(ii), the word ''shall'' and adding in its place the word ''must''.

The revision reads as follows:

§ 7.2005 Ownership of stock necessary to qualify as director.

(a) *In general.* * * *

* * * * *

§ 7.2006 [Amended]

■ 28. Amend § 7.2006 in the first sentence by removing the word ''shall'' and adding in its place the word ''must''.

§ 7.2008 [Amended]

■ 29. Amend § 7.2008 by:

■ a. In paragraph (a), removing the word ''state'' and adding in its place the word ''State''; and

■ b. In paragraph (b), removing the word ''shall'' and adding in its place the word ''must'' wherever it appears.

§ 7.2009 [Amended]

■ 30. Amend § 7.2009 by removing the word ''shall'' and adding in its place the word ''must''.

§ 7.2010 [Amended]

■ 31. Amend § 7.2010 in the first sentence by removing the word ''shall'' and adding in its place the word ''must''.

■ 32. Revise § 7.2012 to read as follows:

§ 7.2012 President as director.

Pursuant to 12 U.S.C. 76, the person serving as, or in the function of, president of a national bank, regardless of title, must be a member of the board of directors. A director other than the person serving as, or in the function of, president may be elected chairman of the board.

■ 33. Revise § 7.2014 to read as follows:

§ 7.2014 Indemnification of institution-affiliated parties.

(a) *Indemnification under State law.* Subject to the limitations of paragraph (b) of this section, a national bank or Federal savings association may indemnify an institution-affiliated party for damages and expenses, including the advancement of expenses and legal fees, in accordance with the law of the State the bank or savings association has designated for its corporate governance pursuant to § 7.2000(b) (for national banks), 12 CFR 5.21(j)(3)(iii) (for Federal mutual savings associations), or 12 CFR 5.22(j)(2)(iii) (for Federal Stock savings associations), provided such payments are consistent with safe and sound banking practices. The term ''institution-affiliated party'' has the same meaning as set forth at 12 U.S.C. 1813(u).

(b) *Administrative proceedings or civil actions initiated by Federal banking agencies.* With respect to an administrative proceeding or civil action initiated by any Federal banking agency, a national bank or Federal savings association may only make or agree to make indemnification payments to an institution-affiliated party that are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and the implementing regulations thereunder.

(c) *Written agreement required for advancement.* Before advancing funds to an institutional-affiliated party under this section, a national bank or Federal savings association must obtain a written agreement that the institution-affiliated party will reimburse the bank or savings association, as appropriate, for any portion of that indemnification that the institution-affiliated party is ultimately found not to be entitled to under 12 U.S.C. 1828(k) and the implementing regulations thereunder, except to the extent that the bank's or savings association's expenses have been reimbursed by an insurance policy or fidelity bond.

(d) *Insurance premiums.* A national bank or Federal savings association may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of institution-affiliated parties to the extent that the expenses, fees, or liability could be indemnified under this section.

■ 34. Amend § 7.2016 by:

■ a. Revising the section heading;

■ b. Redesignating paragraph (a) as paragraph (a)(1) and adding a paragraph heading to paragraph (a);

■ c. Redesignating paragraph (b) as paragraph (a)(2); and

■ d. Adding a new paragraph (b).

The revision and additions read as follows:

§ 7.2016 Restricting transfer of stock and record dates; stock certificates.

(a) *Restricting transfer of stock and record dates.*

(b) *Bank stock certificates.* (1) A national bank may prescribe the manner in which its stock must be transferred in its bylaws or articles of association. A bank issuing stock in certificated form must comply with the requirements of 12 U.S.C. 52, including as to:

(i) The name and location of the bank;

(ii) The name of the holder of record of the stock represented thereby;

(iii) The number and class of shares which the certificate represents;

(iv) If the bank issues more than one class of stock, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations, and qualifications of each class of stock issued (unless incorporated by reference to the articles of association);

(v) Signatures of the president and cashier of the bank, or such other officers as the bylaws of the bank provide; and

(vi) The seal of the bank.

(2) The requirements of paragraph (b)(1)(v) of this section may be met through the use of electronic means or by facsimile.

§§ 7.2017 through 7.2018 [Removed]

■ 35. Remove §§ 7.2017 through 7.2018.

§ 7.2020 [Removed]

■ 36. Remove § 7.2020.

§ 7.2022 [Amended]

■ 37. Amend § 7.2022 by removing the word ''state'' and adding in its place the word ''State''.

§ 7.2024 [Amended]

■ 38. Amend § 7.2024 paragraphs (a) and (c) by removing the word ''shall'' and adding in its place the word ''must'' wherever it appears.

■ 39. Add § 7.2025 to read as follows:

§ 7.2025 Capital stock-related activities of a national bank.

(a) *In general.* A national bank must obtain the necessary shareholder approval required by 12 U.S.C. 51a, 57, or 59 for any change in its permanent capital. An increase or decrease in the amount of a national bank's common or preferred stock is a change in permanent capital subject to the notice and approval requirements of 12 CFR 5.46 and applicable law. A national bank may obtain the required shareholder approval of changes in permanent capital, as provided in paragraphs (b), (c), and (d) of this section.

(b) *Issuance of previously approved and authorized common stock.* In compliance with 12 U.S.C. 57, a national bank may issue common stock up to an amount previously approved and authorized in the national bank's articles of association by holders of two-thirds of the national bank's shares without obtaining additional shareholder approval for each subsequent issuance within the authorized amount.

(c) *Issuance, Repurchase, and Redemption of Preferred Stock Pursuant to Certain Procedures.* Subject to the requirements of 12 U.S.C. 51a and 59, a national bank may adopt procedures to authorize the board of directors to issue, determine the terms of, repurchase, and redeem one or more series of preferred stock, if permitted by the corporate governance provisions adopted by the bank under 12 CFR 7.2000. To satisfy the shareholder approval requirements of 12 U.S.C. 51a and 59, the adoption of such procedures must be approved by shareholders in advance through an amendment to the national bank's articles of association. Any amendment to a national bank's articles of association that authorizes both the issuance and the repurchase and redemption of shares must be approved by holders of two-thirds of the national bank's shares.

(d) *Share repurchase programs.* Subject to the requirements of 12 U.S.C. 59, a national bank may establish a program for the repurchase, from time to time, of the national bank's common or preferred stock, if permitted by the corporate governance provisions adopted by the bank under 12 CFR 7.2000. To satisfy the shareholder approval requirement of 12 U.S.C. 59, the repurchase program must be approved in advance by the holders of two-thirds of the national bank's shares, including through an amendment to the national bank's articles of association that authorizes the board of directors to repurchase the national bank's common or preferred stock from time to time under board-determined parameters that can limit the frequency, type, aggregate limit, or purchase price of repurchases.

(e) *Preferred Stock Features.* A national bank's preferred stock may be cumulative or non-cumulative and may or may not have voting rights on one or more series.

■ 40. Revise the heading for subpart C of this part to read as follows:

Subpart C—National Bank and Federal Savings Association Operations

■ 41. Revise § 7.3000 to read as follows:

§ 7.3000 National bank and Federal savings association banking hours and closings.

(a) *Banking hours.* The board of directors of a national bank or Federal savings association, or an equivalent person or committee of a Federal branch or agency, should review its hours of operations for customers and, independently of any other bank, savings association, or Federal branch or agency, take appropriate action to establish a schedule of operating hours for customers.

(b) *Emergency closings declared by the Comptroller.* Pursuant to 12 U.S.C. 95(b)(1) and 1463(a)(1)(A), the Comptroller of the Currency (Comptroller), may declare any day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks, Federal savings associations, and Federal branches or agencies in the affected geographic area (*i.e.,* throughout the United States, in a State, or in part of a State), and national banks, Federal savings associations, and Federal branches and agencies may temporarily limit or suspend operations at their affected offices, unless the Comptroller by written order directs otherwise. Emergency conditions may be caused by acts of nature or of man and may include natural and other disasters, public health or safety emergencies, civil and municipal emergencies, and cyber threats or other unauthorized intrusions (*e.g.,* severe flooding, a pandemic, terrorism, a cyber-attack on bank systems, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller may issue a proclamation authorizing the emergency closing in anticipation of the emergency condition, at the time of the emergency condition, or soon thereafter. In the absence of a Comptroller declaration of a bank holiday, a national bank, Federal savings associations, or Federal branch or agency may choose to temporarily close offices in response to an emergency condition. The national bank, Federal savings associations, or Federal branch or agency should notify the OCC of such temporary closure as soon as feasible.

(c) *Emergency and ceremonial closings declared by a State or State official.* In the event a State or a legally authorized State official declares any day to be a legal holiday for emergency or ceremonial reasons in that State or part of the State, that same day is a legal holiday for national banks, Federal savings associations, and Federal branches or agencies or their offices in the affected geographic area. National banks, Federal savings associations, and Federal branches or agencies or their affected offices may close their affected offices or remain open on such a State-designated holiday, unless the Comptroller by written order directs otherwise.

(d) *Liability.* A national bank, Federal savings association, or Federal branch or agency should assure that all liabilities or other obligations under the applicable law due to its closing are satisfied.

(e) *Definition.* For the purpose of this subpart, the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

§ 7.3001 [Amended]

■ 42. Amend § 7.3001 by:

■ a. In paragraph (a)(1), removing the words ''Lease excess space'' and adding in its place the words ''Consistent with § 7.1024 of this title, lease excess space'';

■ b. In paragraph (c) introductory text, removing the word ''shall'' and adding in its place the word ''must''; and

■ c. In paragraph (c)(3), removing the word ''state'' and adding in its place the word ''State''.

§§ 7.4003 through 7.4005 [Removed]

■ 43. Remove §§ 7.4003 through 7.4005.

§ 7.4010 [Amended]

■ 44. Amend the section heading for § 7.4010 by removing the word ''state'' and adding in its place the word ''State''.

§ 7.5001 [Removed]

■ 45. Remove § 7.5001.

PART 145—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

■ 46. The authority citation for part 145 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

§ 145.121 [Removed]

■ 47. Remove § 145.121.

PART 160—LENDING AND INVESTMENT

■ 48. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.50 [Removed]

■ 49. Remove § 160.50.

§ 160.120 [Removed]

■ 50. Remove § 160.120.

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–12435 Filed 7–6–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 155

[Docket ID OCC–2019–0028]

RIN 1557–AE74

National Bank and Federal Savings Association Digital Activities

AGENCY: Office of the Comptroller of the Currency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is interested in making sure it is aware of and understands the evolution of financial services, so it ensures the federal banking system continues to serve consumers, businesses, and communities effectively. Further, national banks and Federal savings associations (banks) must have a regulatory and supervisory framework that enables banks to adapt to rapidly changing trends and technology developments in the financial marketplace to meet customers' evolving needs while continuing to operate in a safe and sound manner. The Office of the Comptroller of the Currency (OCC) is reviewing its regulations on bank digital activities to ensure that its regulations continue to evolve with developments in the industry. This advance notice of proposed rulemaking (ANPR) solicits public input as part of this review.

DATES: Comments must be received by August 3, 2020.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''National Bank and Federal Savings Association Digital Activities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta: Regulations.gov Classic:* Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2019–0028'' in the Search Box and

click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2019–0028'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5p.m. ET or email *regulations@erulemakinghelpdesk.com.*

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0028'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2019–0028'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2019–0028'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

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

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Beth Knickerbocker, Chief Innovation Officer, Office of Innovation, (202) 649–5200; Karen McSweeney, Special Counsel; Jason Almonte, Special Counsel; Matthew Tynan, Counsel; or Sarah Turney, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Introduction

Over the past two decades, technological advances have transformed the financial industry, including the channels through which products and services are delivered and the nature of the products and services themselves. Fewer than fifteen years ago, smart phones with slide-out keyboards and limited touchscreen capability were newsworthy.[1] Today, 49 percent of Americans bank on their phones,[2] and 85 percent of American millennials use mobile banking.[3]

The first person-to-person (P2P) platform for money transfer services was established in 1998.[4] Today, there are countless P2P payment options, and many Americans regularly use P2P to transfer funds.[5] In 2003, Congress authorized digital copies of checks to be made and electronically processed.[6] Today, remote deposit capture is the norm for many consumers.[7] The first cryptocurrency was created in 2009; there are now over 1,000 rival cryptocurrencies,[8] and approximately eight percent of Americans own cryptocurrency.[9] Today, artificial intelligence (AI) and machine learning, biometrics, cloud computing, big data and data analytics, and distributed ledger and blockchain technology are

[1] Charles Arthur, *The history of smartphones: Timeline,* The Guardian (Jan. 24, 2012, 3:00 p.m.), *https://www.theguardian.com/technology/2012/jan/24/smartphones-timeline.*

[2] *Tech's raid on the banks; Banking and technology,* The Economist (May 4, 2019), *https://link.gale.com/apps/doc/A584205036/AONE?u=wash94865&sid=AONE&xid=0023c2e4.*

[3] Irving Wladawsky-Berger, *The Digital Revolution Comes for Banking,* The Wall Street Journal (June 28, 2019), *https://blogs.wsj.com/cio/2019/06/28/the-digital-revolution-comes-for-banking/.*

[4] Elizabeth Judd, *Timeline: 180 years of banking technology,* Independent Banker (Oct. 31, 2017), *https://independentbanker.org/2017/10/timeline-180-years-of-banking-technology/.*

[5] *Id. See also* Tom Groenfeldt, *Real-Time Person-to-Person Payments Are On The Rise In The U.S.* Forbes (Feb. 8, 2019, 7:00 p.m.), *https://www.forbes.com/sites/tomgroenfeldt/2019/02/08/real-time-person-to-person-payments-are-on-the-rise-in-the-u-s-aite/#fcb030d609d0;* Jill Cornfield, *Instant payment apps grow up. They're not just for millennials anymore,* CNBC (July 14, 2018), *https://www.cnbc.com/2018/07/12/instant-payment-is-growing-up-its-not-just-for-millennials-anymore.html.*

[6] Check Clearing for the 21st Century Act, Public Law 108–100, 117 Stat. 1177 (2003).

[7] Colleen Morrison, *Protect your bank from remote deposit capture risks,* Independent Banker (Sept. 1, 2019), *https://independentbanker.org/2019/09/protect-your-bank-from-remote-deposit-capture-risks/.*

[8] Bernard Marr, *A Short History of Bitcoin and Crypto Currency Everyone Should Read,* Forbes (Dec. 6, 2017, 12:28 a.m.), *https://www.forbes.com/sites/bernardmarr/2017/12/06/a-short-history-of-bitcoin-and-crypto-currency-everyone-should-read/#328e28a63f27.*

[9] Annie Nova, *Just 8 percent of Americans are invested in cryptocurrencies, survey says,* CNBC (March 16, 2018, 11:48 a.m.), *https://www.cnbc.com/2018/03/16/why-just-8-percent-of-americans-are-invested-in-cryptocurrencies-.html.*

used commonly or are emerging in the banking sector. Even the language used to describe these innovations is evolving, with the term ''digital'' now commonly used to encompass electronic, mobile, and other online activities.

These technological developments have led to a wide range of new banking products and services delivered through innovative and more efficient channels in response to evolving customer preferences. Back-office banking operations have experienced significant changes as well. AI and machine learning play an increasing role, for example, in fraud identification, transaction monitoring, and loan underwriting and monitoring. And technology is fueling advances in payments. In addition, technological innovations are helping banks comply with the complex regulatory framework and enhance cybersecurity to more effectively protect bank and customer data and privacy. More and more banks, of all sizes and types, are entering into relationships with technology companies that enable banks and the technology companies to establish new delivery channels and business practices and develop new products to meet the needs of consumers, businesses, and communities. These relationships facilitate banks' ability to reach new customers, better serve existing customers, and take advantage of cost efficiencies, which help them to remain competitive in a changing industry.

Along with the opportunities presented by these technological changes, there are new challenges and risks. Banks should adjust their business models and practices to a new financial marketplace and changing customer demands. Banks are in an environment where they compete with non-bank entities that offer products and services that historically have only been offered by banks, while ensuring that their activities are consistent with the authority provided by a banking charter and safe and sound banking practices. Banks also must comply with applicable laws and regulations, including those focused on consumer protection and Bank Secrecy Act/anti-money laundering (BSA/AML) compliance. And, importantly, advanced persistent threats require banks to pay constant and close attention to increasing cybersecurity risks.

Notwithstanding these challenges, the Federal banking system is well acquainted with and well positioned for change, which has been a hallmark of this system since its inception. The OCC's support of responsible innovation throughout its history has helped facilitate the successful evolution of the industry. The OCC has long understood that the banking business is not frozen in time and agrees with the statement made over forty years ago by the U.S. Court of Appeals for the Ninth Circuit: ''the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking.'' [10] Accordingly, the OCC has sought to regulate banking in ways that allow for the responsible creation or adoption of technological advances and to establish a regulatory and supervisory framework that allows banking to evolve, while ensuring that safety and soundness and the fair treatment of customers is preserved.

II. Existing Regulatory Framework

For almost twenty years, OCC regulations have specifically addressed national banks' digital activities. The agency initially issued regulations in 1996 that addressed data processing activities.[11] In 2000, it published an ANPR seeking public comment on how to revise its regulations to further facilitate national banks' use of developing technology, noting that ''rapid developments in new technologies are causing banks to reevaluate existing delivery channels and business practices and to develop new products and services in order to reach new customers, better serve existing customers, and take advantage of cost efficiencies.'' [12] The comments submitted in response to that ANPR formed the basis of a final rule issued in 2002 and updated in 2008.[13] Today, these regulations, at 12 CFR part 7, subpart E, address (1) electronic activities that are part of or incidental to the business of banking; [14] (2) furnishing of products and services by electronic means and facilities; (3) engaging in an electronic activity that is comprised of several component activities (composite authority); (4) the sale of excess electronic capacity and by-products; (5) acting as digital certification authority; (6) data processing; (7) correspondent services; (8) the location of a national bank conducting electronic activities; (9) the location under 12 U.S.C. 85 of national banks operating exclusively through the internet; and (10) shared electronic space. Separate regulations at 12 CFR part 155 address (1) Federal savings associations' use of electronic means and facilities generally and (2) requirements for Federal savings associations using electronic means and facilities. The regulations in part 155 were initially issued in 1998 and substantively updated in 2001 and again in 2017.[15]

Over this same period, the OCC has responded on a case-by-case basis to industry requests for approval to engage in innovative, technology-driven banking activities. Such approvals in the 1990s covered internet applications (*e.g.,* transactional websites, commercial website hosting services, a virtual mall, an electronic marketplace for non-financial products, and internet access services), electronic payment systems activities (*e.g.,* electronic bill payment and presentment services, stored value systems, electronic data interchange services, and prepaid alternate media such as stamps and prepaid phone cards), and other technology-based services (*e.g.,* digital certification authority services and electronic correspondent banking services).[16] More recently, the OCC issued a preliminary conditional approval for a full-service national bank with a nationwide footprint that proposes to offer banking products through mobile, online, and phone-based banking channels.[17] The OCC also approved a request for confirmation that a national bank may participate as a funding participant in a real-time payment system for small dollar, irrevocable payment services.[18]

In 2015, the OCC launched an initiative to better understand the role of innovation in financial services and to determine what actions the agency could take in response to this dynamic environment. The OCC subsequently implemented a ''responsible innovation'' framework designed to

[10] *M & M Leasing Corp.* v. *Seattle First Nat. Bank,* 563 F.2d 1377, 1382 (9th Cir. 1977), *cert. denied,* 436 U.S. 956 (1978).

[11] 61 FR 4849 (Feb. 9, 1996).

[12] 65 FR 4895 (Feb. 2, 2000).

[13] 67 FR 34992 (May 17, 2002) and 73 FR 22216 (Apr. 24, 2008).

[14] This provision, at 12 CFR 7.5001, identifies the criteria that the OCC uses to determine whether an electronic activity is authorized for national banks as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh) or other statutory authority. While this section details those criteria in the context of electronic activities, the OCC uses the criteria to determine whether any activity is part of or incidental to the business of banking. To confirm the broader applicability of the criteria listed in § 7.5001, the OCC is proposing in a separate rulemaking to remove the word ''electronic'' from this section and move it to part 7, subpart A, as new § 7.1027. These proposed changes would better organize OCC rules and clarify that the criteria of this section may apply to any potential national bank activity, not just those that are electronic in nature. There would be no substantive effect as a result of this change.

[15] 63 FR 65673 (Nov. 30, 1998), 66 FR 12993 (Mar. 2, 2001), and 82 FR 8082 (Jan 23, 2017).

[16] Specific citations for these approvals are in OCC's 2000 ANPR. See *supra* note 12, at 4895–96, fns. 4–6.

[17] Conditional Approval No. 1205 (Aug. 31, 2018).

[18] Interpretive Letter No. 1157 (Nov. 12, 2017).

ensure that national banks and Federal savings associations have a regulatory structure that is receptive to innovation and that the agency's supervisory approach appropriately accounts for the opportunities and risks of changing business models and new products, services, and processes.[19]

The OCC also established a dedicated Office of Innovation that serves as a central point of contact for interested parties and a clearinghouse for innovation-related matters. This Office works to increase OCC awareness and understanding of industry trends and issues, such as the use of AI and machine learning, payment developments, the evolution of lending, and relationships between banks and technology companies. The Office of Innovation also assists both OCC-supervised banks and nonbanks with understanding the agency's expectations regarding safe and sound operations, fair access to financial services, and fair treatment of customers.

III. Regulatory Review

As part of its on-going efforts to remain responsive to the evolution of the Federal banking system, the OCC is undertaking a comprehensive review of 12 CFR part 7, subpart E, and part 155.[20] The goals of this review are to evaluate whether these regulations effectively take into account the ongoing evolution of the financial services industry, promote economic growth and opportunity and ensure that banks operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.

As part of this review, the OCC invites the public, including members of the financial service and technology sectors and consumer groups, to share their experiences and ideas. Based on the comments received, the OCC may propose specific revisions to its rules, on which it would again seek public comment. It should be noted that certain principles guide the OCC's approach to its regulatory framework in the context of technology and innovation. First, any regulation adopted should be technology-neutral, so that products, services, and processes can evolve regardless of the changes in technology that enables them. Second, any regulation should facilitate appropriate levels of consumer protection and privacy, including features that ensure transparency and informed consent. Finally, regulations on digital activities should be principle-based, rather than prescriptive, to enable effective management of evolving risks and to reduce the potential that the regulations quickly become outdated.

IV. Issues for Comment

The public is invited to respond to the following questions and offer comments or suggestions on any other banking issues related to digital activities, use of technology, or innovation. The OCC is not seeking comment on its authority to issue a special purpose national bank charter.

1. Considering the financial industry's evolution, are the OCC's legal standards in part 7, subpart E, and part 155 sufficiently flexible and clear? Should the standards be revised to better reflect developments in the broader financial services industry? If so, how?

2. Do any of the legal standards in part 7, subpart E, or part 155 create unnecessary hurdles or burdens to the use of technological advances or innovation in banking?

3. Are there digital banking activities or issues related to digital banking activities that the OCC does not address in part 7, subpart E, or part 155 that the OCC should address? If so, what are these activities or issues, and why and how should the OCC address them?

a. Are there digital finders' activities (*i.e.,* activities that bring together buyers and sellers of financial and nonfinancial products and services) in which financial services companies engage or banks wish to engage that are not included or sufficiently addressed 12 CFR part 7, subpart E, or part 155? If so, what are they?

b. Is there software that a bank produces, markets, or sells (or wishes to produce, market, or sell) that is not within the current scope of, or sufficiently addressed in, 12 CFR part 7, subpart E, or part 155? If so, what type of software?

c. Does the term ''software,'' as used in 12 CFR 7.5006, exclude a similar product or service that should be included in this section? If so, what is the similar product or service, and why should it be included?

d. Are there digital activities that banks offer, or wish to offer, as correspondent services to its affiliates or other financial institutions that are not included or sufficiently addressed in 12 CFR part 7, subpart E, or in part 155? If so, what are they?

4. What types of activities related to cryptocurrencies or cryptoassets are financial services companies or bank customers engaged? To what extent does customer engagement in crypto-related activities impact banks and the banking industry? What are the barriers or obstacles, if any, to further adoption of crypto-related activities in the banking industry? Are there specific activities that should be addressed in regulatory guidance, including regulations?

5. How is distributed ledger technology used, or potentially used, in banking activities (*e.g.,* identity verification, credit underwriting or monitoring, payments processing, trade finance, and records management)? Are there specific matters on this topic that should be clarified in regulatory guidance, including regulations?

6. How are AI techniques, including machine learning, used or potentially used in activities related to banking (*e.g.,* credit underwriting or monitoring, transaction monitoring, anti-money laundering or fraud detection, customer identification and due diligence processes, trading and hedging activities, forecasting, and marketing)? Are there ways the banking industry could be, but is not, using AI because of issues such as regulatory complexity, lack of transparency, audit and audit trail complexities, or other regulatory barriers? Are there specific ways these issues could be addressed by the OCC? Should the OCC provide regulatory guidance on this use, including by issuing regulations?

