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Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2020–0050]

RIN 3150–AK47

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of July 27, 2020, for the direct final rule that was published in the **Federal Register** on May 13, 2020. The direct final rule amends the NRC's spent fuel storage regulations by revising the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 5 to Certificate of Compliance No. 1032. Amendment No. 5 revises the certificate of compliance to: Add new heat load patterns and revise the minimum required cooling time for two multipurpose canisters (MPC–89 and MPC–37); add new fuel types to the approved contents; allow an exception to a code to permit use of certain duplex stainless steels; use an analysis model to revise the calculation for evaluating effective fuel conductivities; add the use of the damaged fuel isolator; add two versions of the standard variable weight transfer cask; add the option of using cyclic vacuum drying; and make changes to the final safety analysis report to add new types of fuel assemblies, add a definition to it and to the certificate of compliance, and add the required shielding evaluation to Section 5.4.8. In addition, Amendment No. 5 makes several clarifications and minor changes.

DATES: The effective date of July 27, 2020, for the direct final rule published May 13, 2020 (85 FR 28479), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2020–0050 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–2020–0050. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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.* The proposed amendment to the certificate of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML20014E616. The final amendment to the certificate of compliance, final changes to the technical specifications, and final safety evaluation report can also be viewed in ADAMS under Accession No. ML20163A701.
- *Attention: The Public Document Room (PDR),* where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8342 or email: *Vanessa.Cox@nrc.gov.*

SUPPLEMENTARY INFORMATION: On May 13, 2020 (85 FR 28479), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 5 to Certificate of Compliance No. 1032. Amendment No. 5 revises the certificate of compliance to: Add new heat load patterns and revise the minimum required cooling time for two multipurpose canisters (MPC–89 and MPC–37); add new fuel types to the approved contents; allow an exception to a code to permit use of certain duplex stainless steels; use an analysis model to revise the calculation for evaluating effective fuel conductivities; add the use of the damaged fuel isolator; add two versions of the standard variable weight transfer cask; add the option of using cyclic vacuum drying; and make changes to the final safety analysis report to add new types of fuel assemblies, add a definition to it and to the certificate of compliance, and add the required shielding evaluation to Section 5.4.8. In addition, Amendment No. 5 makes several clarifications and minor changes.

In the direct final rule published on May 13, 2020, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on July 27, 2020. The NRC received and docketed one comment on the companion proposed rule (85 FR 28521; May 13, 2020). Electronic copies of the comment can be obtained from the Federal Rulemaking website *https://www.regulations.gov* under Docket ID NRC–2020–0050 and is also available in ADAMS under Accession No. ML20168B028.

The NRC evaluated the comment against the criteria described in the direct final rule and determined that the comment was not significant and adverse. Specifically, the comment was outside the scope of this rulemaking, did not oppose the rule, or did not propose a change to the rule, such that the rule would be ineffective or unacceptable without incorporation of the change. Therefore, the direct final rule will become effective as scheduled.

Dated July 8, 2020.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–15128 Filed 7–21–20; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 331

RIN 3064–AF21

Federal Interest Rate Authority

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing regulations clarifying the law that governs the interest rates State-chartered banks and insured branches of foreign banks (collectively, State banks) may charge. These regulations provide that State banks are authorized to charge interest at the rate permitted by the State in which the State bank is located, or one percent in excess of the 90-day commercial paper rate, whichever is greater. The regulations also provide that whether interest on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined at the time the loan is made, and interest on a loan permissible under section 27 is not affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan.

DATES: The rule is effective on August 21, 2020.

FOR FURTHER INFORMATION CONTACT: James Watts, Counsel, Legal Division, (202) 898–6678, *jwatts@fdic.gov;* Catherine Topping, Counsel, Legal Division, (202) 898–3975, *ctopping@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Objectives

Section 27 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831d) authorizes State banks to make loans charging interest at the maximum rate permitted by the State where the bank is located, or at one percent in excess of the 90-day commercial paper rate, whichever is greater. Section 27 does not state at what point in time the validity of the interest rate should be determined to assess whether a State bank is taking or receiving interest in accordance with section 27. Situations may arise when the usury laws of the State where the bank is located change after a loan is made (but before the loan has been paid in full), and a loan's rate may be non-usurious under the old law but usurious under the new law. To fill this statutory gap and carry out the purpose of section 27, the FDIC proposed regulations [1] in November 2019 that would provide that the permissibility of interest under section 27 must be determined when the loan is made, and shall not be affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan. This interpretation protects the parties' expectations and reliance interests at the time when a loan is made, and provides a logical and fair rule that is easy to apply.

A second statutory gap is also present because section 27 expressly gives banks the right to make loans at the rates permitted by their home States, but does not explicitly list all the components of that right. One such implicit component is the right to assign the loans under the preemptive authority of section 27. Banks' power to make loans has been traditionally viewed as carrying with it the power to assign loans. Thus, a State bank's Federal statutory authority under section 27 to make loans at particular rates includes the power to assign the loans at those rates. To eliminate ambiguity, the proposed regulation makes this implicit understanding explicit. By providing that the permissibility of interest under section 27 must be determined when the loan is made, and shall not be affected by the sale, assignment, or other transfer of the loan, the regulation clarifies that banks can transfer enforceable rights in the loans they made under the preemptive authority of section 27.

The FDIC believes that safety and soundness concerns also support clarification of the application of section 27 to State banks' loans, because the statutory ambiguity exposes State banks to increased risk in the event they need to sell their loans to satisfy their liquidity needs in a crisis. Left unaddressed, the two statutory gaps could create legal uncertainty for State banks and confusion for the courts. One example of the concerns with leaving the statutory ambiguity unaddressed is the recent decision of the U.S. Court of Appeals for the Second Circuit in *Madden* v. *Midland Funding, LLC.*[2]

[1] 84 FR 66845 (Dec. 6, 2019).

[2] 786 F.3d 246 (2d Cir. 2015).

Reading the text of the statute in isolation, the *Madden* court concluded that 12 U.S.C. 85 (section 85)—which authorizes national banks to charge interest at the rate permitted by the law of the State in which the national bank is located—does not allow national banks to transfer enforceable rights in the loans they made under the preemptive authority of section 85. While *Madden* concerned the assignment of a loan by a national bank, the Federal statutory provision governing State banks' authority with respect to interest rates is patterned after and interpreted in the same manner as section 85. *Madden* therefore helped highlight the need to issue clarifying regulations addressing the legal ambiguity in section 27.[3]

As described in more detail below, the FDIC received 59 comment letters on the proposed rule from interested parties. The FDIC has carefully considered these comments and is now issuing a final rule. The final rule implements the Federal statutory provisions that authorize State banks to charge interest of up to the greater of: one percent more than the 90-day commercial paper rate; or the rate permitted by the State in which the bank is located. The final rule also provides that whether interest on a loan is permissible under section 27 is determined at the time the loan is made, and interest on a loan under section 27 is not affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan. The regulations also implement section 24(j) of the FDI Act (12 U.S.C. 1831a(j)) to provide that the laws of a State in which a State bank is not chartered but in which it maintains a branch (host State), shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. The regulations do not address the question of whether a State bank or insured branch of a foreign bank is a real party in interest with respect to a loan or has an economic interest in the loan under state law, *e.g.* which entity is the ''true lender.'' Moreover, the FDIC continues to support the position that it will view

[3] The Secretary of the Treasury also recommended, in a July 2018 report to the President, that the Federal banking regulators should ''use their available authorities to address challenges posed by *Madden*.'' *See* ''A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation,'' July 31, 2018, at p. 93 (*https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf*).

unfavorably entities that partner with a State bank with the sole goal of evading a lower interest rate established under the law of the entity's licensing State(s).

II. Background: Current Regulatory Approach and Market Environment

A. National Banks' Interest Rate Authority

The statutory provisions implemented by the final rule are patterned after, and have been interpreted consistently with, section 85 to provide competitive equality among federally-chartered and State-chartered depository institutions. While the final rule implements the FDI Act, rather than section 85, the following background information is intended to frame the discussion of the rule.