7. What new payments technologies and processes should the OCC be aware of and what are the potential implications of these technologies and processes for the banking industry? How are new payments technologies and processes facilitated or hindered by existing regulatory frameworks?

8. What new or innovative tools do financial services companies use to comply with applicable regulations and supervisory expectations (*i.e.,* ''regtech'')? How does the OCC's regulatory approach enable or hinder advancements in this area?

9. Are there issues unique to smaller institutions regarding the use and implementation of innovative products, services, or processes that the OCC should consider?

[19] OCC, Recommendations and Decisions for Implementing a Responsible Innovation Framework (2016), *https://www.occ.treas.gov/topics/supervision-and-examination/responsible-innovation/comments/recommendations-decisions-for-implementing-a-responsible-innovation-framework.pdf.*

[20] As a companion to this ANPR, the OCC is separately issuing a Notice of Proposed Rulemaking, published elsewhere in this issue of the **Federal Register** as a separate document, that proposes amendments to subparts A through D of Part 7 that would clarify and codify recent OCC interpretations, integrate certain regulations for national banks and Federal savings associations, and update or eliminate outdated regulatory requirements that no longer reflect the modern financial system.

10. What other changes to the development and delivery of banking products and services for consumers, businesses and communities should the OCC be aware of and consider?

11. Are there issues the OCC should consider in light of changes in the banking system that have occurred in response to the COVID–19 pandemic, such as social distancing?

Brian P. Brooks,

Acting Comptroller of the Currency.

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Part IV

Department of Labor

Employee Benefits Security Administration
29 CFR Part 2550

Improving Investment Advice for Workers & Retirees; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D–12011]

ZRIN 1210–ZA29

Improving Investment Advice for Workers & Retirees

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notification of Proposed Class Exemption.

SUMMARY: This document gives notice of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The prohibited transaction provisions of ERISA and the Code generally prohibit fiduciaries with respect to employee benefit plans (Plans) and individual retirement accounts and annuities (IRAs) from engaging in self-dealing and receiving compensation from third parties in connection with transactions involving the Plans and IRAs. The provisions also prohibit purchasing and selling investments with the Plans and IRAs when the fiduciaries are acting on behalf of their own accounts (principal transactions). This proposed exemption would allow investment advice fiduciaries under both ERISA and the Code to receive compensation, including as a result of advice to roll over assets from a Plan to an IRA, and to engage in principal transactions, that would otherwise violate the prohibited transaction provisions of ERISA and the Code. The exemption would apply to registered investment advisers, broker-dealers, banks, insurance companies, and their employees, agents, and representatives that are investment advice fiduciaries. The exemption would include protective conditions designed to safeguard the interests of Plans, participants and beneficiaries, and IRA owners. The new class exemption would affect participants and beneficiaries of Plans, IRA owners, and fiduciaries with respect to such Plans and IRAs.

DATES: Written comments and requests for a public hearing on the proposed class exemption must be submitted to the Department within August 6, 2020. The Department proposes that the exemption, if granted, will be available 60 days after the date of publication of the final exemption in the **Federal Register**.

ADDRESSES: All written comments and requests for a hearing concerning the proposed class exemption should be sent to the Office of Exemption Determinations through the Federal eRulemaking Portal and identified by Application No. D–12011:

Federal eRulemaking Portal: www.regulations.gov at Docket ID number: EBSA–2020–0003. Follow the instructions for submitting comments.

See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Susan Wilker, telephone (202) 693–8557, or Erin Hesse, telephone (202) 693–8546, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Comment Instructions

All comments and requests for a hearing must be received by the end of the comment period. Requests for a hearing must state the issues to be addressed and include a general description of the evidence to be presented at the hearing. 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. The comments and hearing requests will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210; however, the Public Disclosure Room may be closed for all or a portion of the comment period due to circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus. Comments and hearing requests will also be available online at *www.regulations.gov,* at Docket ID number: EBSA–2020–0003 and *www.dol.gov/ebsa,* at no charge.

Warning: All comments received will be included in the public record without change and will be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number), or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it. If you send an email directly to EBSA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Background

The Employee Retirement Income Security Act of 1974 (ERISA) section 3(21)(A)(ii) provides, in relevant part, that a person is a fiduciary with respect to a Plan to the extent he or she renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such Plan, or has any authority or responsibility to do so. Internal Revenue Code (Code) section 4975(e)(3)(B) includes a parallel provision that defines a fiduciary of a Plan and an IRA. In 1975, the Department issued a regulation establishing a five-part test for fiduciary status under this provision of ERISA.[1] The Department's 1975 regulation also applies to the definition of fiduciary in the Code, which is identical in its wording.[2]

Under the 1975 regulation, for advice to constitute ''investment advice,'' a financial institution or investment professional who is not a fiduciary under another provision of the statute must—(1) render advice as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing, or selling securities or other property (2) on a regular basis (3) pursuant to a mutual agreement, arrangement, or understanding with the Plan, Plan fiduciary or IRA owner that (4) the advice will serve as a primary basis for investment decisions with respect to Plan or IRA assets, and that (5) the

[1] 29 CFR 2510.3–21(c)(1), 40 FR 50842 (October 31, 1975).

[2] 26 CFR 54.4975–9(c), 40 FR 50840 (October 31, 1975).

advice will be individualized based on the particular needs of the Plan or IRA. A financial institution or investment professional that meets this five-part test, and receives a fee or other compensation, direct or indirect, is an investment advice fiduciary under ERISA and under the Code.

Investment advice fiduciaries, like other fiduciaries to Plans and IRAs, are subject to duties and liabilities established in Title I of ERISA (ERISA) and Title II of ERISA (the Internal Revenue Code or the Code). Under Title I of ERISA, plan fiduciaries must act prudently and with undivided loyalty to employee benefit plans and their participants and beneficiaries. Although these statutory fiduciary duties are not in the Code, both ERISA and the Code contain provisions forbidding fiduciaries from engaging in certain specified ''prohibited transactions,'' involving Plans and IRAs, including conflict of interest transactions.[3] Under these prohibited transaction provisions, a fiduciary may not deal with the income or assets of a Plan or IRA in his or her own interest or for his or her own account, and a fiduciary may not receive payments from any party dealing with the Plan or IRA in connection with a transaction involving assets of the Plan or IRA. The Department has authority to grant administrative exemptions from the prohibited transaction provisions in ERISA and the Code.[4]

In 2016, the Department finalized a new regulation that would have replaced the 1975 regulation and it granted new associated prohibited transaction exemptions. After that rulemaking was vacated by the U.S. Court of Appeals for the Fifth Circuit in 2018,[5] the Department issued Field Assistance Bulletin (FAB) 2018–02, a temporary enforcement policy providing prohibited transaction relief to investment advice fiduciaries.[6] In the FAB, the Department stated it would not pursue prohibited transactions claims against investment advice fiduciaries who worked diligently and in good faith to comply with ''Impartial Conduct Standards'' for transactions that would have been exempted in the new exemptions, or treat the fiduciaries as violating the applicable prohibited transaction rules. The Impartial Conduct Standards have three components: A best interest standard; a reasonable compensation standard; and a requirement to make no misleading statements about investment transactions and other relevant matters.

This proposal takes into consideration the public correspondence and comments received by the Department since February 2017 and responds to informal industry feedback seeking an administrative class exemption based on FAB 2018–02. As noted in the FAB, following the 2016 rulemaking many financial institutions created and implemented compliance structures designed to ensure satisfaction of the Impartial Conduct Standards. These parties were permitted to continue to rely on those structures pending further guidance. Under the exemption, financial institutions could continue relying on those compliance structures on a permanent basis, subject to the additional conditions of the exemption, rather than changing course to begin complying with the Department's other existing exemptions for investment advice fiduciaries. In addition, the exemption would provide a defense to private litigation as well as enforcement action by the Department, while the FAB is limited to the latter.

This new proposed exemption would provide relief that is broader and more flexible than the Department's existing prohibited transaction exemptions for investment advice fiduciaries. The Department's existing exemptions generally provide relief for discrete, specifically identified transactions, and they were not amended to clearly provide relief for the compensation arrangements that developed over time.[7] The exemption would provide additional certainty regarding covered compensation arrangements and would avoid the complexity associated with a financial institution relying on multiple exemptions when providing investment advice.

The proposed exemption's principles-based approach is rooted in the Impartial Conduct Standards for fiduciaries providing investment advice. The proposed exemption includes additional conditions designed to support the provision of investment advice that meets the Impartial Conduct Standards. This notice also sets forth the Department's interpretation of the five-part test of investment advice fiduciary status and provides the Department's views on when advice to roll over Plan assets to an IRA[8] could be considered fiduciary investment advice under ERISA and the Code.

Since 2018, other regulators have considered enhanced standards of conduct for investment professionals as a method of addressing conflicts of interest. At the federal level, on June 5, 2019, the Securities and Exchange Commission (SEC) finalized a regulatory package relating to conduct standards for broker-dealers and investment advisers. The package included Regulation Best Interest, which establishes a best interest standard applicable to broker-dealers when making a recommendation of any securities transaction or investment strategy involving securities to retail customers.[9] The SEC also issued an interpretation of the conduct standards applicable to registered investment advisers.[10] As part of the package, the SEC adopted new Form CRS, which requires broker-dealers and registered investment advisers to provide retail

[3] ERISA section 406 and Code section 4975.

[4] ERISA section 408(a) and Code section 4975(c)(2). Reorganization Plan No. 4 of 1978 (5 U.S.C. App. (2018)) generally transferred the authority of the Secretary of the Treasury to grant administrative exemptions under Code section 4975 to the Secretary of Labor. These provisions require the Secretary to make the following findings before granting an administrative exemption: (i) The exemption is administratively feasible; (ii) the exemption is in the interests of the Plans and IRAs and their participants and beneficiaries, and (iii) the exemption is protective of the rights of participants and beneficiaries of the Plans and IRAs. The Department is proposing this new class exemption on its own motion pursuant to ERISA section 408(a) and Code section 4975(c)(2), and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637 (October 27, 2011)).

[5] *Chamber of Commerce of the United States* v. *U.S. Department of Labor,* 885 F.3d 360 (5th Cir. 2018). Elsewhere in this issue of the **Federal Register**, the Department is publishing a technical amendment related to the decision.

[6] *Available at www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-02.* The Impartial Conduct Standards incorporated in the FAB were conditions of the new exemptions granted in 2016. *See* Best Interest Contract Exemption, 81 FR 21002 (Apr. 8, 2016), as corrected at 81 FR 44773 (July 11, 2016).

[7] *See e.g.*, PTE 86–128, Class Exemption for Securities Transactions involving Employee Benefit Plans and Broker-Dealers, 51 FR 41686 (Nov. 18, 1986), as amended, 67 FR 64137 (Oct. 17, 2002)(providing relief for a fiduciary's use of its authority to cause a Plan or IRA to pay a fee for effecting or executing securities transactions to the fiduciary, as agent for the Plan or IRA, and for a fiduciary to act as an agent in an agency cross transaction for a Plan or IRA and another party to the transaction and receive reasonable compensation for effecting or executing the transaction from the other party to the tranaction); PTE 84–24 Class Exemption for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters, 49 FR 13208 (Apr. 3, 1984) , as corrected, 49 FR 24819 (June 15, 1984), as amended, 71 FR 5887 (Feb. 3, 2006) (providing relief for the receipt of a sales commission by an insurance agent or broker from an insurance company in connection with the purchase, with plan assets, of an insurance or annuity contract).

[8] For purposes of any rollover of assets between a Plan and an IRA described in this preamble, the term ''IRA'' only includes an account or annuity described in Code section 4975(e)(1)(B) or (C).

[9] Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 FR 33318 (July 12, 2019) (Regulation Best Interest Release).

[10] Commission Interpretation Regarding Standard of Conduct for Investment Advisers, 84 FR 33669 (July 12, 2019) (SEC Fiduciary Interpretation).

investors with a short relationship summary with specified information (SEC Form CRS).[11]

State regulators and standards-setting bodies also have focused on conduct standards. The New York State Department of Financial Services has amended its insurance regulations to establish a best interest standard in connection with life insurance and annuity transactions.[12] The Massachusetts Securities Division has amended its regulations for broker-dealers to apply a fiduciary conduct standard, under which broker-dealers and their agents must ''[m]ake recommendations and provide investment advice without regard to the financial or any other interest of any party other than the customer.'' [13] The National Association of Insurance Commissioners has revised its Suitability In Annuity Transactions Model Regulation to clarify that all recommendations by agents and insurers must be in the best interest of the consumer and that agents and carriers may not place their financial interest ahead of in the consumer's interest in making the recommendation.[14]

The approach in this proposal includes Impartial Conduct Standards that are, in the Department's view, aligned with those of the other regulators. In this way, the proposal is designed to promote regulatory efficiencies that might not otherwise exist under the Department's existing administrative exemptions for investment advice fiduciaries.

This proposed exemption is expected to be an Executive Order (E.O.) 13771 deregulatory action because it would allow investment advice fiduciaries with respect to Plans and IRAs to receive compensation and engage in certain principal transactions that would otherwise be prohibited under ERISA and the Code. The temporary enforcement policy stated in FAB 2018–02 remains in place. The Department is proposing this class exemption on its own motion, pursuant to ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570 (76 FR 66637 (October 27, 2011)).

Description of the Proposed Exemption

As discussed in greater detail below, the exemption proposed in this notice would be available to registered investment advisers, broker-dealers, banks, and insurance companies (Financial Institutions) and their individual employees, agents, and representatives (Investment Professionals) that provide fiduciary investment advice to Retirement Investors. The proposal defines Retirement Investors as Plan participants and beneficiaries, IRA owners, and Plan and IRA fiduciaries.[15] Under the exemption, Financial Institutions and Investment Professionals could receive a wide variety of payments that would otherwise violate the prohibited transaction rules, including, but not limited to, commissions, 12b–1 fees, trailing commissions, sales loads, mark-ups and mark-downs, and revenue sharing payments from investment providers or third parties. The exemption's relief would extend to prohibited transactions arising as a result of investment advice to roll over assets from a Plan to an IRA, as detailed later in this proposed exemption. The exemption also would allow Financial Institutions to engage in principal transactions with Plans and IRAs in which the Financial Institution purchases or sells certain investments from its own account.

As noted above, ERISA and the Code include broad prohibitions on self-dealing. Absent an exemption, a fiduciary may not deal with the income or assets of a Plan or IRA in his or her own interest or for his or her own account, and a fiduciary may not receive payments from any party dealing with the Plan or IRA in connection with a transaction involving assets of the Plan or IRA. As a result, fiduciaries who use their authority to cause themselves or their affiliates [16] or related entities [17] to receive additional compensation violate the prohibited transaction provisions unless an exemption applies.[18]

The proposed exemption would condition relief on the Investment Professional and Financial Institution providing advice in accordance with the Impartial Conduct Standards. In addition, the exemption would require Financial Institutions to acknowledge in writing their and their Investment Professionals' fiduciary status under ERISA and the Code, as applicable, when providing investment advice to the Retirement Investor, and to describe in writing the services to be provided and the Financial Institutions' and Investment Professionals' material conflicts of interest. Finally, Financial Institutions would be required to adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards and conduct a retrospective review of compliance. The exemption would also provide, subject to additional safeguards, relief for Financial Institutions to enter into principal transactions with Retirement Investors, in which they purchase or sell certain investments from their own accounts.

The exemption requires Financial Institutions to provide reasonable oversight of Investment Professionals and to adopt a culture of compliance. The proposal further provides that Financial Institutions and Investment Professionals would be ineligible to rely on the exemption if, within the previous 10 years, they were convicted of certain crimes arising out of their provision of investment advice to Retirement Investors; they would also be ineligible if they engaged in systematic or

[11] Form CRS Relationship Summary; Amendments to Form ADV, 84 FR 33492 (July 12, 2019)(Form CRS Relationship Summary Release).

[12] New York State Department of Financial Services Insurance Regulation 187, 11 NYCRR 224, First Amendment, effective August 1, 2019.

[13] 950 Mass. Code Regs. 12.204 & 12.207 as amended effective March 6, 2020.

[14] NAIC Takes Action to Protect Annuity Consumers; *available at https://content.naic.org/article/news_release_naic_takes_action_protect_annuity_consumers.htm.*

[15] The term ''Plan'' is defined for purposes of the exemption as any employee benefit plan described in ERISA section 3(3) and any plan described in Code section 4975(e)(1)(A). The term ''Individual Retirement Account'' or ''IRA'' is defined as any account or annuity described in Code section 4975(e)(1)(B) through (F), including an Archer medical savings account, a health savings account, and a Coverdell education savings account.

[16] For purposes of the exemption, an affiliate would include: (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Professional or Financial Institution. (For this purpose, ''control'' would mean the power to exercise a controlling influence over the management or policies of a person other than an individual) (2) Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)), of the Investment Professional or Financial Institution; and (3) Any corporation or partnership of which the Investment Professional or Financial Institution is an officer, director, or partner.

[17] For purposes of the exemption, related entities would include entities that are not affiliates, but in which the Investment Professional or Financial Institution has an interest that may affect the exercise of its best judgment as a fiduciary.

[18] As articulated in the Department's regulations, ''a fiduciary may not use the authority, control, or responsibility which makes such a person a fiduciary to cause a plan to pay an additional fee to such fiduciary (or to a person in which such fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary) to provide a service.'' 29 CFR 2550.408b–2(e)(1).

intentional violation of the exemption's conditions or provided materially misleading information to the Department in relation to their conduct under the exemption. Ineligible parties could rely on an otherwise available statutory exemption or apply for an individual prohibited transaction exemption from the Department. This targeted approach of allowing the Department to give special attention to parties with certain criminal convictions or with a history of egregious conduct with respect to compliance with the exemption should provide significant protections for Retirement Investors while preserving wide availability of investment advice arrangements and products.

The proposed exemption would not expand Retirement Investors' ability to enforce their rights in court or create any new legal claims above and beyond those expressly authorized in ERISA, such as by requiring contracts and/or warranty provisions.[19]

Scope of Relief

Financial Institutions

The exemption would be available to entities that satisfy the exemption's definition of a ''Financial Institution.'' The proposal limits the types of entities that qualify as a Financial Institution to SEC- and state-registered investment advisers, broker-dealers, insurance companies and banks.[20] The proposed definition is based on the entities identified in the statutory exemption for investment advice under ERISA section 408(b)(14) and Code section 4975(d)(17), which are subject to well-established regulatory conditions and oversight.[21] Congress determined that this group of entities could prudently mitigate certain conflicts of interest in their investment advice through adherence to tailored principles under the statutory exemption. The Department takes a similar approach here, and therefore is proposing to include the same group of entities. To fit within the definition of *Financial Institution,* the firm must not have been disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization).

The Department recognizes that different types of Financial Institutions have different business models, and the proposal is drafted to apply flexibly to these institutions.[22] Broker-dealers, for example, provide a range of services to Retirement Investors, ranging from executing one-time transactions to providing personalized investment recommendations, and they may be compensated on a transactional basis such as through commissions.[23] If broker-dealers that are investment advice fiduciaries with respect to Retirement Investors provide investment advice that affects the amount of their compensation, they must rely on an exemption.

Registered investment advisers, by contrast, generally provide ongoing investment advice and services and are commonly paid either an assets under management fee or a fixed fee.[24] If a registered investment adviser is an investment advice fiduciary that charges only a level fee that does not vary on the basis of the investment advice provided, the registered investment adviser may not violate the prohibited transaction rules.[25] However, if the registered investment adviser provides investment advice that causes itself to receive the level fee, such as through advice to roll over Plan assets to an IRA, the fee (including an ongoing management fee paid with respect to the IRA) is prohibited under ERISA and the Code.[26] Additionally, if a registered investment adviser that is an investment advice fiduciary is dually-registered as a broker-dealer, the registered investment adviser may engage in a prohibited transaction if it recommends a transaction that increases the broker-dealer's compensation, such as for execution of securities transactions. As noted above, it is a prohibited transaction for a fiduciary to use its authority to cause an affiliate or related entity to receive additional compensation.[27]

Insurance companies commonly compensate insurance agents on a commission basis, which generally creates prohibited transactions when insurance agents are investment advice fiduciaries that provide investment advice to Retirement Investors in connection with the sales. However, the Department is aware that insurance companies often sell insurance products and fixed (including indexed) annuities through different distribution channels than broker-dealers and registered investment advisers. While some insurance agents are employees of an insurance company, other insurance agents are independent, and work with multiple insurance companies. The proposed exemption would apply to either of these business models. Insurance companies can supervise independent insurance agents and they can also create oversight and compliance systems through contracts with intermediaries such as independent marketing organizations (IMOs), field marketing organizations (FMOs) or brokerage general agencies (BGAs).[28] Eligible parties can also continue to use relief under the existing exemption for insurance transactions, PTE 84–24, as an alternative.[29] The Department requests comment on these suggestions, and whether there are alternatives for oversight of investment advice fiduciaries who also serve as insurance agents.

Finally, banks and similar institutions would be permitted to act as Financial Institutions under the exemption if they or their employees are investment advice fiduciaries with respect to Retirement Investors. The Department seeks comment on whether banks and their employees provide investment advice to Retirement Investors, and if so, whether the proposal needs

[19] ERISA section 502(a) provides the Secretary of Labor and plan participants and beneficiaries with a cause of action for fiduciary breaches and prohibited transactions with respect to ERISA-covered Plans (but not IRAs). Code section 4975 imposes a tax on disqualified persons participating in a prohibited transaction involving Plans and IRAs (other than a fiduciary acting only as such).

[20] The proposal includes ''a bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)).'' The Department would interpret this definition to extend to credit unions.

[21] ERISA section 408(g)(11)(A) and Code section 4975(f)(8)(J)(i).

[22] Some of the Department's existing prohibited transaction exemptions would also apply to the transactions described in the next few paragraphs.

[23] Regulation Best Interest Release, 84 FR at 33319.

[24] *Id.*

[25] As noted above, fiduciaries who use their authority to cause themselves or their affiliates or related entities to receive additional compensation violate the prohibited transaction provisions unless an exemption applies. 29 CFR 2550.408b–2(e)(1).

[26] The Department has long interpreted the requirement of a fee to broadly cover ''all fees or other compensation incident to the transaction in which the investment advice to the plan has been rendered or will be rendered.'' Preamble to the Department's 1975 Regulation, 40 FR 50842 (October 31, 1975). The Department's analysis of the five-part test's application to rollovers is discussed below.

[27] 29 CFR 2550.408b–2(e)(1).

[28] Although the proposal's definition of Financial Institution does not include insurance intermediaries, the Department seeks comments on whether the exemption should include insurance intermediaries as Financial Institutions for the recommendation of fixed (including indexed) annuity contracts. If so, the Department asks parties to provide a definition of the type of intermediary that should be permitted to operate as a Financial Institution and whether any additional protective conditions might be necessary with respect to the intermediary.

[29] Class Exemption for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters, 49 FR 13208 (Apr. 3, 1984), as corrected, 49 FR 24819 (June 15, 1984), as amended, 71 FR 5887 (Feb. 3, 2006).

adjustment to address any unique aspects of their business models. The Department seeks comment on other business models not listed here, and invites commenters to explain whether other business models would be appropriate to include in this framework.

The proposal also allows the definition of *Financial Institution* to expand after the exemption is finalized based upon subsequent grants of individual exemptions to additional entities that are investment advice fiduciaries that meet the five-part test seeking to be treated as covered Financial Institutions. Additional types of entities, such as IMOs, FMOs, or BGAs, that are investment advice fiduciaries may separately apply for relief for the receipt of compensation in connection with the provision of investment advice on the same conditions as apply to the Financial Institutions covered by the proposed exemption.[30] If the Department grants an individual exemption under ERISA section 408(a) and Code section 4975(c) after the date this exemption is granted, the expanded definition of Financial Institution in the individual exemption would be added to this class exemption so other entities that satisfy the definition could similarly use the class exemption. The Department requests comment on the procedural aspects, *e.g.,* ensuring sufficient notice to Retirement Investors, of this permitted expansion of the definition.

The Department seeks comment on the definition of *Financial Institution* in general and whether any other type of entity should be included. The Department also seeks comment as to whether the definition is overly broad, or whether Retirement Investors would benefit from a narrowed list of Financial Institutions. In addition, the Department requests comment on whether the definition of *Financial Institution* is sufficiently broad to cover firms that render advice with respect to investments in Health Savings Accounts (HSA), and about the extent to which Plan participants receive investment advice in connection with such accounts.

Investment Professionals

As defined in the proposal, an *Investment Professional* is an individual who is a fiduciary of a Plan or IRA by reason of the provision of investment advice, who is an employee, independent contractor, agent or representative of a Financial Institution, and who satisfies the federal and state regulatory and licensing requirements of insurance, banking, and securities laws (including self-regulatory organizations) with respect to the covered transaction, as applicable. Similar to the definition of *Financial Institution,* this definition also includes a requirement that the Investment Professional has not been disqualified from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization).

Covered Transactions

The proposal would permit Financial Institutions and Investment Professionals, and their affiliates and related entities, to receive reasonable compensation as a result of providing fiduciary investment advice. The exemption specifically covers compensation received as a result of investment advice to roll over assets from a Plan to an IRA. The exemption also would provide relief for a Financial Institution to engage in the purchase or sale of an asset in a riskless principal transaction or a Covered Principal Transaction, and receive a mark-up, mark-down, or other payment. The exemption would provide relief from ERISA section 406(a)(1)(A) and (D) and 406(b) and Code section 4975(c)(1)(A), (D), (E), and (F).[31]

Subsection (1) of the exemption would provide broad relief for Financial Institutions and Investment Professionals that are investment advice fiduciaries to receive all forms of reasonable compensation as a result of their investment advice to Retirement Investors. For example, it would cover compensation received as a result of investment advice to acquire, hold, dispose of, or exchange securities and other investments. It would also cover compensation received as a result of investment advice to take a distribution from a Plan or to roll over the assets to an IRA, or from investment advice regarding other similar transactions including (but not limited to) rollovers from one Plan to another Plan, one IRA to another IRA, or from one type of account to another account (*e.g.,* from a commission-based account to a fee-based account). The exemption would cover compensation received as a result of investment advice as to persons the Retirement Investor may hire to serve as an investment advice provider or asset manager.

Subsection (2) of the exemption would address the circumstance in which the Financial Institution may, in addition to providing investment advice, engage in a purchase or sale of an investment with a Retirement Investor and receive a mark-up or a mark-down or similar payment on the transaction. The exemption would extend to both riskless principal transactions and Covered Principal Transactions. A riskless principal transaction is a transaction in which a Financial Institution, after having received an order from a Retirement Investor to buy or sell an investment product, purchases or sells the same investment product for the Financial Institution's own account to offset the contemporaneous transaction with the Retirement Investor. Covered Principal Transactions are defined in the exemption as principal transactions involving certain specified types of investments, discussed in more detail below. Principal transactions that are not riskless and that do not fall within the definition of Covered Principal Transaction would not be covered by the exemption.

The following sections provide additional information on the proposal as it would apply to investment advice to roll over ERISA-covered Plan assets to an IRA, and as it would apply to Covered Principal Transactions.

Rollovers

Amounts accrued in an ERISA-covered Plan can represent a lifetime of savings, and often comprise the largest sum of money a worker has at retirement. Therefore, the decision to roll over ERISA-covered Plan assets to an IRA is potentially a very consequential financial decision for a Retirement Investor. For example, Retirement Investors may incur transaction costs associated with moving the assets into new investments and accounts, and, because of the loss of economies of scale, the cost of investing through an IRA may be higher than through a Plan.[32] Retirement

[30] Exemption relief for an insurance intermediary would only be required if the intermediary is an investment advice fiduciary under the applicable regulations. An exemption is not necessary for an insurance intermediary or its insurance agents who conduct sales transactions and are not fiduciaries under ERISA or the Code.

[31] The proposal does not include relief from ERISA section 406(a)(1)(C) and Code section 4975(c)(1)(C). The statutory exemptions, ERISA section 408(b)(2) and Code section 4975(d)(2) provide this necessary relief for Plan or IRA service providers, subject the applicable conditions.

[32] *See, e.g.,* ''IRA Investors Are Concentrated in Lower-Cost Mutual Funds'' (Aug. 8, 2018), available at *https://www.ici.org/viewpoints/view_18_ira_expenses_fees* (''The data show that 401(k) investors incur lower expense ratios in their mutual fund holdings than IRA mutual fund investors. One reason for this is economies of scale, as many employer plans aggregate the savings of hundreds or thousands of workers, and often carry large average account balances, which are more cost-effective to service. In addition, employers that

Investors who roll out of ERISA-covered Plans also lose important ERISA protections, including the benefit of a Plan fiduciary representing their interests in selecting a menu of investment options or structuring investment advice relationships, and the statutory causes of action to protect their interests. Retirement Investors who are retirees may not have the ability to earn additional amounts to offset any costs or losses.

Rollovers from ERISA-covered Plans to IRAs were expected to approach $2.4 trillion cumulatively from 2016 through 2020.[33] These large sums of money eligible for rollover represent a significant revenue source for investment advice providers. A firm that recommends a rollover to a Retirement Investor can generally expect to earn transaction-based compensation such as commissions, or an ongoing advisory fee, from the IRA, but may or may not earn compensation if the assets remain in the Plan.

In light of potential conflicts of interest related to rollovers from Plans to IRAs, ERISA and the Code prohibit an investment advice fiduciary from receiving fees resulting from investment advice to Plan participants to roll over assets from a Plan to an IRA, unless an exemption applies. The proposed exemption would provide relief, as needed, for this prohibited transaction, if the Financial Institution and Investment Professional provide investment advice that satisfies the Impartial Conduct Standards and they comply with the other applicable conditions discussed below.[34] In particular, the Financial Institution would be required to document the reasons that the advice to roll over was in the Retirement Investor's best interest. In addition, investment advice fiduciaries under Title I of ERISA would remain subject to the fiduciary duties imposed by section 404 of that statute.

In determining the fiduciary status of an investment advice provider in this context, the Department does not intend to apply the analysis in Advisory Opinion 2005–23A (the Deseret Letter), which suggested that advice to roll assets out of a Plan did not generally constitute investment advice. The Department believes that the analysis in the Deseret Letter was incorrect and that advice to take a distribution of assets from an ERISA-covered Plan is actually advice to sell, withdraw, or transfer investment assets currently held in the Plan. A recommendation to roll assets out of a Plan is necessarily a recommendation to liquidate or transfer the Plan's property interest in the affected assets, the participant's associated property interest in the Plan investments, and the fiduciary oversight structure that applies to the assets. Typically the assets, fees, asset management structure, investment options, and investment service options all change with the decision to roll money out of the Plan. Accordingly, the better view is that a recommendation to roll assets out of a Plan is advice with respect to moneys or other property of the Plan. Moreover, a distribution recommendation commonly involves either advice to change specific investments in the Plan or to change fees and services directly affecting the return on those investments.[35]

All prongs of the five-part test must be satisfied for the investment advice provider to be a fiduciary within the meaning of the regulatory definition, including the ''regular basis'' prong and the prongs requiring the advice to be provided pursuant to a ''mutual'' agreement, arrangement, or understanding that the advice will serve as ''a primary basis'' for investment decisions. As discussed below, these inquiries will be informed by all the surrounding facts and circumstances. The Department acknowledges that advice to take a distribution from a Plan and roll over the assets may be an isolated and independent transaction that would fail to meet the regular basis prong.[36] However, the Department believes that whether advice to roll over Plan assets to an IRA satisfies the regular-basis prong of the five-part test depends on the surrounding facts and circumstances. The Department has long interpreted advice to a Plan to include advice to participants and beneficiaries in participant-directed individual account pension plans.[37] The Department also recognizes that advice to roll over Plan assets can occur as part of an ongoing relationship or an anticipated ongoing relationship that an individual enjoys with his or her advice provider. For example, in circumstances in which the advice provider has been giving financial advice to the individual about investing in, purchasing, or selling securities or other financial instruments, the advice to roll assets out of a Plan is part of an ongoing advice relationship that satisfies the ''regular basis'' requirement. Similarly, advice to roll assets out of the Plan into an IRA where the advice provider will be regularly giving financial advice regarding the IRA in the course of a more lengthy financial relationship would be the start of an advice relationship that satisfies the ''regular basis'' requirement. In these scenarios, there is advice to the Plan—meaning the Plan participant or beneficiary—on a regular basis. The Department is disinclined to propose an exemption that would artificially exclude rollover advice from investment advice when that would be contrary to the parties' course of dealing and expectations. And it is more than reasonable, as discussed below, that the advice provider would anticipate that advice about rolling over Plan assets would be ''a primary basis for [those] investment decisions.''

This interpretation would both align the Department's approach with other regulators and protect Plan participants and beneficiaries under today's market practices, including the increasing prevalence of 401(k) plans and self-directed accounts. Numerous sources acknowledge that a common purpose of advice to roll over Plan assets is to establish an ongoing relationship in which advice is provided on a regular basis outside of the Plan, in return for a fee or other compensation. For example, in a 2013 notice reminding firms of their responsibilities regarding IRA rollovers, the Financial Industry Regulatory Authority (FINRA) stated that ''a financial adviser has an economic incentive to encourage an investor to roll Plan assets into an IRA that he will represent as either a broker-dealer or an investment adviser representative.''[38] Similarly, in 2011, the U.S. Government Accountability Office (GAO) discussed the practice of cross-selling, in which 401(k) service providers sell Plan participants products and services outside of their Plans, including IRA rollovers. GAO reported that industry professionals said

sponsor 401(k) plans may defray some of the costs of running the plan, enabling the sponsor to select lower-cost funds (or fund share classes) for the plan.'')

[33] Cerulli Associates, ''U.S. Retirement Markets 2019.''

[34] The exemption would also provide relief for investment advice fiduciaries under either ERISA or the Code to receive compensation for advice to roll Plan assets to another Plan, to roll IRA assets to another IRA or to a Plan, and to transfer assets from one type of account to another, all limited to the extent such rollovers are permitted under law. The analysis set forth in this section will apply as relevant to those transactions as well.

[35] The SEC and FINRA have each recognized that recommendations to roll over Plan assets to an IRA will almost always involve a securities transaction. *See* Regulation Best Interest Release, 84 FR at 33339; FINRA Regulatory Notice 13–45 Rollovers to Individual Retirement Accounts (December 2013), *available at https://www.finra.org/sites/default/files/NoticeDocument/p418695.pdf.*

[36] Merely executing a sales transaction at the customer's request also does not confer fiduciary status.

[37] Interpretive Bulletin 96–1, 29 CFR 2509.96–1.

[38] FINRA Regulatory Notice 13–45.

''cross-selling IRA rollovers to participants, in particular, is an important source of income for service providers.'' [39]

Therefore, the regular basis prong of the five-part test would be satisfied when an entity with a pre-existing advice relationship with the Retirement Investor advises the Retirement Investor to roll over assets from a Plan to an IRA. Similarly, for an investment advice provider who establishes a new relationship with a Plan participant and advises a rollover of assets from the Plan to an IRA, the rollover recommendation may be seen as the first step in an ongoing advice relationship that could satisfy the regular basis prong of the five-part test depending on the facts and circumstances.[40]

Further, the determination of whether there is a mutual agreement, arrangement, or understanding that the investment advice will serve as a primary basis for investment decisions is appropriately based on the *reasonable* understanding of each of the parties, if no mutual agreement or arrangement is demonstrated. Written statements disclaiming a mutual understanding or forbidding reliance on the advice as a primary basis for investment decisions are not determinative, although such statements are appropriately considered in determining whether a mutual understanding exists.

More generally, the Department emphasizes that the five-part test does not look at whether the advice serves as ''the'' primary basis of investment decisions, but whether it serves as ''a'' primary basis. When financial service professionals make recommendations to a Retirement Investor, particularly pursuant to a best interest standard such as the one in the SEC's Regulation Best Interest, or another requirement to provide advice based on the individualized needs of the Retirement Investor, the parties typically should reasonably understand that the advice will serve as at least a primary basis for the investment decision. By contrast, a one-time sales transaction, such as the one-time sale of an insurance product, does not by itself confer fiduciary status under ERISA or the Code, even if accompanied by a recommendation that the product is well-suited to the investor and would be a valuable purchase.[41]

In addition to satisfying the five-part test, a person must receive a fee or other compensation to be an investment advice fiduciary. The Department has long interpreted this requirement broadly to cover ''all fees or other compensation incident to the transaction in which the investment advice to the plan has been rendered or will be rendered.'' [42] The Department previously noted that ''this may include, for example, brokerage commissions, mutual fund sales commissions, and insurance sales commissions.'' [43] In the rollover context, fees and compensation received from transactions involving rollover assets would be incident to the advice to take a distribution from the Plan and to roll over the assets to an IRA. If, under the above analysis, advice to roll over Plan assets to an IRA is fiduciary investment advice under ERISA, the fiduciary duties of prudence and loyalty would apply to the initial instance of advice to take the distribution and to roll over the assets. Fiduciary investment advice concerning investment of the rollover assets and ongoing management of the assets, once distributed from the Plan into the IRA, would be subject to obligations in the Code. For example, a broker-dealer who satisfies the five-part test with respect to a Retirement Investor, advises that Retirement Investor to move his or her assets from a Plan to an IRA, and receives any fees or compensation incident to distributing those assets, will be a fiduciary subject to ERISA, including section 404, with respect to the advice regarding the rollover.

The Department requests comment on all aspects of this part of its proposal. For instance: Are there other rollover scenarios that are not clear and which the Department should address? Does the discussion above reflect real-world experiences and concerns? Does it provide enough clarity to financial entities interested in the proposed exemption?

Principal Transactions

Principal transactions involve the purchase from, or sale to, a Plan or IRA, of an investment, on behalf of the Financial Institution's own account or the account of a person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Financial Institution. Because an investment advice fiduciary engaging in a principal transaction is on both sides of the transaction, the firm has a clear conflict. In addition, the securities typically traded in principal transactions often lack pre-trade price transparency and Retirement Investors may, therefore, have difficulty evaluating the fairness of a particular principal transaction. These investments also can be associated with low liquidity, low transparency, and the possible incentive to sell unwanted investments held by the Financial Institution.

Consistent with the Department's historical approach to prohibited transaction exemptions for fiduciaries, this proposal includes relief for principal transactions that is limited in scope and subject to additional conditions, as set forth in the definition of Covered Principal Transactions, described below. Importantly, certain transactions would not be considered principal transactions for purposes of the exemption, and so could occur under the more general conditions. This includes the sale of an insurance or annuity contract, or a mutual fund transaction.

Principal transactions that are ''riskless principal transactions'' would be covered under the exemption as well, subject to the general conditions. A riskless principal transaction is a transaction in which a Financial Institution, after having received an order from a Retirement Investor to buy or sell an investment product, purchases or sells the same investment product in a contemporaneous transaction for the Financial Institution's own account to offset the transaction with the Retirement Investor. The Department requests comment on whether the exemption text should include a definition of the terms ''principal transaction'' and ''riskless principal transaction.''

The proposal uses the defined term ''Covered Principal Transaction'' to describe the types of non-riskless principal transactions that would be covered under the exemption. For purchases from a Plan or IRA, the term is broadly defined to include any securities or other investment property.

[39] U.S. General Accountability Office, 401(k) Plans: Improved Regulation Could Better Protect Participants from Conflicts of Interest, GAO 11–119 (Washington, DC 2011), *available at https://www.gao.gov/assets/320/315363.pdf.*

[40] The Department is aware that some Financial Institutions pay unrelated parties to solicit clients for them. *See* Rule 206(4)–3 under the Investment Advisers Act of 1940; *see also* Investment Advisers Advertisements; Compensation for Solicitations, Proposed Rule, 84 FR 67518 (December 10, 2019). The Department notes that advice by a paid solicitor to take a distribution from a Plan and to roll over assets to an IRA could be part of ongoing advice to a Retirement Investor, if the Financial Institution that pays the solicitor provides ongoing fiduciary advice to the IRA owner.

[41] Like other Investment Professionals, however, insurance agents may have or contemplate an ongoing advice relationship with a customer. For example, agents who receive trailing commissions on annuity transactions may continue to provide ongoing recommendations or service with respect to the annuity.

[42] Preamble to the Department's 1975 Regulation, 40 FR 50842 (October 31, 1975).

[43] *Id.*

This is to reflect the possibility that a principal transaction will be needed to provide liquidity to a Retirement Investor. However, for sales to a Plan or IRA, the proposed exemption would provide more limited relief. For those sales, the definition of Covered Principal Transaction would be limited to transactions involving: corporate debt securities offered pursuant to a registration statement under the Securities Act of 1933; U.S. Treasury securities; debt securities issued or guaranteed by a U.S. federal government agency other than the U.S. Department of Treasury; debt securities issued or guaranteed by a government-sponsored enterprise (GSE); municipal bonds; certificates of deposit; and interests in Unit Investment Trusts. The Department seeks comment on whether any of these investments should be further defined for clarity.

The Department intends for this exemption to accommodate new and additional investments, as appropriate. Accordingly, the definition of Covered Principal Transaction is designed to expand to include additional investments if the Department grants an individual exemption that provides relief for investment advice fiduciaries to sell the investment to a Retirement Investor in a principal transaction, under the same conditions as this class exemption.

For sales of a debt security to a Plan or IRA, the definition of Covered Principal Transaction would require the Financial Institution to adopt written policies and procedures related to credit quality and liquidity. Specifically, the policies and procedures must be reasonably designed to ensure that the debt security, at the time of the recommendation, has no greater than moderate credit risk and has sufficient liquidity that it could be sold at or near its carrying value within a reasonably short period of time. This standard is intended to identify investment grade securities, and is included to prevent the exemption from being available to Financial Institutions that recommend speculative debt securities from their own accounts.

The proposal is broader than the scope of FAB 2018–02, which did not include principal transactions involving municipal bonds. The Department cautions, however, that Financial Institutions and Investment Professionals should pay special care to the reasons for advising Retirement Investors to invest in municipal bonds. Tax-exempt municipal bonds are often a poor choice for investors in ERISA plans and IRAs because the plans and IRAs are already tax advantaged and, therefore, do not benefit from paying for the bond's tax-favored status.[44] Financial Institutions and Investment Professionals may wish to document the reasons for any recommendation of a tax-exempt municipal bond and why the recommendation, despite the tax consequences, was in the Retirement Investor's best interest.

The Department seeks public comment on all aspects of the proposal's treatment of principal transactions, including the proposal to provide relief in this exemption for principal transactions involving municipal bonds. Do commenters believe that the exemption should extend to principal transactions involving municipal bonds? Do commenters believe the definition of municipal bonds should be limited to taxable municipal bonds? Should the exemption include any additional safeguards for these transactions? Are there any other transactions that would benefit from special care before making a recommendation in addition to municipal bonds? The Department requests comments on whether its proposed mechanism for including new and additional investments through later, individual exemptions provides sufficient flexibility.

Exclusions

Section I(c) provides that certain specific transactions would be excluded from the exemption. Under Section I(c)(1), the exemption would not extend to transactions involving ERISA-covered Plans if the Investment Professional, Financial Institution, or an affiliate is either (1) the employer of employees covered by the Plan, or (2) is a named fiduciary or plan administrator, or an affiliate thereof, who was selected to provide advice to the Plan by a fiduciary who is not independent of the Financial Institution, Investment Professional, and their affiliates. The Department is of the view that, to protect employees from abuse, employers generally should not be in a position to use their employees' retirement benefits as potential revenue or profit sources, without additional safeguards. Employers can always render advice and recover their direct expenses in transactions involving their employees without need of an exemption.[45] Further, the Department does not intend for the exemption to be used by a Financial Institution or Investment Professional that is the named fiduciary or plan administrator of a Plan or an affiliate thereof, unless the Financial Institution or Investment Professional is selected as an advice provider by a party that is independent of them.[46] Named fiduciaries and plan administrators have significant authority over Plan operations and accordingly, the Department believes that any selection of these parties to also provide investment advice to the Plan or its participants and beneficiaries should be made by an independent party who will also monitor the performance of the investment advice services.

As reflected in Section I(c)(2), the exemption also would not extend to transactions that result from robo-advice arrangements that do not involve interaction with an Investment Professional. Congress previously granted statutory relief for investment advice programs using computer models in ERISA sections 408(b)(14) and 408(g) and Code sections 4975(d)(17) and 4975(f)(8) and the Department has promulgated applicable regulations thereunder.[47] Thus, while ''hybrid'' robo-advice arrangements[48] would be permitted under the exemption, arrangements in which the only investment advice provided is generated by a computer model would not be eligible for relief under the exemption. The Department requests comment on whether additional relief is needed for robo-advice arrangements which do not

[44] *See e.g.,* Seven Questions to Ask When Investing in Municipal Bonds, *available at http://www.msrb.org/~/media/pdfs/msrb1/pdfs/seven-questions-when-investing.ashx.* (''[T]ax-exempt bonds may not be an efficient investment for certain tax advantaged accounts, such as an IRA or 401k, as the tax-advantages of such accounts render the tax-exempt features of municipal bonds redundant. Furthermore, since withdrawals from most of those accounts are subject to tax, placing a tax exempt bond in such an account has the effect of converting tax-exempt income into taxable income. Finally, if an investor purchases bonds in the secondary market at a discount, part of the gain received upon sale may be subject to regular income tax rates rather than capital gains rates.'')

[45] ERISA section 408(b)(5) provides a statutory exemption for the purchase of life insurance, health insurance, or annuities, from an employer with respect to a Plan or a wholly-owned subsidiary of the employer.

[46] For purposes of this exemption, the Department would view a party as independent of the Financial Institution and Investment Professional if: (i) The person was not the Financial Institution, Investment Professional or an affiliate, (ii) the person did not have a relationship to or an interest in the Financial Institution, Investment Professional or any affiliate that might affect the exercise of the person's best judgment in connection with transactions covered by the exemption, and (iii) the party does not receive and is not projected to receive within the current federal income tax year, compensation or other consideration for his or her own account from the Financial Institution, Investment Professional or an affiliate, in excess of 2% of the person's annual revenues based upon its prior income tax year.

[47] 29 CFR 2550.408g–1.

[48] Hybrid robo-advice arrangements involve both computer software-based models and personal investment advice from an Investment Professional.

involve interaction with an Investment Professional.

Finally, under Section I(c)(3), the exemption would not extend to transactions in which the Investment Professional is acting in a fiduciary capacity other than as an investment advice fiduciary. This is consistent with FAB 2018–02, which applied to investment advice fiduciaries. For clarity, Section I(c)(3) cites to the Department's five-part test as the governing authority for status as an investment advice fiduciary.

Exemption Conditions

Section II of the proposal sets forth the general conditions that would be included in the exemption. Section III establishes the eligibility requirements. Section IV would require parties to maintain records to demonstrate compliance with the exemption. Section V includes the defined terms used in the exemption. These sections are discussed below. In order to avoid a prohibited transaction, the Financial Institution and Investment Professional would have to comply with all of the conditions of the exemption, and could not waive or disclaim compliance with any of the conditions. Similarly, a Retirement Investor could not agree to waive any of the conditions.

Investment Advice Arrangement (Section II)

Section II sets forth conditions that would govern the Financial Institution's and Investment Professionals' provision of investment advice. As discussed in greater detail below, Section II(a) would require Financial Institutions and Investment Professionals to comply with the Impartial Conduct Standards by providing advice that is in Retirement Investors' best interest, charging only reasonable compensation, and making no materially misleading statements about the investment transaction and other relevant matters. The Impartial Conduct Standards would further require the Financial Institution and Investment Professional to seek to obtain the best execution of the investment transaction reasonably available under the circumstances, as required by the federal securities laws.

Section II(b) would require Financial Institutions, prior to engaging in a transaction pursuant to the exemption, to provide a written disclosure to the Retirement Investor acknowledging that the Financial Institution and its Investment Professionals are fiduciaries under ERISA and the Code, as applicable.[49] The disclosure also would be required to provide a written description, accurate in all material respects regarding the services to be provided and the Financial Institution's and Investment Professional's material conflicts of interest. Under Section II(c), the Financial Institution would be required to establish, maintain and enforce written policies and procedures prudently designed to ensure that the Financial Institution and its Investment Professionals comply with the Impartial Conduct Standards. Section II(d) would require Financial Institutions to conduct an annual retrospective review.

Best Interest Standard

As defined in Section V(a), the proposed best interest standard would be satisfied if investment advice ''reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, and does not place the financial or other interest of the Investment Professional, Financial Institution or any affiliate, related entity or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own.''

This proposed best interest standard is based on longstanding concepts derived from ERISA and the high fiduciary standards developed under the common law of trusts, and is intended to comprise objective standards of care and undivided loyalty, consistent with the requirements of ERISA section 404.[50] These longstanding concepts of law and equity were developed in significant part to deal with the issues that arise when agents and persons in a position of trust have conflicting interests, and accordingly are well-suited to the problems posed by conflicted investment advice.