Section 30 of the National Bank Act was enacted in 1864 to protect national banks from discriminatory State usury legislation. The statute provided alternative interest rates that national banks were permitted to charge their customers pursuant to Federal law. Section 30 was later divided and renumbered, with the interest rate provisions becoming current sections 85 and 86. Under section 85, a national bank may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under title 62 of the Revised Statutes.[4]

Soon after the statute was enacted, the Supreme Court's decision in *Tiffany* v. *National Bank of Missouri* interpreted the statute as providing a ''most favored lender'' protection.[5] In *Tiffany,* the Supreme Court construed section 85 to allow a national bank to charge interest at a rate exceeding that permitted for State banks if State law permitted nonbank lenders to charge such a rate. By allowing national banks to charge interest at the highest rate permitted for any competing State lender by the laws of the State in which the national bank is located, section 85's language providing national banks ''most favored lender'' status protects national banks from State laws that could place them at a competitive disadvantage vis-à-vis State lenders.[6]

Subsequently, the Supreme Court interpreted section 85 to allow national banks to ''export'' the interest rates of their home States to borrowers residing in other States. In *Marquette National Bank* v. *First of Omaha Service Corporation,*[7] the Court held that because the State designated on the national bank's organizational certificate was traditionally understood to be the State where the bank was ''located'' for purposes of applying section 85, a national bank cannot be deprived of this location merely because it is extending credit to residents of a foreign State. Since *Marquette* was decided, national banks have been allowed to charge interest rates authorized by the State where the national bank is located on loans to out-of-State borrowers, even though those rates may be prohibited by the State laws where the borrowers reside.[8]

B. Interest Rate Authority of State Banks

In the late 1970s, monetary policy was geared towards combating inflation and interest rates soared.[9] State-chartered lenders, however, were constrained in the interest they could charge by State usury laws, which often made loans economically unfeasible. National banks did not share this restriction because section 85 permitted them to charge interest at higher rates set by reference to the then-higher Federal discount rates.

To promote competitive equality in the nation's banking system and reaffirm the principle that institutions offering similar products should be subject to similar rules, Congress incorporated language from section 85 into the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA)[10] and granted all federally insured financial institutions—State banks, savings associations, and credit unions—similar interest rate authority to that provided to national banks.[11] The incorporation was not mere happenstance. Congress made a conscious choice to incorporate section 85's standard.[12] More specifically, section 521 of DIDMCA added a new section 27 to the FDI Act, which provides that in order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed by the subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of the subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of the section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.[13]

As stated above, section 27(a) of the FDI Act was patterned after section 85.[14] Because section 27 was patterned after section 85 and uses similar language, courts and the FDIC have consistently construed section 27 *in pari materia* with section 85.[15] Section 27 has been construed to permit a State bank to export to out-of-State borrowers the interest rate permitted by the State in which the State bank is located, and to preempt the contrary laws of such borrowers' States.[16]

Pursuant to section 525 of D-OMCA,[17] States may opt out of the coverage of section 27. This opt-out authority is exercised by adopting a law, or certifying that the voters of the State have voted in favor of a provision, stating explicitly that the State does not want section 27 to apply with respect to loans made in such State. Iowa and

[4] 12 U.S.C. 85.

[5] 85 U.S. 409 (1873).

[6] *See Fisher* v. *First National Bank,* 548 F.2d 255, 259 (8th Cir. 1977); *Northway Lanes* v. *Hackley Union National Bank & Trust Co.,* 464 F.2d 855, 864 (6th Cir. 1972).

[7] 439 U.S. 299 (1978).

[8] *See Smiley* v. *Citibank (South Dakota), N.A.,* 517 U.S. 735 (1996).

[9] *See United State* v. *Ven-Fuel, Inc.,* 758 F.2d 741, 764 n.20 (1st Cir. 1985) (discussing fluctuations in the prime rate from 1975 to 1983).

[10] Public Law 96–221, 94 Stat. 132, 164–168 (1980).

[11] *See* Statement of Senator Bumpers, 126 Cong. Rec. 6,907 (Mar. 27, 1980).

[12] *See Greenwood Trust Co.* v. *Massachusetts,* 971 F.2d 818, 827 (1st Cir. 1992); 126 Cong. Rec. 6,907 (1980) (statement of Senator Bumpers); 125 Cong. Rec. 30,655 (1979) (statement of Senator Pryor).

[13] 12 U.S.C. 1831d(a).

[14] Interest charges for savings associations are governed by section 4(g) of the Home Owners' Loan Act (12 U.S.C. 1463(g)), which is also patterned after section 85. *See* DIDMCA, Public Law 96–221.

[15] *See, e.g., Greenwood Trust Co.,* 971 F.2d at 827; FDIC General Counsel's Opinion No. 11, *Interest Charges by Interstate State Banks,* 63 FR 27282 (May 18, 1998).

[16] *Greenwood Trust Co.,* 971 F.2d at 827.

[17] 12 U.S.C. 1831d note.

Puerto Rico have opted out of the coverage of section 27 in this manner.[18]

C. Interstate Branching Statutes

The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal I) generally established a Federal framework for interstate branching for both State banks and national banks.[19] Among other things, Riegle-Neal I addressed the appropriate law to be applied to out-of-State branches of interstate banks. With respect to national banks, the statute amended 12 U.S.C. 36 to provide for the inapplicability of specific host State laws to branches of out-of-State national banks, under specified circumstances, including where Federal law preempted such State laws with respect to a national bank.[20] The statute also provided for preemption where the Comptroller of the Currency determines that State law discriminates between an interstate national bank and an interstate State bank.[21] Riegle-Neal I, however, did not include similar provisions to exempt interstate State banks from the application of host State laws. The statute instead provided that the laws of host States applied to branches of interstate State banks in the host State to the same extent such State laws applied to branches of banks chartered by the host State.[22] This left State banks at a competitive disadvantage when compared with national banks, which benefited from preemption of certain State laws.

Congress provided interstate State banks parity with interstate national banks three years later, through the Riegle-Neal Amendments Act of 1997 (Riegle-Neal II).[23] Riegle-Neal II amended the language of section 24(j)(1) to provide that the laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.[24]

Under section 24(j), the laws of a host State apply to branches of interstate State banks to the same extent such State laws apply to a branch of an interstate national bank. If laws of the host State are inapplicable to a branch of an interstate national bank, they are equally inapplicable to a branch of an interstate State bank.

D. Agencies' Interpretations of the Statutes

Sections 24(j) and 27 of the FDI Act have been interpreted in two published opinions of the FDIC's General Counsel. General Counsel's Opinion No. 10, published in April 1998, clarified that for purposes of section 27, the term ''interest'' includes those charges that a national bank is authorized to charge under section 85.[25] [26]

The question of where banks are ''located'' for purposes of sections 27 and 85 has been the subject of interpretation by both the OCC and FDIC. Following the enactment of Riegle-Neal I and Riegle-Neal II, the OCC has concluded that while ''the mere presence of a host state branch does not defeat the ability of a national bank to apply its home state rates to loans made to borrowers who reside in that host state, if a branch or branches in a particular host state approves the loan, extends the credit, and disburses the proceeds to a customer, Congress contemplated application of the usury laws of that state regardless of the state of residence of the borrower.'' [27] Alternatively, where a loan cannot be said to be made in a host State, the OCC concluded that ''the law of the home state could always be chosen to apply to the loans.'' [28]

FDIC General Counsel's Opinion No. 11, published in May 1998, was intended to address questions regarding the appropriate State law, for purposes of section 27, that should govern the interest charges on loans made to customers of a State bank that is chartered in one State (its home State) but has a branch or branches in another State (its host State).[29] Consistent with the OCC's interpretations regarding section 85, the FDIC's General Counsel concluded that the determination of which State's interest rate laws apply to a loan made by such a bank depends on the location where three non-ministerial functions involved in making the loan occur—loan approval, disbursal of the loan proceeds, and communication of the decision to lend. If all three non-ministerial functions involved in making the loan are performed by a branch or branches located in the host State, the host State's interest provisions would apply to the loan; otherwise, the law of the home State would apply. Where the three non-ministerial functions occur in different States or banking offices, host State rates may be applied if the loan has a clear nexus to the host State.