The proposal's standard of care is an objective standard that would require the Financial Institution and Investment Professional to investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would.[51] Thus, an Investment Professional's and Financial Institution's advice would be measured against that of a prudent Investment Professional. As indicated in the text, the standard of care is measured at the time the advice is provided, and not in hindsight.[52] The standard would not measure compliance by reference to how investments subsequently performed or turn Financial Institutions and Investment Professionals into guarantors of investment performance; rather, the appropriate measure is whether the Investment Professional gave advice that was prudent and in the best interest of the Retirement Investor at the time the advice is provided.

The proposal articulates the best interest standard as the Financial Institutions' and Investment Professionals' duty to ''not place the financial or other interest of the Investment Professional, Financial Institution or any affiliate, related entity or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own.'' The standard is to be interpreted and applied consistent with the standard set forth in the SEC's Regulation Best Interest[53] and the SEC's

[49] As noted above, the Department does not intend the exemption to expand Retirement Investors' ability, such as by requiring contracts and/or warranty provisions, to enforce their rights in court or create any new legal claims above and beyond those expressly authorized in ERISA. Neither does the Department believe the exemption would create any such expansion.

[50] *Cf. also* Code section 4975(f)(5), which defines ''correction'' with respect to prohibited transactions as placing a Plan or IRA in a financial position not worse that it would have been in if the person had acted ''under the highest fiduciary standards.'' While the Code does not expressly impose a duty of loyalty on fiduciaries, the best interest standard proposed here is intended to ensure adherence to the ''highest fiduciary standards'' when a fiduciary advises a Plan or IRA owner under the Code.

[51] *See* Regulation Best Interest Care Obligation, 17 CFR 240.15l–1(a)(2)(ii); Regulation Best Interest Release, 84 FR at 33321 (Under the Care Obligation, ''[t]he broker-dealer must understand potential risks, rewards, and costs associated with the recommendation.''); *id.,* at 33326 (''We are adopting the Care Obligation largely as proposed; however, we are expressly requiring that a broker-dealer understand and consider the potential costs associated with its recommendation, and have a reasonable basis to believe that the recommendation does not place the financial or other interest of the broker-dealer ahead of the interest of the retail customer.''); *id.* at 33376 & n. 598 (discussing the Care Obligation in the context of complex or risky securities and investment strategies; citing FINRA Regulatory Notice 17–32 as explaining that ''[t]he level of reasonable diligence that is required will rise with the complexity and risks associated with the security or strategy. With regard to a complex product such as a volatility-linked [Exchange Traded Product], an associated person should be capable of explaining, at a minimum, the product's main features and associated risks.'').

[52] *See* Donovan v. Mazzola, 716 F.2d 1226, 1232 (9th Cir. 1983).

[53] Regulation Best Interest's best interest obligation provides that a ''broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in

interpretation regarding the conduct standard for registered investment advisers.[54] [55]

This best interest standard would allow Investment Professionals and Financial Institutions to provide investment advice despite having a financial or other interest in the transaction, so long as they do not place the interests ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own. For example, in choosing between two investments equally available to the investor, it would not be permissible for the Investment Professional to advise investing in the one that is worse for the Retirement Investor because it is better for the Investment Professional's or the Financial Institution's bottom line. Because the standard does not forbid the Financial Institution or Investment Professional from having an interest in the transaction this standard would not foreclose the Investment Professional and Financial Institution from being paid, nor would it foreclose investment advice on proprietary products or investments that generate third party payments.

The best interest standard in this proposal would not impose an unattainable obligation on Investment Professionals and Financial Institutions to somehow identify the single ''best'' investment for the Retirement Investor out of all the investments in the national or international marketplace, assuming such advice were even possible at the time of the transaction. The obligation under the best interest standard would be to give advice that adheres to professional standards of prudence, and that does not place the interests of the Investment Professional, Financial Institution, or other party ahead of the Retirement Investor's financial interests, or subordinate the Retirement Investor's interests to those of the Investment Professional or Financial Institution.

Neither the best interest standard nor any other condition of the exemption would establish a monitoring requirement for Financial Institutions or Investment Professionals; the parties can, of course, establish a monitoring obligation by agreement, arrangement, or understanding. Under Section II(b), discussed below, Financial Institutions would, however, be required to disclose which services they will provide. Moreover, Financial Institutions should carefully consider whether certain investments can be prudently recommended to the individual Retirement Investor in the first place without ongoing monitoring of the investment. Investments that possess unusual complexity and risk, for example, may require ongoing monitoring to protect the investor's interests. An Investment Professional may be unable to satisfy the exemption's best interest standard with respect to such investments without a mechanism in place for monitoring. The added cost of monitoring such investments should also be considered by the Financial Institution and Investment Professional in determining whether the recommended investments are in the Retirement Investor's best interest. The Department requests comments on this best interest standard and whether additional examples would be useful.

Reasonable Compensation

General

Section II(a)(2) of the exemption would establish a reasonable compensation standard. Compensation received, directly or indirectly, by the Financial Institution, Investment Professional, and their affiliates and related entities for their services would not be permitted to exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

The obligation to pay no more than reasonable compensation to service providers has been long recognized under ERISA and the Code. ERISA section 408(b)(2) and Code section 4975(d)(2) expressly require all types of services arrangements involving Plans and IRAs to result in no more than reasonable compensation to the service provider. Investment Professionals and Financial Institutions—as service providers—have long been subject to this requirement, regardless of their fiduciary status. The reasonable compensation standard requires that compensation not be excessive, as measured by the market value of the particular services, rights, and benefits the Investment Professional and Financial Institution are delivering to the Retirement Investor. Given the conflicts of interest associated with the commissions and other payments that would be covered by the exemption, and the potential for self-dealing, it is particularly important that Investment Professionals and Financial Institutions adhere to these statutory standards, which are rooted in common law principles.

In general, the reasonableness of fees will depend on the particular facts and circumstances at the time of the recommendation. Several factors inform whether compensation is reasonable, including the market price of service(s) provided and/or the underlying asset(s), the scope of monitoring, and the complexity of the product. No single factor is dispositive in determining whether compensation is reasonable; the essential question is whether the charges are reasonable in relation to what the investor receives. Under the exemption, the Financial Institution and Investment Professional would not have to recommend the transaction that is the lowest cost or that generates the lowest fees without regard to other relevant factors. Recommendations of the ''lowest cost'' security or investment strategy, without consideration of other factors, could in fact violate the exemption.

The reasonable compensation standard would apply to all transactions under the exemption, including investment products that bundle together services and investment guarantees or other benefits, such as annuities. In assessing the reasonableness of compensation in connection with these products, it is appropriate to consider the value of the guarantees and benefits as well as the value of the services. When assessing the reasonableness of a charge, one generally needs to consider the value of all the services and benefits provided for the charge, not just some. If parties need additional guidance in this respect, they should refer to the Department's interpretations under ERISA section 408(b)(2) and Code section 4975(d)(2). The Department will provide additional guidance if necessary.

Best Execution

Section II(a)(2)(B) of the exemption would require that, as required by the federal securities laws, the Financial

the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.'' 17 CFR 240.15l-1(a)(1).

[54] ''An investment adviser's fiduciary duty under the Advisers Act comprises a duty of care and a duty of loyalty. This fiduciary duty requires an adviser 'to adopt the principal's goals, objectives, or ends.' This means the adviser must, at all times, serve the best interest of its client and not subordinate its client's interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client.'' SEC Fiduciary Interpretation, 84 FR at 33671(citations omitted).

[55] The NAIC's updated Suitability in Annuity Transactions Model Regulation includes a safe harbor for recommendations made by financial professionals that are ERISA and Code fiduciaries in compliance with the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA and the Code. NAIC Suitability in Annuity Transactions Model Regulation, Spring 2020, Section 6.E.(5)(c), available at *https://www.naic.org/store/free/MDL-275.pdf.*

Institution and Investment Professional seek to obtain the best execution of the investment transaction reasonably available under the circumstances. Financial Institutions and Investment Professionals subject to federal securities laws such as the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940, and rules adopted by FINRA and the Municipal Securities Rulemaking Board (MSRB), are obligated to a longstanding duty of best execution. As described recently by the SEC, ''[a] broker-dealer's duty of best execution requires a broker-dealer to seek to execute customers' trades at the most favorable terms reasonably available under the circumstances.'' [56] This condition complements the reasonable compensation standard set forth in ERISA and the Code.

The Department would apply the best execution requirement consistent with the federal securities laws. Financial Institutions that are FINRA members would satisfy this subsection if they comply with the standards in FINRA rules 2121 (Fair Prices and Commissions) and 5310 (Best Execution and Interpositioning), or any successor rules in effect at the time of the transaction, as interpreted by FINRA. Financial Institutions engaging in a purchase or sale of a municipal bond would satisfy this subsection if they comply with the standards in MSRB rules G–30 (Prices and Commissions) and G–18 (Best Execution), or any successor rules in effect at the time of the transaction, as interpreted by MSRB. Financial Institutions that are subject to and comply with the fiduciary duty under section 206 of the Investment Advisers Act, which as described by the SEC encompasses a duty to seek best execution, would satisfy this subsection.[57]

Misleading Statements

Section II(a)(3) would require that statements by the Financial Institution and its Investment Professionals to the Retirement Investor about the recommended transaction and other relevant matters are not materially misleading at the time they are made. Other relevant matters would include fees and compensation, material conflicts of interest, and any other fact that could reasonably be expected to affect the Retirement Investor's investment decisions. For example, the Department would consider it materially misleading for the Financial Institution or Investment Professional to include any exculpatory clauses or indemnification provisions in an arrangement with a Retirement Investor that are prohibited by applicable law.[58] Retirement Investors are clearly best served by statements and representations free from material misstatements and omissions. Financial Institutions and Investment Professionals best avoid liability—and best promote the interests of Retirement Investors—by ensuring that accurate communications are a consistent standard in all their interactions with their customers.

Disclosure—Section II(b)

Section II(b) of the exemption would require the Financial Institution to provide certain written disclosures to the Retirement Investor, prior to engaging in any transactions pursuant to the exemption. The Financial Institution must acknowledge, in writing, that the Financial Institution and its Investment Professionals are fiduciaries under ERISA and the Code, as applicable, with respect to any fiduciary investment advice provided by the Financial Institution or Investment Professional to the Retirement Investor. The Financial Institution must provide a written description of the services to be provided and material conflicts of interest arising out of the services and any recommended investment transaction. The description must be accurate in all material respects.

The disclosure obligations in this proposal are designed to protect Retirement Investors by enhancing the quality of information they receive in connection with fiduciary investment advice. The disclosures should be in plain English, taking into consideration Retirement Investors' level of financial experience. The requirement can be satisfied through any disclosure, or combination of disclosures, required to be provided by other regulators so long as the disclosure required by Section II(b) is included.

The proposed disclosures are designed to ensure that the fiduciary nature of the relationship is clear to the Financial Institution and Investment Professional, as well as the Retirement Investor, at the time of the investment transaction. The Department does not intend the fiduciary acknowledgment or any of the disclosure obligations to create a private right of action as between a Financial Institution or Investment Professional and a Retirement Investor and it does not believe the exemption would do so.[59] As noted above, ERISA section 502(a) provides a cause of action for fiduciary breaches and prohibited transactions with respect to ERISA-covered Plans (but not IRAs). Code section 4975 imposes a tax on disqualified persons participating in a prohibited transaction involving Plans and IRAs (other than a fiduciary acting only as such). These are the sole remedies for engaging in non-exempt prohibited transactions.

The description of the services to be provided and material conflicts of interest is necessary to ensure Retirement Investors receive information to assess the conflicts and compensation structures. The approach taken in the proposal is principles-based and meant to provide the flexibility necessary to apply to a wide variety of business models and practices. The proposal does not require specific disclosures to be tailored for each Retirement Investor or each transaction as long as a compliant disclosure is provided before engaging in the particular transaction for which the exemption is sought. The Department requests comments on the disclosure requirements. In particular, the Department seeks comment on whether the written acknowledgment of fiduciary status should be accompanied by a disclosure of the fiduciary's obligations under the exemption to provide advice in accordance with the Impartial Conduct Standard. The Department also requests comment on whether the Department should instead require this disclosure of Financial Institutions' and Investment Professionals' obligations under the Impartial Conduct Standards as an alternative to requiring written disclosure of their fiduciary status.

Policies and Procedures—Section II(c)

General

Section II(c)(1) of the proposal would establish an overarching requirement

[56] Regulation Best Interest Release, 84 FR at 33373, note 565.

[57] SEC Fiduciary Interpretation, 84 FR at 33674–75 (Section II.B.2 ''Duty to Seek Best Execution'').

[58] *See, e.g.,* ERISA section 410 and *see also* ERISA Interpretive Bulletin 75–4—Indemnification of fiduciaries under ERISA § 410(a). (''The Department of Labor interprets section 410(a) as rendering void any arrangement for indemnification of a fiduciary of an employee benefit plan by the plan. Such an arrangement would have the same result as an exculpatory clause, in that it would, in effect, relieve the fiduciary of responsibility and liability to the plan by abrogating the plan's right to recovery from the fiduciary for breaches of fiduciary obligations.'')

[59] In *Chamber of Commerce of the United States* v. *U.S. Department of Labor,* supra note 5, the U.S. Court of Appeals for the 5th Circuit found that the Department did not have authority to include certain contract requirements in the new exemptions granted as part of the 2016 fiduciary rulemaking. The Department is mindful of this holding and has not included any contract requirement in this proposal.

that Financial Institutions establish, maintain and enforce written policies and procedures prudently designed to ensure that the Financial Institution and its Investment Professionals comply with the Impartial Conduct Standards. Under Section II(c)(2), Financial Institutions' policies and procedures would be required to mitigate conflicts of interest to the extent that the policies and procedures, and the Financial Institution's incentive practices, when viewed as a whole, are prudently designed to avoid misalignment of the interests of the Financial Institution and Investment Professionals and the interests of Retirement Investors. In accordance with this standard, a reasonable person reviewing the Financial Institution's incentive practices, policies, and procedures would conclude that the policies do not give Investment Professionals an incentive to violate the Impartial Conduct Standards, but rather are reasonably designed to promote compliance with the standards.

As defined in the proposal, a conflict of interest is ''an interest that might incline a Financial Institution or Investment Professional—consciously or unconsciously—to make a recommendation that is not in the Best Interest of the Retirement Investor'' [60] Conflict mitigation is a critical condition of the exemption, and is an important factor for the Department to make the findings under ERISA section 408(a) and Code section 4975(d)(2), that the exemption is in the interests of, and protective of, Retirement Investors. The requirement to avoid misalignment means, for example, that Financial Institutions' policies and procedures would be required to be prudently designed to protect Retirement Investors from recommendations to make excessive trades, or to buy investment products, annuities, or riders that are not in the investor's best interest or that allocate excessive amounts to illiquid or risky investments.

Section II(c)(3) of the exemption would establish specific documentation requirements for recommendations to roll over Plan or IRA assets to another Plan or IRA and to change from one type of account to another (*e.g.,* from a commission-based account to a fee-based account). Financial Institutions making these recommendations would be required to document the specific reason or reasons why the recommendation was considered to be in the best interest of the Retirement Investor. The Department requests comments on whether additional specific documentation requirements would be appropriate.

To comply with the conditions in Section II(c), Financial Institutions would identify and carefully focus on the particular aspects of their business model that may create incentives that are misaligned with the interests of Retirement Investors. If, for example, a Financial Institution anticipates that conflicts of interest in its business model will center on advice to roll over Plan assets, and after the rollover, the Financial Institution and Investment Professional will be compensated on a level-fee basis, the Financial Institution's policies and procedures should focus on the rollover or distribution recommendation. The proposed requirement in Section II(c)(3) to document the reason for rollover and account recommendations supports compliance with the Impartial Conduct Standards in this context.[61]

On the other hand, if a Financial Institution intends to receive transaction-based third party compensation, and compensate Investment Professionals based on transactions that occur in a Retirement Investor's accounts, such as through commissions, the Financial Institution's policies and procedures would also address the incentives created by these compensation arrangements. Financial Institutions that provide advice regarding proprietary products or from limited menus of products would consider the conflicts of interest these arrangements create. Approaches to these conflicts of interest are discussed in more detail below.

Advice To Roll Over Plan or IRA Assets

Rollover recommendations are a primary concern of the Department, as Financial Institutions and Investment Professionals may have a strong economic incentive to recommend that investors roll over assets into one of their Institution's IRAs, whether from a Plan or from an IRA account at another Financial Institution, or even between different account types. The decision to roll over assets from an ERISA-covered Plan to an IRA may be one of the most important financial decisions that Retirement Investors make, as it may have a long-term impact on their retirement security.

The Department believes the requirement in Section II(c)(3) to document the reasons that advice to take a distribution or to roll over Plan or IRA assets were in the Retirement Investor's best interest will serve an important role in protecting Retirement Investors during this significant decision. The requirement is designed to ensure that Investment Professionals take the time to form a prudent recommendation, and that a record is available for later review.

For purposes of compliance with the exemption, a prudent recommendation to roll over from an ERISA-covered Plan to an IRA would necessarily include consideration and documentation of the following: The Retirement Investor's alternatives to a rollover, including leaving the money in his or her current employer's Plan, if permitted, and selecting different investment options; the fees and expenses associated with both the Plan and the IRA; whether the employer pays for some or all of the Plan's administrative expenses; and the different levels of services and investments available under the Plan and the IRA. For rollovers from another IRA or changes from a commission-based account to a fee-based arrangement, a prudent recommendation would include consideration and documentation of the services that would be provided under the new arrangement.

In evaluating a potential rollover from an ERISA-covered Plan, the Investment Professional and Financial Institution should make diligent and prudent efforts to obtain information about the existing Plan and the participant's interests in it. If the Retirement Investor is unwilling to provide the information, even after a full explanation of its significance, and the information is not otherwise readily available, the Investment Professional should make a reasonable estimation of expenses, asset values, risk, and returns based on publicly available information and explain the assumptions used and their limitations to the Retirement Investor. The Department requests comment on whether there are any other actions the Department should or could take with respect to disclosure or reporting that would promote prudent rollover advice without overlapping existing regulatory requirements.

[60] This definition is consistent with the concept of a conflict of interest in the SEC's rulemaking. Regulation Best Interest definition of Conflict of Interest, 17 CFR 240.15l–1(b)(3); SEC Fiduciary Interpretation, 84 FR at 33671.

[61] In general, after the rollover, the ongoing receipt of compensation based on a fixed percentage of the value of assets under management does not require a prohibited transaction exemption. However, the Department cautions that certain practices such as ''reverse churning'' (*i.e.* recommending a fee-based account to an investor with low trading activity and no need for ongoing monitoring or advice) or recommending holding an asset solely to generate more fees may be prohibited transactions that would not satisfy the Impartial Conduct Standards.

Commission-Based Compensation Arrangements

Financial Institutions that compensate Investment Professionals through transaction-based payments and incentives would need to consider how to minimize the impact of these compensation incentives on fiduciary investment advice to Retirement Investors, so that the Financial Institution would be able to meet the exemption's standard of conflict mitigation set forth in proposed Section II(c)(2). As noted above, this standard would require the policies and procedures, and the Financial Institution's incentive practices, when viewed as a whole, to be prudently designed to avoid misalignment of the interests of the Financial Institution and Investment Professionals and the interests of Retirement Investors.

For commission-based compensation arrangements, Financial Institutions would be encouraged to focus on both financial incentives to Investment Professionals and supervisory oversight of investment advice. These two aspects of the Financial Institution's policies and procedures would complement each other, and Financial Institutions would retain the flexibility, based on the characteristics of their businesses, to adjust the stringency of each component provided that the exemption's overall standards would be satisfied. Financial Institutions that significantly mitigate commission-based compensation incentives would have less need to rigorously oversee Investment Professionals. Conversely, Financial Institutions that have significant variation in compensation across different investment products would need to implement more stringent supervisory oversight.

In developing compliance structures, the Department envisions that Financial Institutions would implement conflict mitigation strategies identified by the Financial Institutions' other regulators. The following non-exhaustive examples of practices identified as options by the SEC could be implemented by Financial Institutions in compensating Investment Professionals: (i) Avoiding compensation thresholds that disproportionately increase compensation through incremental increases in sales; (ii) Minimizing compensation incentives for employees to favor one type of account over another; or to favor one type of product over another, proprietary or preferred provider products, or comparable products sold on a principal basis, for example, by establishing differential compensation based on neutral factors; (iii) Eliminating compensation incentives within comparable product lines by, for example, capping the credit that an associated person may receive across mutual funds or other comparable products across providers; (iv) Implementing supervisory procedures to monitor recommendations that are: near compensation thresholds; near thresholds for firm recognition; involve higher compensating products, proprietary products or transactions in a principal capacity; or, involve the rollover or transfer of assets from one type of account to another (such as recommendations to roll over or transfer assets in an ERISA account to an IRA) or from one product class to another; (v) Adjusting compensation for associated persons who fail to adequately manage conflicts of interest; and (vi) Limiting the types of retail customer to whom a product, transaction or strategy may be recommended.[62]

Financial Institutions also should consider minimizing incentives at the Financial Institution level. Firms could establish or enhance the review process for investment products that may be recommended to Retirement Investors. This process could include procedures for identifying and mitigating conflicts of interest associated with the product and declining to recommend a product if the Financial Institution cannot effectively mitigate associated conflicts of interest.

Insurance companies and insurance agents that are investment advice fiduciaries relying on the exemption would be encouraged to adopt strategies similar to those identified above to address conflicts of interest. Insurance companies could also supervise independent insurance agents who provide investment advice on their products through the mechanisms noted above. To comply with the exemption, the insurer could adopt and implement supervisory and review mechanisms and avoid improper incentives that preferentially push the products, riders, and annuity features that might incentivize Investment Professionals to provide investment advice to Retirement Investors that does not meet the Impartial Conduct Standards. Insurance companies could implement procedures to review annuity sales to Retirement Investors to ensure that they were made in satisfaction of the Impartial Conduct Standards, much as they may already be required to review annuity sales to ensure compliance with state-law suitability requirements.[63]

In this regard, insurance company Financial Institutions would be responsible only for an Investment Professional's recommendation and sale of products offered to Retirement Investors by the insurance company in conjunction with fiduciary investment advice, and not unrelated and unaffiliated insurers.[64] Insurance companies could implement the policies and procedures by monitoring market prices and benchmarks for their products and services, and remaining attentive to any financial inducements they offer to independent agents that could result in a misalignment of the interests of the agent and his or her Retirement Investor customer. Insurers could also create a system of oversight and compliance by contracting with an IMO to implement policies and procedures designed to ensure that all of the agents associated with the intermediary adhere to the conditions of this exemption. Thus, for example, as one possible approach, the intermediary could eliminate compensation incentives across all the insurance

[62] Regulation Best Interest Release, 84 FR at 33392.

[63] *Cf.* NAIC Suitability in Annuity Transactions Model Regulation, Spring 2020, Section 6.C.(2)(d) (''The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria''); and (e) (''The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity''), available at *https://www.naic.org/store/free/MDL-275.pdf.* The prior version of the model regulation, which was adopted in some form by a number of states, also included similar provisions requiring systems to supervise recommendations. *See* Annuity Suitability (A) Working Group Exposure Draft, Adopted by the Committee Dec. 30, 2019, *available at https://www.naic.org/documents/committees_mo275.pdf.* (comparing 2020 version with prior version).

[64] *Cf. Id.,* Section 6.C.(4) (''An insurer is not required to include in its system of supervision: (a) A producer's recommendations to consumers of products other than the annuities offered by the insurer''), available at *https://www.naic.org/store/free/MDL-275.pdf.*

companies that work with the intermediary, assisting each of the insurance companies with their independent obligations under the exemption. This might involve the intermediary's review of documentation prepared by insurance agents to comply with the exemption, as may be required by the insurance company, or the use of third-party industry comparisons available in the marketplace to help independent insurance agents recommend products that are prudent for the Retirement Investors they advise.[65]

The Department notes that regulators in the securities and insurance industry have adopted provisions requiring elimination of sales contests and similar incentives such as sales quotas, bonuses, and non-cash compensation that are based on sales of certain investments within a limited period of time.[66] The Department agrees that these practices create incentives to recommend products that are not in a Retirement Investor's best interest that cannot be effectively mitigated. Therefore, Financial Institutions' policies and procedures would not be prudently designed to avoid a misalignment of interests between Investment Professionals and Retirement Investors if they establish or permit these practices. To satisfy the exemption's standard of mitigation, Financial Institutions would be required to carefully consider performance and personnel actions and practices that could encourage violation of the Impartial Conduct Standards.

The Department notes Financial Institutions complying with the exemption would need to review their policies and procedures periodically and reasonably revise them as necessary to ensure that the policies and procedures continue to satisfy the conditions of this exemption. In particular, the exemption would require ongoing vigilance as to the impact of conflicts of interest on the provision of fiduciary investment advice to Retirement Investors. As a matter of prudence, Financial Institutions should address any deficiencies in their policies and procedures if, in fact, the policies and procedures are not achieving their intended goal of ensuring compliance with the exemption and the provision of advice that satisfies the Impartial Conduct Standards. The Department seeks comment on the proposed policy and procedure requirements, including whether this principle-based method is sufficiently protective of participants and beneficiaries.

Proprietary Products and Limited Menus of Investment Products

It is important to note that the Department believes that the best interest standard can be satisfied by Financial Institutions and Investment Professionals that provide investment advice on proprietary products or on a limited menu, including limitations to proprietary products[67] and products that generate third party payments.[68] Product limitations can serve a beneficial purpose by allowing broker-dealers and associated persons to develop increased familiarity with the products they recommend. At the same time, limited menus, particularly if they focus on proprietary products and products that generate third party payments, can result in heightened conflicts of interest. Financial Institutions and their affiliates may receive more compensation than they would for recommending other products, and, as a result, Investment Professionals' and Financial Institutions' interests may be misaligned with the interests of Retirement Investors.

Financial Institutions and Investment Professionals providing investment advice on proprietary products or on a limited menu would satisfy the standard provided they give complete and accurate disclosure of their material conflicts of interest in connection with such products or limitations and adopt policies and procedures that are prudently designed to prevent any conflicts of interest from causing a misalignment of the interests of the Financial Institution and Investment Professional with the interests of the Retirement Investor. This would include policies applicable to circumstances where the Financial Institution or Investment Professional prudently determines that its proprietary products or limited menu do not offer Retirement Investors an investment option in their best interest when compared with other investment alternatives available in the marketplace. The Department envisions that Financial Institutions complying with the Impartial Conduct Standards would carefully consider their product offerings and form a reasonable conclusion about whether the menu of investment options would permit Investment Professionals to provide fiduciary investment advice to Retirement Investors in accordance with the Impartial Conduct Standards. The exemption would be available if the Financial Institution prudently concludes that its offering of proprietary products, or its limitations on investment product offerings, in conjunction with the policies and procedures, would not cause a misalignment of interests. Financial Institutions and Investment Professionals cannot use a limited menu to justify making a recommendation that does not meet the Impartial Conduct Standards.

The Department seeks comment on this analysis. Is this preamble guidance sufficient or do commenters believe that it is important for the exemption text to specifically address proprietary products and limited menus of investment products? Should the Department more specifically incorporate provisions of Regulation Best Interest in this respect?[69] Should this exemption specify documentation requirements reflecting the Financial Institution's analysis or conclusions with respect to its adoption of a limited menu or its recommendation of proprietary products, and its ability to comply with the conditions of this exemption with respect to such products or menus?

Retrospective Review—Section II(d)

Section II(d) of the proposal relates to the Financial Institution's oversight of its compliance, and its Investment Professionals' compliance, with the Impartial Conduct Standards and the policies and procedures. While mitigation of Financial Institutions' and Investment Professionals' conflicts of interest is critical, Financial Institutions must also monitor Investment Professionals' conduct to detect advice that does not adhere to the Impartial

[65] None of the conditions of this proposal are intended to categorically bar the provision of employee benefits to insurance company statutory employees, despite the practice of basing eligibility for such benefits on sales of proprietary products of the insurance company. *See* Internal Revenue Code section 3121.

[66] Regulation Best Interest Release, 84 FR at 33394–97; NAIC Suitability in Annuity Transactions Model Regulation, Spring 2020, Section 6.C.(2)(h), available at *https://www.naic.org/store/free/MDL-275.pdf.*

[67] Proprietary products include products that are managed, issued or sponsored by the Financial Institution or any of its affiliates.

[68] Third party payments include sales charges when not paid directly by the Plan or IRA; gross dealer concessions; revenue sharing payments; 12b–1 fees; distribution, solicitation or referral fees; volume-based fees; fees for seminars and educational programs; and any other compensation, consideration or financial benefit provided to the Financial Institution or an affiliate or related entity by a third party as a result of a transaction involving a Plan or IRA.

[69] *See* 17 CFR 240.15l–1(a)(2)(iii)(C) describing policies and procedures addressing material limitations placed on securities or investment strategies.

Conduct Standards or the Financial Institution's policies and procedures.

Under the proposal, Financial Institutions would be required to conduct a retrospective review, at least annually, that is reasonably designed to assist the Financial Institution in detecting and preventing violations of, and achieving compliance with, the Impartial Conduct Standards and the policies and procedures governing compliance with the exemption. The Department envisions that the review would involve testing a sample of transactions to determine compliance.

The methodology and results of the retrospective review would be reduced to a written report that is provided to the Financial Institution's chief executive officer (or equivalent officer). That officer would be required to certify annually that:

(A) The officer has reviewed the report of the retrospective review;

(B) The Financial Institution has in place policies and procedures prudently designed to achieve compliance with the conditions of this exemption; and

(C) The Financial Institution has in place a prudent process to modify such policies and procedures as business, regulatory and legislative changes and events dictate, and to test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with the conditions of this exemption.

This retrospective review, report and certification would be required to be completed no later than six months following the end of the period covered by the review. The Financial Institution would be required to retain the report and supporting data for a period of six years. If the Department, any other federal or state regulator of the Financial Institution, or any applicable self-regulatory organization, requests the written report and supporting data within those six years, the Financial Institution would make the requested documents available within 10 business days of the request. The Department believes that the requirement to provide the written report within 10 business days will ensure that Financial Institutions diligently prepare their reports each year, resulting in meaningful protection of Retirement Investors. The Department requests comments about this process, including regarding the timing and certified information.

Financial Institutions can use the results of the review to find more effective ways to ensure that Investment Professionals are providing investment advice in accordance with the Impartial Conduct Standards, and to correct any deficiencies in existing policies and procedures. Requiring the chief executive officer (or equivalent, *i.e.,* the most senior officer or executive in charge of managing the Financial Institution) to certify review of the report is a means of creating accountability for the review. This would serve the purpose of ensuring that more than one person determines whether the Financial Institution is complying with the conditions of the exemption and avoiding non-exempt prohibited transactions. If the chief executive officer does not have the experience or expertise to determine whether to make the certification, he or she would be expected to consult with a knowledgeable compliance professional to be able to do so. The proposed retrospective review is based on FINRA rules governing how broker-dealers supervise associated persons,[70] adapted to focus on the conditions of the exemption. The Department is aware that other Financial Institutions are subject to regulatory requirements to review their policies and procedures;[71] however, for the reasons stated above, the Department believes that the specific certification requirement in the proposal will serve to protect Retirement Investors in the context of conflicted investment advice transactions.

Eligibility (Section III)

Section III of the proposal identifies circumstances under which an Investment Professional or Financial Institution would not be eligible to rely on the exemption. The grounds for ineligibility would involve certain criminal convictions or certain egregious conduct with respect to compliance with the exemption. The proposed period of ineligibility would be 10 years.

Criminal Convictions

An Investment Professional or Financial Institution would become ineligible upon the conviction of any crime described in ERISA section 411 arising out of provision of advice to Retirement Investors, except as described below. The Department includes crimes described in ERISA section 411 for the proposal because they are likely to directly contravene the Investment Professional's or Financial Institution's ability to maintain the high standard of integrity, care, and undivided loyalty demanded by a fiduciary's position of trust and confidence.

Ineligibility after a criminal conviction described in the exemption would be automatic for an Investment Professional. However, Financial Institutions with a criminal conviction described in the exemption would be permitted to submit a petition to the Department and seek a determination that continued reliance on the exemption would not be contrary to the purposes of the exemption. Petitions would be required to be submitted within 10 business days of the conviction to the Director of the Office of Exemption Determinations by email at *e-OED@dol.gov,* or by certified mail at Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Suite 400, Washington, DC 20210.

Following receipt of the petition, the Department would provide the Financial Institution with the opportunity to be heard, in person or in writing or both. Because of the 10-business day timeframe for submitting a petition, the Department would not expect the Financial Institution to set forth its entire position or argument in its initial petition. The opportunity to be heard in person would be limited to one in-person conference unless the Department determines in its sole discretion to allow additional conferences.

The Department's determination as to whether to grant the petition would be based solely on its discretion. In determining whether to grant the petition, the Department will consider the gravity of the offense; the relationship between the conduct underlying the conviction and the Financial Institution's system and practices in its retirement investment business as a whole; the degree to which the underlying conduct concerned individual misconduct, or, alternately, corporate managers or policy; how recent was the underlying lawsuit; remedial measures taken by the Financial Institution upon learning of the underlying conduct; and such other factors as the Department determines in its discretion are reasonable in light of the nature and purposes of the exemption. The Department would consider whether any extenuating circumstances would indicate that the Financial Institution should be able to continue to rely on the exemption despite the conviction. The standard for the determination, as stated above, would be that continued reliance on the exemption would not be contrary to the

[70] *See* FINRA rules 3110, 3120, and 3130.

[71] *See e.g.,* Rule 206(4)–7 under the Investment Advisers Act of 1940.

purposes of the exemption. Accordingly, the Department will focus on the Financial Institution's ability to fulfil its obligations under the exemption prudently and loyally, for the protection of Retirement Investors. The Department will provide a written determination to the Financial Institution that articulates the basis for the determination. The Department notes that the denial of a Financial Institution's petition will not necessarily indicate that the Department will not entertain a separate individual exemption request submitted by the same Financial Institution subject to additional protective conditions.

Conduct With Respect to Compliance With the Exemption

An Investment Professional or Financial Institution would become ineligible upon the date of a written ineligibility notice from the Director of the Office of Exemption Determinations that they (i) engaged in a systematic pattern or practice of violating the conditions of the exemption; (ii) intentionally violated the conditions of this exemption; or (iii) provided materially misleading information to the Department in connection with the Investment Professional's or Financial Institution's conduct under the exemption. This type of conduct in connection with exemption compliance would indicate that the entity should not be permitted to continue to rely on the broad prohibited transaction relief in the class exemption.

The proposal sets forth a process governing the issuance of the written ineligibility notice, as follows. Prior to issuing a written ineligibility notice, the Director of the Office of Exemption Determinations would be required to issue a written warning to the Investment Professional or Financial Institution, as applicable, identifying specific conduct that could lead to ineligibility, and providing a six-month opportunity to cure. At the end of the six-month period, if the Department determined that the conduct persisted, it would provide the Investment Professional or Financial Institution with the opportunity to be heard, in person or in writing, before the Director of the Office of Exemption Determinations issued the written ineligibility notice. The written ineligibility notice would articulate the basis for the determination that the Investment Professional or Financial Institution engaged in conduct warranting ineligibility.

Period and Scope of Ineligibility

The proposed period of ineligibility would be 10 years; however, the ineligibility provisions would apply differently to Investment Professionals and Financial Institutions. An Investment Professional convicted of a crime would become ineligible immediately upon the date the Investment Professional is convicted by a trial court, regardless of whether that judgment remains under appeal, or upon the date of the written ineligibility notice from the Office of Exemption Determinations.

A Financial Institution's ineligibility would be triggered by its own conviction or receipt of a written ineligibility notice, or that of another Financial Institution in the same Control Group. A Financial Institution is in a Control Group with another Financial Institution if, directly or indirectly, the Financial Institution owns at least 80 percent of, is at least 80 percent owned by, or shares an 80 percent or more owner with, the other Financial Institution. For purposes of this provision, if the Financial Institutions are not corporations, ownership is defined to include interests in the Financial Institution such as profits interest or capital interests.

The Department is including Control Group Financial Institutions to ensure that a Financial Institution facing ineligibility for its actions affecting Retirement Investors cannot simply transfer its fiduciary investment advice business to another Financial Institution that is closely related and also provides fiduciary investment advice to Retirement Investors, thus avoiding the ineligibility provisions entirely. The proposed definition is narrowly tailored to cover only other investment advice fiduciaries that share significant ownership. A Financial Institution could not become ineligible based on the actions of an entity engaged in unrelated services that happened to share a small amount of common ownership. The 80 percent threshold is consistent with the Code's rules for determining when employees of multiple corporations should be treated as employed by the same employer.[72] The Department requests comments on this definition. Is 80 percent an appropriate threshold? Are there alternative ways of defining ownership that would be easily applicable to all types of Financial Institutions?

Unlike Investment Professionals, Financial Institutions would have a one-year winding down period before becoming ineligible to rely on the exemption, as long as they complied with the exemption's other conditions during that year. The winding down period begins on the date of the trial court's judgment, regardless of whether that judgment remains under appeal. Financial Institutions that timely submit a petition regarding the conviction would become ineligible as of the date of a written notice of denial from the Office of Exemption Determinations. Financial Institutions that become ineligible due to conduct with respect to exemption compliance would become ineligible as of the date of the written ineligibility notice from the Office of Exemption Determinations.

Financial Institutions or Investment Professionals that become ineligible to rely on this exemption may rely on a statutory prohibited transaction exemption if one is available or may seek an individual prohibited transaction exemption from the Department. The Department encourages any Financial Institution or Investment Professional facing allegations that could result in ineligibility to begin the application process. If the applicant becomes ineligible and the Department has not granted a final individual exemption, the Department will consider granting retroactive relief, consistent with its policy as set forth in 29 CFR 2570.35(d). Retroactive exemptions may require additional prospective compliance.

The Department seeks comment on the proposal's eligibility provisions. Are the crimes included in the proposal properly tailored to identify Investment Professionals and Financial Institutions that should no longer be eligible to rely on the broad relief in the class exemption? Is additional guidance needed with respect to any aspect of the ineligibility section to provide clarity to Investment Professionals and Financial Institutions?

Recordkeeping (Section IV)

Section IV would condition relief on the Financial Institution maintaining the records demonstrating compliance with this exemption for six years. The Department generally imposes a recordkeeping requirement on exemptions so that parties relying on an exemption can demonstrate, and the Department can verify, compliance with the conditions of the exemption.

To demonstrate compliance with the exemption, Financial Institutions would be required to provide, among other things, documentation of rollover recommendations and their written policies and procedures adopted

[72] See Code section 414(b).

pursuant to Section II(c). The Department does not expect Financial Institutions to document the reason for every investment recommendation made pursuant to the exemption. However, documentation may be especially important for recommendations of particularly complex products or recommendations that might, on their face, appear inconsistent with the best interest of a Retirement Investor.

Section IV would require that the records be made available, to the extent permitted by law, to any authorized employee of the Department; any fiduciary of a Plan that engaged in an investment transaction pursuant to this exemption; any contributing employer and any employee organization whose members are covered by a Plan that engaged in an investment transaction pursuant to this exemption; or any participant or beneficiary of a Plan, or IRA owner that engaged in an investment transaction pursuant to this exemption.

The records should be made reasonably available for examination at their customary location during normal business hours. Participants, beneficiaries and IRA owners; Plan fiduciaries; and contributing employers/employee organizations should be able to request only information applicable to their own transactions, and not privileged trade secrets or privileged commercial or financial information of the Financial Institution, or information identifying other individuals. Should the Financial Institution refuse to disclose information on the basis that the information is exempt from disclosure, the Department expects that the Financial Institution would provide a written notice, within 30 days, advising the requestor of the reasons for the refusal and that the Department may request such information.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 Statement

Executive Orders 12866 [73] and 13563 [74] 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 costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' 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 and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant'');

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Department anticipates that this proposed exemption would be economically significant within the meaning of section 3(f)(1) of Executive Order 12866. Therefore, the Department provides the following assessment of the potential benefits and costs associated with this proposed exemption. In accordance with Executive Order 12866, this proposed exemption was reviewed by OMB.

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

Need for Regulatory Action

Following the United States Court of Appeals for the Fifth Circuit decision to vacate the Department's 2016 fiduciary rule and exemptions, the Department issued the temporary enforcement policy under FAB 2018–02 and announced its intent to provide additional guidance in the future. Since then, as discussed earlier in this preamble, the regulatory landscape has changed as other regulators, including the SEC, have adopted enhanced conduct standards for financial services professionals. These changes are accordingly reflected in the baseline that the Department applies when it evaluates the benefits and costs associated with this proposed exemption below.

At the same time, the share of total Plan participation attributable to participant-directed defined contribution (DC) Plans continued to grow. In 2017, 83 percent of DC Plan participation was attributable to 401(k) Plans, and 98 percent of 401(k) Plan participants were responsible directing some or all of their account investments.[75] Individual DC Plan participants and IRA investors are responsible for investing their retirement savings and they are in need of high quality, impartial advice from financial service professionals in making these investment decisions.

Given this backdrop, the Department believes that it is appropriate to propose an exemption to formalize the relief provided in the FAB. The exemption would provide Financial Institutions and Investment Professionals broader, more flexible prohibited transaction relief than is currently available, while safeguarding the interests of Retirement Investors. Offering a permanent exemption based on the FAB would provide certainty to Financial Institutions and Investment Professionals that may currently be relying on the temporary enforcement policy.

Benefits

This proposed exemption would generate several benefits. It would provide Financial Institutions and Investment Professionals with flexibility to choose between the new exemption or existing exemptions, depending on their needs and business models. In this regard, the proposed exemption would help preserve different business models, transaction arrangements, and products that meet different needs in the market place. This can, in turn, help preserve wide availability of investment advice arrangements and products for Retirement Investors. Furthermore, the exemption would provide certainty for Financial Institutions and Investment Professionals that opted to comply with the enforcement policy announced in the FAB to continue with that compliance approach, and the exemption would ensure advice that satisfies the Impartial Conduct Standards is widely available to Retirement Investors without any interruption.

[73] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[74] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

[75] *Private Pension Plan Bulletin Historic Tables and Graphs 1975–2017,* Employee Benefits Security Administration (Sep. 2018), *https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf.*

As described above, the FAB announced a temporary enforcement policy that would apply until the issuance of further guidance. Its designation as ''temporary'' communicated its nature as a transitional measure following the vacatur of the Department's 2016 rulemaking. Although the FAB remains in place following this proposal, the Department does not envision that the FAB represents a permanent compliance approach. This is due in part to the fact that the FAB allows Financial Institutions to avoid enforcement action by the Department but it does not (and cannot) provide relief from private litigation.

In connection with the more permanent relief it would provide, the exemption would have more specific conditions than the FAB, which required only good faith compliance with the Impartial Conduct Standards. The conditions in the proposal are designed to support the provision of investment advice that meets the Impartial Conduct Standards. For example, the required policies and procedures and retrospective review inform Financial Institutions as to how they should implement compliance with the standards.

Some Financial Institutions may consider whether to rely on the Department's existing exemptions rather than adopt the specific conditions in the new proposed exemption. The existing exemptions generally rely on disclosures as conditions. However, the existing exemptions are also very narrowly tailored in terms of the transactions and types of compensation arrangements that are covered as well as the parties that may rely on the exemption. For example, the existing exemptions were never amended to clearly cover the third party compensation arrangements, such as revenue sharing, that developed over time. Investment advice fiduciaries relying on some of the existing exemptions would be limited to the types of compensation that tend to be more transparent to Retirement Investors, such as commission payments.

For a number of reasons, Financial Institutions may decide to rely on the new exemption, if it is finalized, instead of the Department's existing exemptions. The proposed exemption does not identify specific transactions or limit the types of payments that are covered, so Financial Institutions may prefer this flexibility. Additionally, Financial Institutions may determine that there is a marketing advantage to acknowledging their fiduciary status with respect to Retirement Investors, as would be required by the new exemption.

As the proposed exemption would apply to multiple types of investment advice transactions, it would potentially allow Financial Institutions to rely on one exemption for investment advice transactions under a single set of conditions. This approach may allow Financial Institutions to streamline compliance, as compared to relying on multiple exemptions with multiple sets of conditions, resulting in a lower overall compliance burden for some Financial Institutions. Retirement Investors may benefit, in turn, if those Financial Institutions pass their savings on to them.

This proposed exemption's alignment with other regulatory conduct standards could result in a reduction in overall regulatory burden as well. As discussed earlier in this preamble, the proposed exemption was developed in consideration of other regulatory conduct standards. The Department envisions that Financial Institutions and Investment Professionals that have already developed, or are in the process of developing, compliance structures for other regulators' standards will be able to experience regulatory efficiencies through reliance on the new exemption.

As discussed above, the Department believes that the proposed exemption would provide significant protections for Retirement Investors. The proposed exemption would not expand Retirement Investors' ability, such as through required contracts and warranty provisions, to enforce their rights in court or create any new legal claims above and beyond those expressly authorized in ERISA. Rather, the proposed exemption relies in large measure on Financial Institutions' reasonable oversight of Investment Professionals and their adoption of a culture of compliance. Accordingly, in addition to the Impartial Conduct Standards, the exemption includes conditions designed to support investment advice that meets those standards, such as the provisions requiring written policies and procedures, documentation of rollover recommendations, and retrospective review.

Finally, the proposal provides that Financial Institutions and Investment Professionals with certain criminal convictions or that engage in egregious conduct with respect to compliance with the exemption would become ineligible to rely on the exemption. These factors would indicate that the Financial Institution or Investment Professional does not have the ability to maintain the high standard of integrity, care, and undivided loyalty demanded by a fiduciary's position of trust and confidence. This targeted approach of allowing the Department to give special attention to parties with certain criminal convictions or with a history of egregious conduct with respect to compliance with the exemption should provide significant protections for Retirement Investors while preserving wide availability of investment advice arrangements and products.

Although the Department expects this proposed exemption to generate significant benefits, it has not quantified the benefits due to a lack of available data. However, the Department expects the benefits to outweigh the compliance costs associated with this proposal because it creates an additional pathway for compliance with ERISA's prohibited transaction provisions. This new pathway is broader than existing exemptions, and thus applies to a wider range of transaction arrangements and products than the relief that is already available. The Department anticipates that entities will generally take advantage of the exemptive relief available in this proposal only if it is less costly than other alternatives already available, including avoiding prohibited transactions or complying with a different exemption. The Department requests comments about the specific benefits that may flow from the exemption and invites commenters to submit quantifiable data that would support or disprove the Department's expectations.

Costs

To estimate compliance costs associated with the proposed exemption, the Department takes into account the changed regulatory baseline. For example, the Department assumes affected entities will likely incur incremental costs if they are already subject to another regulator's similar rules or requirements. Because this proposed exemption is intended to align significantly with other regulators' rules and standards of conduct, the Department expects the compliance costs associated with this proposal to be modest. The Department estimates that the proposed exemption would impose costs of more than $44 million in the first year and $42 million in each subsequent year.[76] Over 10 years, the

[76] These estimates rely on the Employee Benefits Security Administration's 2018 labor rate estimates. See *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,*

Continued

costs associated with the proposal would be approximately $294 million, annualized to $42 million per year (using a 7 percent discount rate).[77] Using a perpetual time horizon (to allow the comparisons required under E.O. 13771), the annualized costs in 2016 dollars are $30 million at a 7 percent discount rate. These costs are broken down and explained below. More details are provided in the Paperwork Reduction Act section as well. The Department requests comments on this overall estimate and is especially interested in how different entities will incur costs associated with this proposed exemption as well as any quantifiable data that would support or contradict any aspect of its analysis below.

Affected Entities

As a first step, the Department examines the entities likely to be affected by the proposed exemption. The proposal would potentially impact SEC- and state-registered investment advisers (IAs), broker-dealers (BDs), banks, and insurance companies, as well as their employees, agents, and representatives. The Department acknowledges that not all these entities will serve as investment advice fiduciaries to Plans and IRAs within the meaning of ERISA and the Code. Additionally, because other exemptions are also currently available to these entities, it is unclear how widely Financial Institutions will rely upon the exemption and which firms are most likely to choose to rely on it. To err on the side of overestimation, the Department includes all entities eligible for this proposed relief in its cost estimation. The Department solicits comments about which, and how many, entities would likely utilize this proposed exemption.

Broker-Dealers (BDs)

As of December 2018, there were 3,764 registered BDs. Of those, 2,766, or approximately 73.5 percent, reported retail customer activities,[78] while 998 were estimated to have no retail customers. The Department does not have information about how many BDs advise Retirement Investors, which, as defined in the proposed exemption include Plan fiduciaries, Plan participants and beneficiaries, and IRA owners. However, according to one compliance survey, about 52 percent of IAs provide advice directly to retirement plans.[79] Assuming the same percentage of BDs service retirement plans, nearly 2,000 BDs would be affected by the proposed exemption.[80] The proposal may also impact BDs that advise Retirement Investors that are Plan participants or beneficiaries, or IRA owners, but the Department does not have a basis to estimate the number of these BDs. The Department assumes that such BDs would be considered as providing recommendations to retail customers under the SEC's Regulation Best Interest.

To continue servicing retirement plans with respect to transactions that otherwise would be prohibited under ERISA and the Code, this group of BDs would be able to rely on the proposed exemption.[81] Because BDs with retail businesses are subject to the SEC's Regulation Best Interest, they already comply with, or are preparing to comply with, standards functionally identical to those set forth in the proposed exemption.

SEC-Registered Investment Advisers (IAs)

As of December 2018, there were approximately 13,299 SEC-registered IAs[82] and 17,268 state-registered IAs.[83] An IA must register with the appropriate regulatory authorities, with the SEC or with state securities authorities. IAs registered with the SEC are generally larger than state-registered IAs, both in staff and in regulatory assets under management (RAUM).[84] SEC-registered IAs that advise retirement plans and other Retirement Investors would be directly affected by the proposed exemption.

Some IAs are dual-registered as BDs. To avoid double counting when estimating compliance costs, the Department counted dual-registered entities as BDs and excluded them from the burden estimates of IAs.[85] The Department estimates there to be 12,940 SEC-registered IAs, a figure produced by subtracting the 359 dually-registered IAs from the 13,299 SEC-registered IAs.

Similar to BDs, the Department assumes that about 52 percent of SEC-registered IAs provide recommendations or services to retirement plans.[86] Applying this assumption, the Department estimates that approximately 6,729 SEC-registered IAs currently service retirement plans. An inestimable number of IAs may provide advice only to Retirement Investors that are Plan participants or beneficiaries or IRA owners, rather than retirement plans. These IAs are fiduciaries, and they already operate under conditions functionally identical to those required by the proposed exemption.[87] Accordingly, the proposed exemption would pose no more than a nominal burden for these entities.

State-Registered Investment Advisers

As of December 2018, there were 16,939 state-registered IAs.[88] Of these state-registered IAs, 13,793 provide advice to retail investors, while 3,146 do not.[89] State-registered IAs tend to be smaller than SEC-registered IAs, both in RAUM and staff. For example, according to one survey of both SEC- and state-registered IAs, about 47 percent of respondent IAs reported 11 to

Employee Benefits Security Administration (June 2019), *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[77] The costs would be $357 million over 10-year period, annualized to $42 million per year, if a 3 percent discount rate is applied.

[78] Regulation Best Interest Release, 84 FR at 33407.

[79] *2019 Investment Management Compliance Testing Survey,* Investment Adviser Association (Jun. 18, 2019), *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/about/190618_IMCTS_slides_after_webcast_edits.pdf.*

[80] If this assumption is relaxed to include all BDs, the costs would increase by $1 million for the first year and by $0.02 million for subsequent years.

[81] The Department's estimate of compliance costs does not include any state-registered BDs because the exception from SEC registration for BDs is very narrow. *See Guide to Broker-Dealer Registration,* Securities and Exchange Commission (Apr. 2008), *www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html.*

[82] Form CRS Relationship Summary Release at 33564.

[83] *Id.* at 33565. (Of these 17,268 state-registered IAs, 125 are also registered with SEC and 204 are also dual registered BDs.)

[84] After the Dodd-Frank Wall Street Reform and Consumer Protection Act, an IA with $100 million or more in regulatory assets under management generally registers with the SEC, while an IA with less than $100 million registers with the state in which it has its principle office, subject to certain exceptions. For more details about the registration of IAs, see *General Information on the Regulation of Investment Advisers,* Securities and Exchange Commission (Mar. 11, 2011), *www.sec.gov/divisions/investment/iaregulation/memoia.htm;* see also *A Brief Overview: The Investment Adviser Industry,* North American Securities Administrators Association (2019), *www.nasaa.org/industry-resources/investment-advisers/investment-adviser-guide/.*

[85] The Department applied this exclusion rule across all types of IAs, regardless of registration (SEC registered versus state only) and retail status (retail versus nonretail).

[86] 2019 Investment Management Compliance Testing Survey, *supra* note 79.

[87] *SEC Standards of Conduct Rulemaking: What It Means for RIAs,* Investment Adviser Association (July 2019), *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/resources/IAA-Staff-Analysis-Standards-of-Conduct-Rulemaking2.pdf.*

[88] This excludes state-registered IAs that are also registered with the SEC or dual registered BDs.

[89] Form CRS Relationship Summary Release.

50 employees.[90] In contrast, an examination of state-registered IAs reveals about 80 percent reported only 0 to 2 employees.[91] According to one report, 64 percent of state-registered IAs manage assets under $30 million.[92] According to a study by the North American Securities Administrators Association, about 16 percent of state-registered IAs provide advice or services to retirement plans.[93] Based on this study, the Department assumes that 16 percent of state-registered IAs advise retirement plans. Thus, the Department estimates that approximately 2,710 state-registered, nonretail IAs provide advice to retirement plans and other Retirement Investors.

Insurers

The proposed exemption would affect insurers. Insurers are primarily regulated by states, and no single regulator records a national-level count of insurers. Although state regulators track insurers, the sum of all insurers cannot be calculated by aggregating individual state totals because individual insurers often operate in multiple states. However, the NAIC estimates there were approximately 386 insurers directly writing annuities in 2018. Some of these insurers may not sell any annuity contracts in the IRA or retirement plan markets. Furthermore, insurers can rely on other existing exemptions instead of the proposed exemption. Due to lack of data, the Department includes all 386 insurers in its cost estimation, although this likely overestimates costs. The Department invites any comments about how many insurers would utilize this proposed exemption.

Banks

There are 5,362 federally insured depository institutions in the United States.[94] The Department understands that banks most commonly use ''networking arrangements'' to sell retail non-deposit investment products (RNDIPs), including, among other products, equities, fixed-income securities, exchange-traded funds, and variable annuities.[95] Under such arrangements, bank employees are limited to performing only clerical or ministerial functions in connection with brokerage transactions. However, bank employees may forward customer funds or securities and may describe, in general terms, the types of investment vehicles available from the bank and BD under the arrangement. Similar restrictions exist with respect to bank employees' referrals of insurance products and IAs. Because of the limitations, the Department believes that in most cases such referrals will not constitute fiduciary investment advice within the meaning of the proposed exemption. Due to the prevalence of banks using networking arrangements for transactions related to RNDIPs, the Department believes that most banks will not be affected with respect to such transactions.

The Department does not have sufficient data to estimate the costs to banks of any other investment advice services because it does not know how frequently banks use their own employees to perform activities that would be otherwise prohibited. The Department invites comments on the magnitude of such costs and welcomes submission of data that would facilitate their quantification.

Costs Associated With Disclosures

The Department estimates the compliance costs associated with the disclosure requirement would be approximately $1 million in the first year and $0.3 million per year in each subsequent year.[96]

Section II(b) of the proposed exemption would require Financial Institutions to acknowledge, in writing, their status as fiduciaries under ERISA and the Code. In addition, the institutions must furnish a written description of the services they provide and any material conflicts of interest. For many entities, including IAs, this condition would impose only modest additional costs, if any at all. Most IAs already disclose their status as a fiduciary and describe the types of services they offer in Form ADV. BDs with retail investors are also required, as of June 30, 2020, to provide disclosures about services provided and conflicts of interest on Form CRS and pursuant to the disclosure obligation in Regulation Best Interest. Even among entities that currently do not provide such disclosures, such as insurers and some BDs, the Department believes that developing disclosures required in this proposed exemption would not substantially increase costs because the required disclosures are clearly specified and limited in scope.

Not all entities will decide to use the proposed exemption. Some may instead rely on other existing exemptions that better align with their business models. However, for the cost estimation, the Department assumes that all eligible entities would use the proposed exemption and incur, on average, modest costs.

The Department estimates that developing disclosures that acknowledge fiduciary status and describe the services offered and any material conflicts of interest would incur costs of approximately $0.7 million in the first year.[97]

The Department estimates that it would cost Financial Institutions about $0.3 million to print and mail required disclosures to Retirement Investors,[98]

[90] 2019 Investment Management Compliance Testing Survey, *supra* note 79.

[91] *2019 Investment Adviser Section Annual Report,* North American Securities Administrators Association (May 2019), *www.nasaa.org/wp-content/uploads/2019/06/2019–IA-Section-Report.pdf.*

[92] *2018 Investment Adviser Section Annual Report,* North American Securities Administrators Association (May 2018), *www.nasaa.org/wp-content/uploads/2018/05/2018–NASAA–IA-Report-Online.pdf.*

[93] 2019 Investment Adviser Section Annual Report, *supra* note 91.

[94] The FDIC reports there are 4,681 Commercial banks and 681 Savings Institutions (thrifts) for 5,362 FDIC- Insured Institutions as of March 31, 2019. For more details, see *Statistics at a Glance,* Federal Deposit Insurance Corporation (Mar. 31, 2019), *www.fdic.gov/bank/statistical/stats/2019mar/industry.pdf.*

[95] For more details about ''networking arrangements,'' see *Conflict of Interest Final Rule, Regulatory Impact Analysis for Final Rule and Exemptions,* U.S. Department of Labor (Apr. 2016), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/ria.pdf.*

[96] Except where specifically noted, all cost estimates are expressed in 2019 dollars throughout this document.

[97] A written acknowledgment of fiduciary status would cost approximately $0.2 million, while a written description of the services offered and any material conflicts of interest would cost another $0.5 million. The Department assumes that 11,782 Financial Institutions, comprising 1,957 BDs, 6,729 SEC-registered IAs, 2,710 state-registered IAs, and 386 insurers, are likely to engage in transactions covered under this PTE. For a detailed description of how the number of entities is estimated, see the Paperwork Reduction Act section, below. The $0.2 million costs associated with a written acknowledgment of fiduciary status are calculated as follows. The Department assumes that it will take each retail BD firm 15 minutes, each nonretail BD or insurance firm 30 minutes, and each registered IA 5 minutes to prepare a disclosure conveying fiduciary status at an hourly labor rate of $138.41, resulting in cost burden of $221,276. Accordingly, the estimated per-entity cost ranges from $11.53 for IAs to $69.21 for non-retail BDs and insurers. The $0.5 million costs associated with a written description of the services offered and any material conflicts of interest are calculated as follows. The Department assumes that it will take each retail BD or IA firm 5 minutes, each small nonretail BD or small insurer 60 minutes, and each large nonretail BDs or larger insurer 5 hours to prepare a disclosure conveying services provided and any conflicts of interest at an hourly labor rate of $138.41, resulting in cost burden of $510,877. Accordingly, the estimated per-entity cost ranges from $11.53 for retail broker-dealers and IAs to $692.07 for large non-retail BDs and insurers.

[98] The Department estimates that approximately 1.8 million Retirement Investors are likely to engage in transactions covered under this PTE, of which 8.1 percent are estimated to receive paper disclosures. Distributing paper disclosures is estimated to take a clerical professional 1 minute per disclosure, at an hourly labor rate of $64.11,

Continued

but it assumes most required disclosures would be electronically delivered to plan fiduciaries. The Department assumes that approximately 92 percent of participants who roll over their plan assets to IRAs would receive required disclosures electronically.[99] According to one study, approximately 3.6 million accounts in retirement plans were rolled over to IRAs in 2018.[100] Of those, about half, 1.8 million, were rolled over by financial services professionals.[101] Therefore, prior to transactions necessitated by rollovers, participants are likely to receive required disclosures from their Investment Professionals. In some cases, Financial Institutions and Investment Professionals may send required disclosures to participants, particularly those with participant-directed defined contribution accounts, before providing investment advice. The Department welcomes comments that speak to the costs associated with required disclosures.

Costs Associated With Written Policies and Procedures

The Department estimates that developing policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards would cost approximately $1.7 million in the first year.[102]

The estimated compliance costs reflect the different regulatory baselines under which different entities are currently operating. For example, IAs already operate under a standard functionally identical to that required under the proposed exemption,[103] and report how they address conflicts of interests in Form ADV.[104] Similarly, BDs subject to the SEC's Regulation Best Interest also operate, or are preparing to operate, under a standard that is functionally identical to the proposed exemption. To comply fully with the proposed exemption, however, these entities may need to review their policies and procedures and amend their existing policies and procedures. These additional steps would impose additional, but not substantial, costs at the Financial Institution level.

The insurers and non-retail BDs currently operating under a suitability standard in most states and largely relying on transaction-based forms of compensation, such as commissions, would be required to establish written policies and procedures that comply with the Impartial Conduct Standards, if they choose to use this proposed exemption. These activities would likely involve higher cost increases than those experienced by IAs and retail BDs. To a large extent, however, the entities facing potentially higher costs would likely elect to rely on other existing exemptions. In this regard, the burden estimates on these entities are likely overestimated to the extent that many of these entities would not use this proposed exemption.

Because smaller entities generally have less complex business practices and arrangements than their larger counterparts, it would likely cost less for them to comply with the proposed exemption. This is reflected in the compliance cost estimates presented in this economic analysis.

Costs Associated With Annual Report of Retrospective Review

Section II(d) would require Financial Institutions to conduct an annual retrospective review reasonably designed to assist the Financial Institution in detecting and preventing violations of, and achieving compliance with the Impartial Conduct Standards and their own policies and procedures, and to produce a written report that is certified by the institution's chief executive officer. The Department estimates that this requirement will impose $1.7 million in costs each year.[105] FINRA requires BDs to establish and maintain a supervisory system reasonably designed to facilitate compliance with applicable securities laws and regulations,[106] to test the supervisory system, and to amend the system based on the testing.[107] Furthermore, the BD's chief executive officer (or equivalent officer) must annually certify that it has processes in place to establish, maintain, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with FINRA rules.[108]

resulting in a cost burden of $156,094. Assuming the disclosures will require two sheets of paper at a cost $0.05 each, the estimated material cost for the paper disclosures is $14,608. Postage for each paper disclosure is expected to cost $0.55, resulting in a printing and mailing cost of $94,954.

[99] The Department estimates approximately 56.4 percent of participants receive disclosures electronically based on data from various data sources including the National Telecommunications and Information Agency (NTIA). In light of the 2019 Electronic Disclosure Regulation, the Department estimates that additional 35.5 percent of participants receive them electronically. In total, 91.9 percent of participants are expected to receive disclosures electronically.

[100] *U.S. Retirement-End Investor 2019: Driving Participant Outcomes with Financial Wellness Programs,* The Cerulli Report (2019).

[101] *Id.*

[102] The Department assumes that 11,782 Financial Institutions, comprising 1,957 BDs, 6,729 SEC-registered IAs, 2,710 state-registered IAs, and 386 insurers, are likely to engage in transactions covered under this PTE. For a detailed description of how the number of entities is estimated, see the Paperwork Reduction Act section, below. The Department assumes that it will take a legal professional, at an hourly labor rage of $138.41, 22.5 minutes at each small retail BD, 45 minutes at each large retail BD, 5 hours at each small nonretail BD, 10 hours at each large nonretail BD, 15 minutes at each small IA, 30 minutes at each large IA, 5 hours at each small insurer, and 10 hours at each large insurer to meet the requirement. This results in a cost burden estimate of $1,664,127. Accordingly, the estimated per-entity cost ranges from $34.60 for small IAs to $1,384.14 for large non-retail BDs and insurers. These compliance cost estimates are not discounted.

[103] *See* SEC Fiduciary Standard of Conduct Interpretation (Release No. IA–5248); *see also A Brief Overview: The Investment Adviser Industry,* North American Securities Administrators Association (2019), *www.nasaa.org/industry-resources/investment-advisers/investment-adviser-guide/.* (According to the NASAA, the anti-fraud provisions of the Investment Advisers Act of 1940, the NASAA Model Rule 102(a)(4)–1, and most state laws require IAs to act as fiduciaries. NASAA further states, ''Fiduciary duty requires the adviser to hold the client's interest above its own in all matters. Conflicts of interest should be avoided at all costs. However, there are some conflicts that will inevitably occur . . . In these instances, the adviser must take great pains to clearly and accurately describe those conflicts and how the adviser will maintain impartiality in its recommendations to clients.''

[104] *See* Form ADV [17 CFR 279.1] (Part 2A of Form ADV requires IAs to prepare narrative brochures that contain information such as the types of advisory services offered, fee schedule, disciplinary information and conflicts of interest. For example, item 10.C of part 2A asks IAs to identify if certain relationships or arrangements create a material conflict of interest, and to describe the nature of the conflict and how to address it. If an IA recommends other IAs for its clients and the IA receives compensation directly or indirectly from those advisers that creates a material conflict of interest or the IA has other business relationships with those advisers that create a material conflict of interest, Item 10.D of Part 2A requires the IA to discuss the material conflicts of interest that these practices create and how to address them.)

[105] The Department assumes that 794 Financial Institutions, comprising 20 BDs, 538 SEC-registered IAs, 217 state-registered IAs, and 20 insurers, would be likely to incur costs associated with producing a retrospective review report. The Department estimates it will take a legal professional, at an hourly labor rate of $138.41, 5 hours for small firms and 10 hours for large firms to produce a retrospective review report, resulting in an estimated cost burden of $973,297. The estimate per-entity cost ranges from $692.07 for small entities to $1,384.14 for large entities. Additionally, the Department assumes that 9,845 Financial Institutions, comprising 20 BDs, 6,729 SEC-registered IAs, 2,710 state-registered IAs, and 386 insurers, would be likely to incur costs associated with reviewing and certifying the report. The Department estimates it will take a legal professional 15 minutes for small firms and 30 minutes for large firms to review the report and certify the exemption, resulting in an estimated cost burden of $718,806. The estimated per-entity cost ranges from $41.41 for small entities to $82.82 for large entities. For a detailed description of how the number of entities for each cost burden is estimated, see the Paperwork Reduction Act section.

[106] Rule 3110. Supervision, FINRA Manual, *www.finra.org/rules-guidance/rulebooks/finra-rules/3110.*

[107] Rule 3120. Supervisory Control System, FINRA Manual, *www.finra.org/rules-guidance/rulebooks/finra-rules/3120.*

[108] Rule 3130. Annual Certification of Compliance and Supervisory Processes, FINRA Manual,

Many insurers are already subject to similar standards.[109] For instance, the NAIC's Model Regulation contemplates that insurers establish a supervision system that is reasonably designed to comply with the Model Regulation and annually provide senior management with a written report that details findings and recommendations on the effectiveness of the supervision system.[110] States that have adopted the Model Regulation also require insurers to conduct annual audits and obtain certifications from senior managers. Based on these regulatory baselines, the Department believes the compliance costs attributable to this requirement would be modest.

SEC-registered IAs are already subject to Rule 206(4)–7, which requires them to adopt and implement written policies and procedures reasonably designed to ensure compliance with the Advisers Act and rules adopted thereunder and review them annually for adequacy and the effectiveness of their implementation. Under the same rule, SEC-registered IAs must designate a chief compliance officer to administer the policies and procedures. However, they are not required to conduct an internal audit nor produce a report detailing findings from its audit. Nonetheless, many seem to voluntarily produce reports after conducting internal audits. One compliance testing survey reveals that about 92 percent of SEC-registered IAs voluntarily provide an annual compliance program review report to senior management.[111] Relying on this information, the Department estimates that only 8 percent of SEC-registered IAs advising retirement plans would incur costs associated with producing a retrospective review report. The rest would incur minimal costs to satisfy the conditions related to this requirement.

Due to lack of data, the Department based the cost estimates associated with state-registered IAs on the assumption that 8 percent of state-registered IAs advising retirement plans currently do not produce compliance review reports, and thus would incur costs associated with the oversight conditions in the proposed exemption. As discussed above, compared with SEC-registered IAs, state-registered IAs tend to be smaller in terms of RAUM and staffing, and thus may not have formal procedures in place to conduct retrospective reviews to ensure regulatory compliance. If that were often the case, the Department's assumption would likely underestimate costs. However, because state-registered IAs tend to be smaller than their SEC-registered counterparts, they tend to handle fewer transactions, limit the range of transactions they handle, and have fewer employees to supervise. Therefore, the costs associated with establishing procedures to conduct internal retrospective reviews and produce compliance reports would likely be low. In sum, the Department estimates that the costs associated with the retrospective review requirement of the proposed exemption would be approximately $1.7 million each year.

Costs Associated With Rollover Documentation

In 2018, slightly more than 3.6 million retirement plan accounts rolled over to an IRA, while slightly less than 0.5 million accounts were rolled over to other retirement plans.[112] Not all rollovers were managed by financial services professionals. As discussed above, about half of all rollovers from plans to IRAs were handled by financial services professionals, while the rest were self-directed.[113] Based on this information, the Department estimates approximately 1.8 million participants obtained advice from financial services professionals.[114] Some of these rollovers likely involved financial services professionals who were not fiduciaries under the five-part test, thus the actual number of rollovers affected by this proposed exemption is likely lower than 1.8 million. The proposed exemption would require the Financial Institution to document why a recommended rollover is in the best interest of the Retirement Investor. As a best practice, the SEC already encourages firms to record the basis for significant investment decisions such as rollovers, although doing so is not required under Regulation Best Interest.[115] In addition, some firms may voluntarily document significant investment decisions to demonstrate compliance with applicable law, even if not required.[116] Therefore, the Department expects that many Financial Institutions already document significant decisions like rollovers.

In estimating costs associated with rollover documentations, the Department faces uncertainty with regards to the number of rollovers that would be affected by the proposed exemption. Given this uncertainty, below the Department discusses a range of cost estimates. For the lower-end cost estimate, the Department estimates that the costs for documenting the basis for investment decisions would come to $15 million per year.[117] This low-end estimate is based on the assumption that most financial services professionals already incorporate documenting rollover justifications in their regular business practices and another assumption that not all rollovers are handled by financial services professionals who act in a fiduciary

www.finra.org/rules-guidance/rulebooks/finra-rules/3130.

[109] The previous NAIC Suitability in Annuity Transactions Model Regulation (2010) had been adopted by many states before the newer NAIC Model Regulation was approved in 2020. Both previous and updated Model Regulations contain similar standards as written report of retrospective review conditions of the proposed exemption.

[110] NAIC Suitability in Annuity Transactions Model Regulation, Spring 2020, Section 6.C.(2)(i), available at *https://www.naic.org/store/free/MDL-275.pdf.* (The same requirement is found in the previous NAIC Suitability in Annuity Transactions Model Regulation (2010), section 6.F.(1)(f).)

[111] *2018 Investment Management Compliance Testing Survey,* Investment Adviser Association (Jun. 14, 2018), *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/2018-Investment-Management_Compliance-Testing-Survey-Results-Webcast_pptx.pdf.*

[112] U.S. Retirement-End Investor 2019, *supra* note 100. (To estimate costs associated with documenting rollovers, the Department did not include rollovers from plans to plans because plan-to-plan rollovers are unlikely to be mediated by Investment Professionals. Also plan-to-plan rollovers occur far less frequently than plan-to-IRA rollovers. Thus, even if plan-to-plan rollovers were included in the cost estimation, the impact would likely be small.)

[113] *Id.*

[114] Another report suggested a higher share, 70 percent of households owning IRAs held their IRAs through Investment Professionals. Note that this is household level data based on an IRA owners' survey, which was not particularly focused on rollovers. (*See* Sarah Holden & Daniel Schrass, ''The Role of IRAs in US Households' Saving for Retirement, 2018,'' *ICI Research Perspective,* vol. 24, no. 10 (Dec. 2018).)

[115] Regulation Best Interest Release, 84 FR at 33360.

[116] According to a comment letter about the proposed Regulation Best Interest, BDs have a strong financial incentive to retain records necessary to document that they have acted in the best interest of clients, even if it is not required. Another comment letter about the proposed Regulation Best Interest suggests that BDs generally maintain documentation for suitability purposes.

[117] For those rollovers affected by this proposed exemption it would take, on average, 10 minutes per rollover to document justifications. Thus, the Department estimates almost 75,500 burden hours in aggregate and slightly less than $15 million assuming $194.77 hourly rate for personal financial advisor. The Department assumes that financial services professionals would spend on average 10 minutes to document the basis for rollover recommendations. The Department understands that financial services professionals seek and gather information regarding to investor profiles in accordance with other regulators' rules. Further, financial professionals often discuss the basis for their recommendations and associated risks with their clients as a best practice. After collecting relevant information and discussing the basis for certain recommendations with clients, the Department believes that it would take relatively short time to document justifications for rollover recommendations.

capacity.[118] For the upper-end cost estimate, the Department assumes that all rollovers involving financial services professionals would be affected by the proposed exemption. Then the estimated costs would come to $59 million per year.[119] For the primary cost estimate, the Department assumes that 67.4 percent of rollovers involving financial services professionals would be affected by the proposed exemption.[120] Under this assumption, the estimated costs would be $40 million per year.[121] The Department acknowledges that uncertainty still remains as some financial services professionals who do *not* generally serve as fiduciaries of their Plan clients may act in a fiduciary capacity in certain rollover recommendations, and thus would be affected by the proposed exemption. Alternatively, the opposite can be true: Financial services professionals who usually serve as fiduciaries of their Plan clients may act in a *non*-fiduciary capacity in certain rollover recommendations, and thus would *not* be affected by the proposed exemption. The Department welcomes any comments and data that can help more precisely estimating the number of rollovers affected by the exemption. In addition, the Department invites comments about financial services professionals' practices about documenting rollover recommendations, particularly whether financial services professionals often utilize a form with a list of common reasons for rollovers and how long on average it would take for a financial services professional to document a rollover recommendation.[122]

Costs Associated With Recordkeeping

Section IV of the proposed exemption would require Financial Institutions to maintain records demonstrating compliance with the exemption for 6 years. The Financial Institutions would also be required to make records available to regulators, Plans, and participants. Recordkeeping requirements in Section IV are generally consistent with requirements made by the SEC and FINRA.[123] In addition, the recordkeeping requirements correspond to the 6-year period in section 413 of ERISA. The Department understands that many firms already maintain records, as required in Section IV, as part of their regular business practices. Therefore, the Department expects that the recordkeeping requirement in Section IV would impose a negligible burden.[124] The Department welcomes comments regarding the burden associated with the recordkeeping requirement.

Regulatory Alternatives

The Department considered various alternative approaches in developing this proposed exemption. Those alternatives are discussed below.

No New Exemption

The Department considered merely leaving in place the existing exemptions that provide prohibited transaction relief for investment advice transactions. However, the existing exemptions generally apply to more limited categories of transactions and investment products, and they include conditions that are tailored to the particular transactions or products covered under each exemption. Therefore, under the existing exemptions, Financial Institutions may find it inefficient to implement advice programs for all of the different products and services they offer. By providing a single set of conditions for all investment advice transactions, this proposal aims to promote the use and availability of investment advice for all types of transactions in a manner that aligns with the conduct standards of other regulators, such as the SEC.

Including an Independent Audit Requirement in the Proposed Exemption

The proposal would require Financial Institutions to conduct a retrospective review, at least annually, designed to detect and prevent violations of the Impartial Conduct Standards, and to ensure compliance with the policies and procedures governing the exemption. The exemption does not require that the review be conducted by an independent party, allowing Financial Institutions to self-review.

As an alternative to this approach, the Department considered requiring independent audits to ensure compliance under the exemption. The Department decided against this

[118] To estimate costs, the Department further assumes that approximately 50 percent of 1.8 million rollovers involve financial professionals who already document rollover recommendations as a best practice. Additionally, the Department assumes half of the remaining half of rollovers, thus an additional quarter of the total 1.8 million rollovers, are handled by financial professionals who act in a non-fiduciary capacity. Thus the Department assumes that approximately three-quarters of 1.8 million rollovers would not be affected by the proposed exemption, while one-quarter of 1.8 million rollovers would be affected.

[119] Assuming that it would take, on average, 10 minutes per rollover to document justifications, the Department estimates about 301,850 burden hours in aggregate and slightly less than $59 million assuming $194.77 hourly rate for personal financial advisor.

[120] In 2019, a survey was conducted to financial services professionals who hold more than 50 percent of their practice's assets under management in employer-sponsored retirement plans. These financial services professionals include both BDs and IAs. In addition, 45 percent of those professionals indicated that they make a proactive effort to pursue IRA rollovers from their DC plan clients. According to this survey, approximately 32.6 percent responded that they function in a non-fiduciary capacity. Therefore, the Department assumes that approximately 67.4 percent of financial service professionals serve their Plan clients as fiduciaries. See *U.S. Defined Contribution 2019: Opportunities for Differentiation in a Competitive Landscape,* The Cerulli Report (2019).

[121] Assuming that it would take, on average, 10 minutes per rollover to document justifications, the Department estimates over 203,000 burden hours in aggregate and slightly less than $40 million assuming $194.77 hourly rate for personal financial advisor.

[122] The Department assumes that financial services professionals would spend on average 10 minutes to document the basis for rollover recommendations. The Department understands that financial services professionals seek and gather information regarding to investor profiles in accordance with other regulators' rules. Further, financial professionals often discuss the basis for their recommendations and associated risks with their clients as a best practice. After collecting relevant information and discussing the basis for certain recommendations with clients, the Department believes that it would take relatively short time to document justifications for rollover recommendations. However, the Department welcomes comments about the burden hours associated with documenting rollover recommendations.

[123] The SEC's Regulation Best Interest amended Rule 17a–4(e)(5) to require that BDs retain all records of the information collected from or provided to each retail customer pursuant to Regulation Best Interest for at least 6 years after the earlier of the date the account was closed or the date on which the information was last replaced or updated. FINRA Rule 4511 also requires its members preserve for a period of at least 6 years those FINRA books and records for which there is no specified period under the FINRA rules or applicable Exchange Act rules.

[124] The Department notes that insurers that are expected to use the proposed exemption are generally not subject to the SEC's Regulation Best Interest and FINRA rules. The Department understands, however, that some states' insurance regulations require insurers to retain similar records for less than six years. For example, some states require insurers to maintain records for five years after the insurance transaction is completed. Thus, the recordkeeping requirement of the proposed exemption would likely impose additional burden on the 386 insurers that the Department estimates would rely on this proposed exemption. However, the Department expects most insurers to maintain records electronically. Electronic storage prices have decreased substantially as cloud services become more widely available. For example, cloud storage space costs on average $0.018 to $0.021 per GB per month. Some estimate that approximately 250,000 PDF files or other typical office documents can be stored on 100GB. Accordingly, the Department believes that maintaining records in electronic storage for an additional year or two would not impose a significant cost burden on the affected 386 insurers. (For more detailed pricing information of three large cloud service providers, *see https://cloud.google.com/products/calculator;* or *https://azure.microsoft.com/en-us/pricing/calculator/;* or *https://calculator.s3.amazonaws.com/index.html.*) The Department welcomes comments on this assessment and the effect of the recordkeeping requirement on insurers.

approach to avoid the significant cost burden that this requirement would impose. The proposal instead requires that Financial Institutions provide a written report documenting the retrospective review, and supporting information, to the Department and other regulators within 10 business days of a request. The Department believes this proposed requirement compels Financial Institutions to take the review obligation seriously, regardless of whether they choose to hire an independent auditor to conduct the review.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the proposed Improving Investment Advice for Workers & Retirees (''Proposed PTE''). A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *www.RegInfo.gov.*

The Department has submitted a copy of the Proposed PTE to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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).

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of publication of the Proposed PTE to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC, 20210. Telephone (202) 693–8425; Fax: (202) 219–5333. These are not toll-free numbers. ICRs submitted to OMB also are available at *www.RegInfo.gov.*

As discussed in detail below, the Proposed PTE would require Financial Institutions and/or their Investment Professionals to (1) make certain disclosures to Retirement Investors, (2) adopt written policies and procedures, (3) document the basis for rollover recommendations, (4) prepare a written report of the retrospective review, and (5) maintain records showing that the conditions have been met to receive relief under the proposed exemption. These requirements are ICRs subject to the Paperwork Reduction Act.

The Department has made the following assumptions in order to establish a reasonable estimate of the paperwork burden associated with these ICRs:

- Disclosures distributed electronically will be distributed via means already used by respondents in the normal course of business, and the costs arising from electronic distribution will be negligible;
- Financial Institutions will use existing in-house resources to prepare the disclosures, policies and procedures, rollover documentations, and retrospective reviews, and to maintain the recordkeeping systems necessary to meet the requirements of the Proposed PTE;
- A combination of personnel will perform the tasks associated with the ICRs at an hourly wage rate of $194.77 for a personal financial advisor, $64.11 for mailing clerical personnel, and $138.41 for a legal professional;[125]
- Approximately 11,782 Financial Institutions will take advantage of the Proposed PTE and they will use the Proposed PTE in conjunction with transactions involving nearly all of their clients that are defined benefit plans, defined contribution plans, and IRA holders.[126]

Disclosures, Documentation, Retrospective Review, and Recordkeeping

Section II(b) of the Proposed PTE would require Financial Institutions to furnish Retirement Investors with a disclosure prior to engaging in a covered transaction. Section II(b)(1) would require Financial Institutions to acknowledge in writing that the Financial Institution and its Investment Professionals are fiduciaries under ERISA and the Code, as applicable, with respect to any investment advice provided to the Retirement Investors. Section II(b)(2) would require Financial Institutions to provide a written description of the services they provide and any material conflicts of interest. The written description must be accurate in all material respects. Financial Institutions will generally be required to provide the disclosure to each Retirement Investor once, but Financial Institutions may need to provide updated disclosures to ensure accuracy.

Section II(c)(1) of the Proposed PTE would require Financial Institutions to establish, maintain, and enforce written policies and procedures prudently designed to ensure that they and their Investment Professionals comply with the Impartial Conduct Standards. Section II(c)(2) would further require that the Financial Institutions design the policies and procedures to mitigate conflicts of interest.

[125] The Department's 2018 hourly wage rate estimates include wages, benefits, and overhead, and are calculated as follows: mean wage data from the 2018 National Occupational Employment Survey (May 2018, *www.bls.gov/news.release/archives/ocwage_03292019.pdf*), wages as a percent of total compensation from the Employer Cost for Employee Compensation (December 2018, *www.bls.gov/news.release/archives/ecec_03192019.pdf*), and overhead cost corresponding to each 2-digit NAICS code from the Annual Survey of Manufacturers (December 2017, *www.census.gov/data/Tables/2016/econ/asm/2016-asm.html*) multiplied by the percent of each occupation within that NAICS industry code based on a matrix of detailed occupation employment for each NAICS industry from the BLS Office of Employment projections (2016, *www.bls.gov/emp/data/occupational-data.htm*).

[126] For this analysis, ''IRA holders'' include rollovers from ERISA plans. The Department welcomes comments on this estimate.

Section II(c)(3) of the Proposed PTE would require Financial Institutions to document the specific reasons for any rollover recommendation and show that the rollover is in the best interest of the Retirement Investor.

Under Section II(d) of the Proposed PTE, Financial Institutions would be required to conduct an annual retrospective review that is reasonably designed to prevent violations of the Proposed PTE's Impartial Conduct Standards and the institution's own policies and procedures. The methodology and results of the retrospective review would be reduced to a written report that is provided to the Financial Institution's chief executive officer and chief compliance officer (or equivalent officers). The chief executive officer would be required to certify that (1) the officer has reviewed the report of the retrospective review, and (2) the Financial Institution has in place policies and procedures prudently designed to achieve compliance with the conditions of the Proposed PTE, and (3) the Financial Institution has a prudent process for modifying such policies and procedures. The process for modifying policies and procedures would need to be responsive to business, regulatory, and legislative changes and events, and the chief executive officer would be required to periodically test their effectiveness. The review, report, and certification would be completed no later than 6 months following the end of the period covered by the review. The Financial Institution would be required to retain the report, certification, and supporting data for at least 6 years, and to make these items available to the Department, any other federal or state regulator of the Financial Institution, or any applicable self-regulatory organization within 10 business days.

Section IV sets forth the recordkeeping requirements in the Proposed PTE.

Production and Distribution of Required Disclosures

The Department assumes that 11,782 Financial Institutions, comprising 1,957 BDs,[127] 6,729 SEC-registered IAs,[128] 2,710 state-registered IAs,[129] and 386 insurers,[130] are likely to engage in transactions covered under this PTE. Each would need to provide disclosures that (1) acknowledge its fiduciary status and (2) identify the services it provides and any material conflicts of interest. The Department estimates that preparing a disclosure indicating fiduciary status would take a legal professional between 5 and 30 minutes, depending on the nature of the business,[131] resulting in an hour burden of 1,599 [132] and a cost burden of $221,276.[133] Preparing a disclosure identifying services provided and conflicts of interest would take a legal professional an estimated 5 minutes to 5 hours, depending on the nature of the business,[134] resulting in an hour burden of 3,691 [135] and an equivalent cost burden of $510,877.[136]

The Department estimates that approximately 1.8 million Retirement Investors [137] have relationships with Financial Institutions and are likely to engage in transactions covered under this PTE. Of these 1.8 million Retirement Investors, it is assumed that 8.1 percent [138] or 146,083 Retirement Investors, would receive paper disclosures. Distributing paper disclosures is estimated to take a clerical professional 1 minute per disclosure, resulting in an hourly burden of 2,435 [139] and an equivalent cost burden of $156,094.[140] Assuming the disclosures will require two sheets of paper at a cost $0.05 each, the estimated material cost for the paper disclosures is $14,608. Postage for each paper disclosure is expected to cost $0.55, resulting in a printing and mailing cost of $94,954.

Written Policies and Procedures Requirement

The Department assumes that 11,782 Financial Institutions, comprising 1,957 BDs,[141] 6,729 SEC-registered IAs,[142]

[127] The SEC estimated that there were 3,764 BDs as of December 2018 (*see* Form CRS Relationship Summary Release). The IAA Compliance 2019 Survey estimates that 52 percent of IAs have a pension consulting business. The estimated number of BDs affected by this exemption is the product of the SEC's estimate of total BDs in 2018 and IAA's estimate of the percent of IAs with a pension consulting business.

[128] The SEC estimated that there were 12,940 SEC-registered IAs that were not dually registered as BDs as of December 2018 (*see* Form CRS Relationship Summary Release). The IAA Compliance 2019 Survey estimates that 52 percent of IAs have a pension consulting business. The estimated number of IAs affected by this exemption is the product of the SEC's estimate of SEC-registered IAs in 2018 and the IAA's estimate of the percent of IAs with a pension consulting business.

[129] The SEC estimated that there were 16,939 state-registered IAs that were not dually registered as BDs as of December 2018 (*see* Form CRS Relationship Summary Release). The NASAA 2019 estimates that 16 percent of state-registered IAs have a pension consulting business. The estimated number of state-registered IAs affected by this exemption is the product of the SEC's estimate of state-registered IAs in 2018 and NASAA's estimate of the percent of state-registered IAs with a pension consulting business.

[130] NAIC estimates that the number of insurers directly writing annuities as of 2018 is 386.

[131] The Department assumes that it will take each retail BD firm 15 minutes, each nonretail BD or insurance firm 30 minutes, and each registered IA 5 minutes to prepare a disclosure conveying fiduciary status.

[132] Burden hours are calculated by multiplying the estimated number of each firm type by the estimated time it will take each firm to prepare the disclosure.

[133] The hourly cost burden is calculated by multiplying the burden hour of each firm associated with preparation of the disclosure by the hourly wage of a legal professional.

[134] The Department assumes that it will take each retail BD or IA firm 5 minutes, each small nonretail BD or small insurer 60 minutes, and each large nonretail BDs or larger insurer 5 hours to prepare a disclosure conveying services provided and any conflicts of interest.

[135] Burden hours are calculated by multiplying the estimated number of each firm type by the estimated time it will take each firm to prepare the disclosure.

[136] The hourly cost burden is calculated by multiplying the burden hour of each firm associated with preparation of the disclosure by the hourly wage of a legal professional.

[137] The Department estimates the number of affected plans and IRAs be equal to 50 percent of rollovers from plans to IRAs. Cerulli has estimated the number of plans rolled into IRAs to be 3,622,198 (*see* U.S. Retirement-End Investor 2019, *supra* note 100).

[138] According to data from the National Telecommunications and Information Agency (NTIA), 37.7 percent of individuals age 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84 percent of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure if automatically enrolled (for a total of 31.7 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 40.5 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61 percent of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7 percent receiving electronic disclosure outside of work). Combining the 31.7 percent who receive electronic disclosure at work with the 24.7 percent who receive electronic disclosure outside of work produces a total of 56.4 percent who will receive electronic disclosure overall. In light of the 2019 Electronic Disclosure Regulation, the Department estimates that 81.5 percent of the remaining 43.6 percent of individuals will receive the disclosures electronically. In total, 91.9 percent of participants are expected to receive disclosures electronically.

[139] Burden hours are calculated by multiplying the estimated number of plans receiving the disclosures non-electronically by the estimated time it will take to prepare the physical disclosure.

[140] The hourly cost burden is calculated as the burden hours associated with the physical preparation of each non-electronic disclosure by the hourly wage of a clerical professional.

[141] The SEC estimated that there were 3,764 BDs as of December 2018 (*see* Form CRS Relationship Summary Release). The IAA Compliance 2019 Survey estimates that 52 percent of IAs have a pension consulting business. The estimated number of BDs affected by this exemption is the product of the SEC's estimate of total BDs in 2018 and IAA's estimate of the percent of IAs with a pension consulting business.

[142] The SEC estimated that there were 12,940 SEC-registered IAs, who were not dually registered as BDs, as of December 2018 (*see* Form CRS Relationship Summary Release). The IAA Compliance 2019 Survey estimates that 52 percent of IAs have a pension consulting business. The

2,710 state registered IAs,[143] and 386 insurers,[144] are likely to engage in transactions covered under this PTE. The Department estimates that establishing, maintaining, and enforcing written policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards will take a legal professional between 15 minutes and 10 hours, depending on the nature of the business.[145] This results in an hour burden of 12,023 [146] and an equivalent cost burden of $1,664,127.[147]

Rollover Documentation Requirement

To meet the requirement of the rollover documentation requirement, Financial Institutions must document the specific reasons that any recommendation to roll over assets is in the best interest of the Retirement Investor. The Department estimates that 1.8 million retirement plan accounts [148] were rolled into IRAs in accordance with advice from a financial services professional. Due to uncertainty, the Department discusses a range of cost estimates. For the lower-end cost estimate, the Department estimates that the costs for documenting the basis for investment decisions would come to $15 million per year.[149] This is based on the assumption that most financial services professionals already incorporate documenting the basis for rollover recommendations in their regular business practices and another assumption that not all rollovers are handled by financial services professionals who act in a fiduciary capacity.[150] For the upper-end cost estimate, the Department assumes that all rollovers involving financial services professionals would be affected by the proposed exemption. Then the costs would be $59 million per year.[151] For the primary cost estimate, the Department assumes that 67.4 percent of rollovers would be affected by the proposed exemption.[152] Under this assumption, the costs would be $40 million per year.[153] The Department invites comments and data regarding the number of rollovers affected by the proposed exemption and the burden hours associated with documenting the basis for rollover recommendations. The Department estimates that documenting each rollover recommendation will take a personal financial advisor 10 minutes,[154] resulting in 203,447 [155] burden hours and an equivalent cost burden of $39,626,306.[156]

Annual Retrospective Review Requirement

Under the internal retrospective review requirement, a Financial Institution is required to (1) conduct an annual retrospective review reasonably designed to assist the Financial Institution in detecting and preventing violations of, and achieving compliance with the Impartial Conduct Standards and their policies and procedures and (2) produce a written report that is certified by the Financial Institution's chief executive officer.

The Department understands that, as per FINRA Rule 3110,[157] FINRA Rule 3120,[158] and FINRA Rule 3130,[159] broker dealers are already held to a standard functionally identical to that of the retrospective review requirements of this proposed exemption. Accordingly, in this analysis, the Department assumes that broker dealers will incur minimal costs to meet this requirement. In 2018, the Investment Adviser Association estimated that 92 percent of SEC-registered IAs voluntarily provide an annual compliance program review report to senior management.[160] The Department estimates that only 8 percent, or 538,[161] of SEC-registered IAs advising retirement plans would incur costs associated with producing a retrospective review report. Due to lack of data, the Department assumes that state-registered IAs exhibit similar retrospective review patterns and estimates that 8 percent, or 217,[162] of state-registered IAs would also incur costs associated with producing a retrospective review report.

As SEC-registered IAs are already subject to SEC Rule 206(4)–7 the Department assumes these IAs would incur minimal costs to satisfy the conditions related to this requirement. Insurers in many states are already subject state insurance law based on the

estimated number of IAs affected by this exemption is the product of the SEC's estimate of SEC-registered IAs in 2018 and IAA's estimate of the percent of IAs with a pension consulting business.

[143] The SEC estimated that there were 16,939 state-registered IAs who were not dually registered as BDs as of December 2018 (*see* Form CRS Relationship Summary Release). The NASAA 2019 estimates that 16 percent of state-registered IAs have a pension consulting business. The estimated number of state-registered IAs affected by this exemption is the product of the SEC's estimate of state-registered IAs in 2018 and NASAA's estimate of the percent of state-registered IAs with a pension consulting business.

[144] NAIC estimates that 386 insurers were directly writing annuities as of 2018.

[145] The Department assumes that it will take each small retail BD 22.5 minutes, each large retail BD 45 minutes, each small nonretail BD 5 hours, each large nonretail BD 10 hours, each small IA 15 minutes, each large IA 30 minutes, each small insurer 5 hours, and each large insurer 10 hours to meet the requirement.

[146] Burden hours are calculated by multiplying the estimated number of each firm type by the estimated time it will take each firm to establish, maintain, and enforce written policies and procedures.

[147] The hourly cost burden is calculated as the burden hour of each firm associated with meeting the written policies and procedures requirement multiplied by the hourly wage of a legal professional.

[148] Cerulli has estimated the number of plans rolled into IRAs to be 3,622,198 (*see* U.S. Retirement-End Investor 2019, *supra* note 100). The Department estimates that 50 percent of these rollovers will be handled by a financial professional.

[149] *See supra* note 117.

[150] *See supra* note 118.

[151] *See supra* note 119.

[152] *See supra* note 120.

[153] *See supra* note 121.

[154] *See supra* note 122.

[155] Burden hours are calculated by multiplying the estimated number of rollovers affected by this proposed exemption by the estimated hours needed to document each recommendation.

[156] The hourly cost burden is calculated as the burden hour of each firm associated with meeting the rollover documentation requirement multiplied by the hourly wage of a personal financial advisor.

[157] Rule 3110. Supervision, FINRA Manual, *www.finra.org/rules-guidance/rulebooks/finra-rules/3110.*

[158] Rule 3120. Supervisory Control System, FINRA Manual, *www.finra.org/rules-guidance/rulebooks/finra-rules/3120.*

[159] Rule 3130. Annual Certification of Compliance and Supervisory Processes, FINRA Manual, *www.finra.org/rules-guidance/rulebooks/finra-rules/3130.*

[160] *2018 Investment Management Compliance Testing Survey,* Investment Adviser Association (Jun. 14, 2018), *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/2018-Investment-Management_Compliance-Testing-Survey-Results-Webcast_pptx.pdf.*

[161] The SEC estimated that there were 12,940 SEC-registered IAs that were not dually registered as BDs as of December 2018 (*see* Form CRS Relationship Summary Release). The IAA Compliance 2019 Survey estimates that 52 percent of IAs have a pension consulting business. The IAA Investment Management Compliance Testing Survey estimates that 92 percent of SEC-registered IAs provide an annual compliance program review report to senior management. The estimated number of IAs affected by this exemption who do not meet the retrospective review requirement is the product of the SEC's estimate of SEC-registered IAs in 2018, the IAA's estimate of the percent of IAs with a pension consulting business, and IAA's estimate of the percent of IA's who do not provide an annual compliance program review report.

[162] The SEC estimated that there were 16,939 state-registered IAs that were not dually registered as BDs as of December 2018 (*see* Form CRS Relationship Summary Release). The NASAA 2019 estimates that 16 percent of state-registered IAs have a pension consulting business. The IAA Investment Management Compliance Testing Survey estimates that 92 percent of SEC-registered IAs provide an annual compliance program review report to senior management. The Department assumes state-registered IAs exhibit similar retrospective review patterns as SEC-registered IAs. The estimated number of state-registered IAs affected by this exemption is the product of the SEC's estimate of state-registered IAs in 2018, NASAA's estimate of the percent of state-registered IAs with a pension consulting business, and IAA's estimate of the percent of IA's who do not provide an annual compliance program review report.

NAIC's Model Regulation, [163] Thus, the Department assumes that insurers would incur negligible costs associated with producing a retrospective review report. This is estimated to take a legal professional 5 hours for small firms and 10 hours for large firms, depending on the nature of the business. This results in an hour burden of 7,032 [164] and an equivalent cost burden of $973,297.[165]

In addition to conducting the audit and producing a report, Financial Institutions will need to review the report and certify the exemption. This is estimated to take a financial professional 15 minutes for small firms and 30 minutes for large firms, depending on the nature of the business. This results in an hour burden of 4,340 [166] and an equivalent cost burden of $718,806.[167] The Department welcomes any comments about burden hours associated with producing an annual review report and certifying it.

Overall Summary

Overall, the Department estimates that in order to meet the conditions of this PTE, 11,782 Financial Institutions will produce 1.8 million disclosures and notices annually. These disclosures and notices will result in 234,565 burden hours during the first year and 217,253 burden hours in subsequent years, at an equivalent cost of $43.9 million and $41.5 million respectively. The disclosures and notices in this exemption will also result in a total cost burden for materials and postage of $94,954 annually.

These paperwork burden estimates are summarized as follows:

- *Type of Review:* New collection (Request for new OMB Control Number).
- *Agency:* Employee Benefits Security Administration, Department of Labor.
- *Title:* Improving Investment Advice for Workers & Retirees.
- *OMB Control Number:* 1210–NEW.
- *Affected Public:* Business or other for-profit institution.
- *Estimated Number of Respondents:* 11,782.
- *Estimated Number of Annual Responses:* 1,811,099.
- *Frequency of Response:* Initially, Annually, and when engaging in exempted transaction.
- *Estimated Total Annual Burden Hours:* 234,565 during the first year and 217,253 in subsequent years.
- *Estimated Total Annual Burden Cost:* $94,954 during the first year and $94,954 in subsequent years.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [168] imposes certain requirements on rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act or any other law.[169] Under section 603 of the RFA, agencies must submit an initial regulatory flexibility analysis (IRFA) of a proposal that is likely to have a significant economic impact on a substantial number of small entities, such as small businesses, organizations, and governmental jurisdictions. The Department determines that this proposed exemption will likely have a significant economic impact on a substantial number of small entities. Therefore, the Department provides its IRFA of the proposed exemption, below. The Department welcomes comments regarding this assessment.

Need for and Objectives of the Rule

As discussed earlier in this preamble, the proposed class exemption would allow investment advice fiduciaries to receive compensation and engage in transactions that would otherwise violate the prohibited transaction provisions of ERISA and the Code. As such, the proposed exemption would grant Financial Institutions and Investment Professionals the flexibility to address different business models, and would lessen their overall regulatory burden by coordinating potentially overlapping regulatory requirements. The exemption conditions, including the Impartial Conduct Standards and other conditions supporting the standards, are expected to provide protections to Retirement Investors. Therefore, the Department expects the proposed exemption to benefit Retirement Investors that are small entities and to provide efficiencies to small Financial Institutions.

Affected Small Entities

The Small Business Administration (SBA),[170] pursuant to the Small Business Act,[171] defines small businesses and issues size standards by industry. The SBA defines a small business in the Financial Investments and Related Activities Sector as a business with up to $41.5 million in annual receipts. Due to a lack of data and shared jurisdictions, for purpose of performing Regulatory Flexibility Analyses pursuant to section 601(3) of the Regulatory Flexibility Act, the Department, after consultation with SBA's Office of Advocacy, defines small entities included in this analysis differently from the SBA definitions.[172] For instance, in this analysis, the small-business definitions for BDs and SEC-registered IAs are consistent with the SEC's definitions, as these entities are subject to the SEC's rules as well as the ERISA.[173] As with SEC-registered IAs, the size of state-registered IAs is determined based on total value of the assets they manage.[174] The size of insurance companies is based on annual sales of annuities. The Department requests comments on the appropriateness of the size standard used to evaluate the impact of the proposed exemption on small entities.

In December 2018, there were 985 small-business BDs and 528 SEC-registered, small-business IAs.[175] The Department estimates that approximately 52 percent of these small-businesses will be affected by the proposed exemption.[176] In December 2018, the Department estimates there were approximately 10,840 small state-registered IAs,[177] of which about 1,700

[163] NAIC Suitability in Annuity Transactions Model Regulation, Spring 2020, Section 6.C.(2)(i), available at *https://www.naic.org/store/free/MDL-275.pdf.* (The same requirement is found in the previous NAIC Suitability in Annuity Transactions Model Regulation (2010), section 6.F.(1)(f).)

[164] Burden hours are calculated by multiplying the estimated number of each firm type by the estimated time it will take each firm to review the report and certify the exemption.

[165] The hourly cost burden is calculated by multiplying the burden hours for reviewing the report and certifying the exemption requirement by the hourly wage of a legal professional.

[166] Burden hours are calculated by multiplying the estimated number of each firm type by the estimated time it will take each firm to review the report and certify the exemption.

[167] The hourly cost burden is calculated by multiplying the burden hours for reviewing the report and certifying the exemption requirement by the hourly wage of a financial professional.

[168] 5 U.S.C. 601 *et seq.*

[169] 5 U.S.C. 601(2), 603(a); *see also* 5 U.S.C. 551.

[170] 13 CFR 121.201.

[171] 15 U.S.C. 631 *et seq.*

[172] The Department consulted with the Small Business Administration Office of Advocacy in making this determination as required by 5 U.S.C. 603(c).

[173] 17 CFR parts 230, 240, 270, and 275, *https://www.sec.gov/rules/final/33-7548.txt.*

[174] Due to lack of available data, the Department includes state-registered IAs managing assets less than $30 million as small entities in this analysis.

[175] *See Form CRS Relationship Summary; Amendments to Form ADV,* 84 FR 33492 (Jul. 12, 2019).

[176] *2019 Investment Management Compliance Testing Survey,* Investment Adviser Association (Jun. 18, 2019), *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/about/190618_IMCTS_slides_after_webcast_edits.pdf.*

[177] The SEC estimates there were approximately 17,000 state-registered IAs (*see Form CRS Relationship Summary; Amendments to Form ADV,* 84 FR 33492 (Jul. 12, 2019)). The Department estimates that about 64 percent of state-registered IAs manage assets less than $30 million, and it considers such entities small businesses. (*See 2018 Investment Adviser Section Annual Report,* North

are estimated to be affected by the proposed exemption.[178] There were approximately 386 insurers directly writing annuities in 2018,[179] 316 of which the Department estimates are small entities.[180] Table 1 summarizes the distribution of affected entities by size.

TABLE 1—DISTRIBUTION OF AFFECTED ENTITIES BY SIZE

	BDs		SEC-registered IAs		State-registered IAs		Insurers	
Small	985	26%	528	4%	10,840	64%	316	82%
Large	2,779	74%	12,412	96%	6,099	36%	70	18%
Total	3,764	100%	12,940	100%	16,939	100%	386	100%

Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed above, the proposed exemption would provide Financial Institutions and Investment Professionals with the flexibility to choose between the new proposed exemption or existing exemptions, depending on their individual needs and business models. Furthermore, the proposed exemption would provide Financial Institutions and Investment Professionals broader, more flexible prohibited transaction relief than is currently available, while safeguarding the interests of Retirement Investors. In this regard, this proposed exemption could present a less burdensome compliance alternative for some Financial Institutions because it would allow them to streamline compliance rather than rely on multiple exemptions with multiple sets of conditions.

This proposed exemption simply provides an additional alternative pathway for Financial Institutions and Investment Professionals to receive compensation and engage in certain transactions that would otherwise be prohibited under ERISA and the Code. Financial Institutions would incur costs to comply with conditions set forth in the proposed exemption. However, the Department believes the costs associated with those conditions would be modest because the proposed exemption was developed in consideration of other regulatory conduct standards. The Department believes that many Financial Institutions and Investment Professionals have already developed, or are in the process of developing, compliance structures for similar regulatory standards. Therefore, the Department does not believe the proposed exemption will impose a significant compliance burden on small entities. For example, the Department estimates that a small entity would incur, on average, an additional $1,000 in compliance costs to meet the conditions of the proposed exemption. These additional costs would represent 0.4 percent of the net capital of BD with $250,000. A BD with less than $500,000 in net capital is generally considered small, according to the SEC.

Duplicate, Overlapping, or Relevant Federal Rules

ERISA and the Code rules governing advice on the investment of retirement assets overlap with SEC rules that govern the conduct of IAs and BDs who advise retail investors. The Department considered conduct standards set by other regulators, such as SEC, state insurance regulators, and FINRA, in developing the proposed exemption, with the goal of avoiding overlapping or duplicative requirements. To the extent the requirements overlap, compliance with the other disclosure or recordkeeping requirements can be used to satisfy the exemption, provided the conditions are satisfied. This would lead to overall regulatory efficiency.

Significant Alternatives Considered

The RFA directs the Department to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities.

External Audit

Under section II(d) of the proposed exemption, Financial Institutions would be required to conduct an annual retrospective review that is reasonably designed to detect and prevent violations of, and achieve compliance with, the Impartial Conduct Standards and the institution's own policies and procedures. The Department considered the alternative of requiring a Financial Institution to engage an independent party to provide an external audit. The Department elected not to propose this requirement to avoid the increased costs this approach would impose. Smaller Financial Institutions may have been disproportionately impacted by such costs, which would have been contrary to the Department's goals of promoting access to investment advice for Retirement Investors. Further, the Department is not convinced that an independent, external audit would yield useful information commensurate with the cost, particularly to small entities. Instead, the proposal requires that Financial Institutions to document their retrospective review, and provide it, and supporting information, to the Department and other regulators within 10 business days of such request.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 [181] requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposed exemption does not include any Federal mandate that will result in such expenditures.

Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. It also requires federal agencies to adhere to specific criteria in formulating and implementing policies that have ''substantial direct effects'' on the states,

American Securities Administrators Association (May 2018), *www.nasaa.org/wp-content/uploads/2018/05/2018-NASAA-IA-Report-Online.pdf.*) Therefore, the Department estimates there were about 10,840 small, state-registered IAs.

[178] Of the small, state-registered IAs, the Department estimates that 16 percent provide advice or services to retirement plans (*see 2019 Investment Adviser Section Annual Report,* North American Securities Administrators Association, (May 2019)).

[179] NAIC estimates that the number of insurers directly writing annuities as of 2018 is 386.

[180] LIMRA estimates in 2016, 70 insurers had more than $38.5 million in sales. (*See U.S. Individual Annuity Yearbook: 2016 Data,* LIMRA Secure Retirement Institute (2017)).

[181] Public Law 104–4, 109 Stat. 48 (1995).

the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the final regulation. The Department does not believe this proposed class exemption has federalism implications because it has no 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.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and Code section 4975(c)(2) does not relieve a fiduciary, or other party in interest or disqualified person with respect to a Plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404 which require, among other things, that a fiduciary act prudently and discharge his or her duties respecting the Plan solely in the interests of the participants and beneficiaries of the Plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of Code section 401(a) that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) Before the proposed exemption may be granted under ERISA section 408(a) and Code section 4975(c)(2), the Department must find that it is administratively feasible, in the interests of Plans and their participants and beneficiaries and IRA owners, and protective of the rights of participants and beneficiaries of the Plan and IRA owners;

(3) If granted, the proposed exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed exemption, if granted, is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Improving Investment Advice for Workers & Retirees

Section I—Transactions

(a) *In general.* ERISA and the Internal Revenue Code prohibit fiduciaries, as defined, that provide investment advice to Plans and individual retirement accounts (IRAs) from receiving compensation that varies based on their investment advice and compensation that is paid from third parties. ERISA and the Code also prohibit fiduciaries from engaging in purchases and sales with Plans or IRAs on behalf of their own accounts (principal transactions). This exemption permits Financial Institutions and Investment Professionals who provide fiduciary investment advice to Retirement Investors to receive otherwise prohibited compensation and engage in riskless principal transactions and certain other principal transactions (Covered Principal Transactions) as described below. The exemption provides relief from the prohibitions of ERISA section 406(a)(1)(A), (D), and 406(b), and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), (E), and (F), if the Financial Institutions and Investment Professionals provide fiduciary investment advice in accordance with the conditions set forth in Section II and are eligible pursuant to Section III, subject to the definitional terms and recordkeeping requirements in Sections IV and V.

(b) *Covered transactions.* This exemption permits Financial Institutions and Investment Professionals, and their affiliates and related entities, to engage in the following transactions, including as part of a rollover from a Plan to an IRA as defined in Code section 4975(e)(1)(B) or (C), as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B):

(1) The receipt of reasonable compensation; and

(2) The purchase or sale of an asset in a riskless principal transaction or a Covered Principal Transaction, and the receipt of a mark-up, mark-down, or other payment.

(c) *Exclusions.* This exemption does not apply if:

(1) The Plan is covered by Title I of ERISA and the Investment Professional, Financial Institution or any affiliate is (A) the employer of employees covered by the Plan, or (B) a named fiduciary or plan administrator with respect to the Plan that was selected to provide advice to the Plan by a fiduciary who is not independent of the Financial Institution, Investment Professional, and their affiliates; or

(2) The transaction is a result of investment advice generated solely by an interactive website in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the website, without any personal interaction or advice with an Investment Professional (*i.e.,* robo-advice);

(3) The transaction involves the Investment Professional acting in a fiduciary capacity other than as an investment advice fiduciary within the meaning of the regulations at 29 CFR 2510.3–21(c)(1)(i) and (ii)(B) or 26 CFR 54.4975–9(c)(1)(i) and (ii)(B) setting forth the test for fiduciary investment advice.

Section II—Investment Advice Arrangement

Section II requires Investment Professionals and Financial Institutions to comply with Impartial Conduct Standards, including a best interest standard, when providing fiduciary investment advice to Retirement Investors. In addition, the exemption requires Financial Institutions to acknowledge fiduciary status under ERISA and/or the Code, and describe in writing the services they will provide and their material Conflicts of Interest. Finally, Financial Institutions must adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards when providing fiduciary investment advice to Retirement Investors and conduct a retrospective review of compliance.

(a) *Impartial Conduct Standards.* The Financial Institution and Investment Professional comply with the following ''Impartial Conduct Standards'':

(1) Investment advice is, at the time it is provided, in the Best Interest of the Retirement Investor. As defined in Section V(a), such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, and does not place

the financial or other interests of the Investment Professional, Financial Institution or any affiliate, related entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own;

(2)(A) The compensation received, directly or indirectly, by the Financial Institution, Investment Professional, their affiliates and related entities for their services does not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and (B) as required by the federal securities laws, the Financial Institution and Investment Professional seek to obtain the best execution of the investment transaction reasonably available under the circumstances; and

(3) The Financial Institutions' and its Investment Professionals' statements to the Retirement Investor about the recommended transaction and other relevant matters are not, at the time statements are made, materially misleading.

(b) *Disclosure.* Prior to engaging in a transaction pursuant to this exemption, the Financial Institution provides the following disclosure to the Retirement Investor:

(1) A written acknowledgment that the Financial Institution and its Investment Professionals are fiduciaries under ERISA and the Code, as applicable, with respect to any fiduciary investment advice provided by the Financial Institution or Investment Professional to the Retirement Investor; and

(2) A written description of the services to be provided and the Financial Institution's and Investment Professional's material Conflicts of Interest that is accurate and not misleading in all material respects.

(c) *Policies and Procedures.*

(1) The Financial Institution establishes, maintains and enforces written policies and procedures prudently designed to ensure that the Financial Institution and its Investment Professionals comply with the Impartial Conduct Standards in connection with covered fiduciary advice and transactions.

(2) Financial Institutions' policies and procedures mitigate Conflicts of Interest to the extent that the policies and procedures, and the Financial Institution's incentive practices, when viewed as a whole, are prudently designed to avoid misalignment of the interests of the Financial Institution and Investment Professionals and the interests of Retirement Investors in connection with covered fiduciary advice and transactions.

(3) The Financial Institution documents the specific reasons that any recommendation to roll over assets from a Plan to another Plan or IRA as defined in Code section 4975(e)(1)(B) or (C), from an IRA as defined in Code section 4975(e)(1)(B) or (C) to a Plan, from an IRA to another IRA, or from one type of account to another (*e.g.,* from a commission-based account to a fee-based account) is in the Best Interest of the Retirement Investor.

(d) *Retrospective Review.*

(1) The Financial Institution conducts a retrospective review, at least annually, that is reasonably designed to assist the Financial Institution in detecting and preventing violations of, and achieving compliance with, the Impartial Conduct Standards and the policies and procedures governing compliance with the exemption.

(2) The methodology and results of the retrospective review are reduced to a written report that is provided to the Financial Institution's chief executive officer (or equivalent officer) and chief compliance officer (or equivalent officer).

(3) The Financial Institution's chief executive officer (or equivalent officer) certifies, annually, that:

(A) The officer has reviewed the report of the retrospective review;

(B) The Financial Institution has in place policies and procedures prudently designed to achieve compliance with the conditions of this exemption; and

(C) The Financial Institution has in place a prudent process to modify such policies and procedures as business, regulatory and legislative changes and events dictate, and to test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with the conditions of this exemption.

(4) The review, report and certification are completed no later than six months following the end of the period covered by the review.

(5) The Financial Institution retains the report, certification, and supporting data for a period of six years and makes the report, certification, and supporting data available to the Department, within 10 business days of request.

Section III—Eligibility

(a) *General.* Subject to the timing and scope provisions set forth in subsection (b), an Investment Professional or Financial Institution will be ineligible to rely on the exemption for 10 years following:

(1) A conviction of any crime described in ERISA section 411 arising out of such person's provision of investment advice to Retirement Investors, unless, in the case of a Financial Institution, the Department grants a petition pursuant to subsection (c)(1) below that the Financial Institution's continued reliance on the exemption would not be contrary to the purposes of the exemption; or

(2) Receipt of a written ineligibility notice issued by the Office of Exemption Determinations for (A) engaging in a systematic pattern or practice of violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; (B) intentionally violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or (C) providing materially misleading information to the Department in connection with the Financial Institution's conduct under the exemption; in each case, as determined by the Director of the Office of Exemption Determinations pursuant to the process described in subsection (c).

(b) *Timing and Scope of Ineligibility.*

(1) An Investment Professional shall become ineligible immediately upon (A) the date of the trial court's conviction of the Investment Professional of a crime described in subsection (a)(1), regardless of whether that judgment remains under appeal, or (B) the date of the Office of Exemption Determinations' written ineligibility notice described in subsection (a)(2), issued to the Investment Professional.

(2) A Financial Institution shall become ineligible following (A) the 10th business day after the conviction of the Financial Institution or another Financial Institution in the same Control Group of a crime described in subsection (a)(1) regardless of whether that judgment remains under appeal, or, if the Financial Institution timely submits a petition described in subsection (c)(1) during that period, upon the date of the Office of Exemption Determination's written denial of the petition, or (B) the Office of Exemption Determinations' written ineligibility notice, described in subsection (a)(2), issued to the Financial Institution or another Financial Institution in the same Control Group.

(3) Control Group. A Financial Institution is in a Control Group with another Financial Institution if, directly or indirectly, the Financial Institution owns at least 80 percent of, is at least 80 percent owned by, or shares an 80 percent or more owner with, the other Financial Institution. For purposes of

this provision, if the Financial Institutions are not corporations, ownership is defined to include interests in the Financial Institution such as profits interest or capital interests.

(4) Winding Down Period. Any Financial Institution that is ineligible will have a one-year winding down period during which relief is available under the exemption subject to the conditions of the exemption other than eligibility. After the one-year period expires, the Financial Institution may not rely on the relief provided in this exemption for any additional transactions.

(c) *Opportunity to be heard.*

(1) Petitions under subsection (a)(1).

(A) A Financial Institution that has been convicted of a crime may submit a petition to the Department informing the Department of the conviction and seeking a determination that the Financial Institution's continued reliance on the exemption would not be contrary to the purposes of the exemption. Petitions must be submitted, within 10 business days after the date of the conviction, to the Director of the Office of Exemption Determinations by email at *e-OED@dol.gov,* or by certified mail at Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Suite 400, Washington, DC 20210.

(B) Following receipt of the petition, the Department will provide the Financial Institution with the opportunity to be heard, in person or in writing or both. The opportunity to be heard in person will be limited to one in-person conference unless the Department determines in its sole discretion to allow additional conferences.

(C) The Department's determination as to whether to grant the petition will be based solely on its discretion. In determining whether to grant the petition, the Department will consider the gravity of the offense; the relationship between the conduct underlying the conviction and the Financial Institution's system and practices in its retirement investment business as a whole; the degree to which the underlying conduct concerned individual misconduct, or, alternately, corporate managers or policy; how recent was the underlying lawsuit; remedial measures taken by the Financial Institution upon learning of the underlying conduct; and such other factors as the Department determines in its discretion are reasonable in light of the nature and purposes of the exemption. The Department will provide a written determination to the Financial Institution that articulates the basis for the determination.

(2) Written ineligibility notice under subsection (a)(2). Prior to issuing a written ineligibility notice, the Director of the Office of Exemption Determinations will issue a written warning to the Investment Professional or Financial Institution, as applicable, identifying specific conduct implicating subsection (a)(2), and providing a six-month opportunity to cure. At the end of the six-month period, if the Department determines that the conduct persists, it will provide the Investment Professional or Financial Institution with the opportunity to be heard, in person or in writing or both, before the Director of the Office of Exemption Determinations issues the written ineligibility notice. The opportunity to be heard in person will be limited to one in-person conference unless the Department determines in its sole discretion to allow additional conferences. The written ineligibility notice will articulate the basis for the determination that the Investment Professional or Financial Institution engaged in conduct described in subsection (a)(2).

(d) A Financial Institution or Investment Professional that is ineligible to rely on this exemption may rely on a statutory prohibited transaction exemption if one is available or seek an individual prohibited transaction exemption from the Department. To the extent an applicant seeks retroactive relief in connection with an exemption application, the Department will consider the application in accordance with its retroactive exemption policy as set forth in 29 CFR 2570.35(d). The Department may require additional prospective compliance conditions as a condition of retroactive relief.

Section IV—Recordkeeping

(a) The Financial Institution maintains for a period of six years records demonstrating compliance with this exemption and makes such records available, to the extent permitted by law including 12 U.S.C. 484, to the following persons or their authorized representatives:

(1) Any authorized employee of the Department;

(2) Any fiduciary of a Plan that engaged in an investment transaction pursuant to this exemption;

(3) Any contributing employer and any employee organization whose members are covered by a Plan that engaged in an investment transaction pursuant to this exemption; or

(4) Any participant or beneficiary of a Plan, or IRA owner that engaged in an investment transaction pursuant to this exemption.

(b)(1) None of the persons described in subsection (a)(2)–(4) above are authorized to examine records regarding a recommended transaction involving another Retirement Investor, privileged trade secrets or privileged commercial or financial information of the Financial Institution, or information identifying other individuals.

(2) Should the Financial Institution refuse to disclose information to Retirement Investors on the basis that the information is exempt from disclosure, the Financial Institution must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

Section V—Definitions

(a) Advice is in a Retirement Investor's ''Best Interest'' if such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, and does not place the financial or other interests of the Investment Professional, Financial Institution or any affiliate, related entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own.

(b) A ''Conflict of Interest'' is an interest that might incline a Financial Institution or Investment Professional—consciously or unconsciously—to make a recommendation that is not in the Best Interest of the Retirement Investor.

(c) A ''Covered Principal Transaction'' is a principal transaction that:

(1) For sales to a Plan or IRA:

(A) Involves a U.S. dollar denominated debt security issued by a U.S. corporation and offered pursuant to a registration statement under the Securities Act of 1933; a U.S. Treasury Security; a debt security issued or guaranteed by a U.S. federal government agency other than the U.S. Department of Treasury; a debt security issued or guaranteed by a government-sponsored enterprise; a municipal security; a certificate of deposit; an interest in a Unit Investment Trust; or any

investment permitted to be sold by an investment advice fiduciary to a Retirement Investor under an individual exemption granted by the Department after the effective date of this exemption that includes the same conditions as this exemption, and

(B) If the recommended investment is a debt security, the security is recommended pursuant to written policies and procedures adopted by the Financial Institution that are reasonably designed to ensure that the security, at the time of the recommendation, has no greater than moderate credit risk and sufficient liquidity that it could be sold at or near carrying value within a reasonably short period of time; and

(2) For purchases from a Plan or IRA, involves any securities or investment property.

(d) ''Financial Institution'' means an entity that is not disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization), that employs the Investment Professional or otherwise retains such individual as an independent contractor, agent or registered representative, and that is:

(1) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or under the laws of the state in which the adviser maintains its principal office and place of business;

(2) A bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1));

(3) An insurance company qualified to do business under the laws of a state, that: (A) Has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended; (B) has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state's insurance commissioner within the preceding 5 years, and (C) is domiciled in a state whose law requires that an actuarial review of reserves be conducted annually and reported to the appropriate regulatory authority;

(4) A broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(5) An entity that is described in the definition of Financial Institution in an individual exemption granted by the Department after the date of this exemption that provides relief for the receipt of compensation in connection with investment advice provided by an investment advice fiduciary under the same conditions as this class exemption.

(e) ''*Individual Retirement Account*'' or ''*IRA*'' means any account or annuity described in Code section 4975(e)(1)(B) through (F).

(f) ''*Investment Professional*'' means an individual who:

(1) Is a fiduciary of a Plan or IRA by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the recommended transaction;

(2) Is an employee, independent contractor, agent, or representative of a Financial Institution; and

(3) Satisfies the federal and state regulatory and licensing requirements of insurance, banking, and securities laws (including self-regulatory organizations) with respect to the covered transaction, as applicable, and is not disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization).

(g) ''*Plan*'' means any employee benefit plan described in ERISA section 3(3) and any plan described in Code section 4975(e)(1)(A).

(h) ''*Retirement Investor*'' means—

(1) A participant or beneficiary of a Plan with authority to direct the investment of assets in his or her account or to take a distribution;

(2) The beneficial owner of an IRA acting on behalf of the IRA; or

(3) A fiduciary of a Plan or IRA.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

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