The effect of FDIC General Counsel's Opinions No. 10 and No. 11 was to promote parity between State banks and national banks with respect to interest charges. Importantly, in the context of interstate banking, the opinions confirm that section 27 of the FDI Act permits State banks to export interest charges allowed by the State where the bank is located to out-of-State borrowers, even if the bank maintains a branch in the State where the borrower resides.

E. Statutory Gaps in Section 27

Section 27 does not state at what point in time the validity and enforceability under section 27 of the interest-rate term of a bank's loan should be determined. Situations may arise when the usury laws of the State where the bank is located change after a loan is made (but before the loan has been paid in full), and a loan's rate may be non-usurious under the old law but usurious under the new law. Similar issues arise where a loan is made in reliance on the Federal commercial paper rate, and that rate changes before the loan is paid in full. To fill this statutory gap and carry out the purpose

[18] *See* 1980 Iowa Acts 1156 sec. 32; P.R. Laws Ann. tit. 10 sec. 998*1*. Colorado, Maine, Massachusetts, North Carolina, Nebraska, and Wisconsin have previously opted out of coverage of section 27, but either rescinded their respective opt-out statutes or allowed them to expire.

[19] Public Law 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[20] 12 U.S.C. 36(f)(1)(A), provides, in relevant part, that the laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except when Federal law preempts the application of such State laws to a national bank.

[21] 12 U.S.C. 36(f)(1)(A)(ii).

[22] Public Law 103–328, sec. 102(a).

[23] Public Law 105–24, 111 Stat. 238 (July 3, 1997).

[24] 12 U.S.C. 1831a(j)(1).

[25] FDIC General Counsel's Opinion No. 10, *Interest Charged Under Section 27 of the Federal Deposit Insurance Act,* 63 FR 19258 (Apr. 17, 1998).

[26] The primary OCC regulation implementing section 85 is 12 CFR 7.4001. Section 7.4001(a) defines ''interest'' for purposes of section 85 to include the numerical percentage rate assigned to a loan and also late payment fees, overlimit fees, and other similar charges. Section 7.4001(b) defines the parameters of the ''most favored lender'' and ''exportation'' doctrines for national banks. The OCC rule implementing section 4(g) of the Home Owners' Loan Act for both Federal and State savings associations, 12 CFR 160.110, adopts the same regulatory definition of ''interest'' provided by § 7.4001(a).

[27] Interpretive Letter No. 822 at 9 (citing statement of Senator Roth).

[28] Interpretive Letter No. 822 at 10.

[29] FDIC General Counsel's Opinion No. 11, *Interest Charges by Interstate State Banks,* 63 FR 27282 (May 18, 1998).

of section 27,[30] the FDIC concludes that the validity and enforceability under section 27 of the interest-rate term of a loan must be determined when the loan is made, not when a particular interest payment is ''taken'' or ''received.'' This interpretation protects the parties' expectations and reliance interests at the time a loan is made, and provides a logical and fair rule that is easy to apply.

A second statutory gap is also present because section 27 expressly gives State banks the right to make loans at the rates permitted by their home States, but does not explicitly list all the components of that right. One such implicit component is the right to assign the loans made under the preemptive authority of section 27. State banks' power to make loans has been traditionally viewed as implicitly carrying with it the power to assign loans.[31] Thus, a State bank's statutory authority under section 27 to make loans at particular rates necessarily includes the power to assign the loans at those rates. Denying State banks the ability to transfer enforceable rights in the loans they make under the preemptive authority of section 27 would undermine the purpose of section 27 and deprive State banks of an important and indispensable component of their Federal statutory power to make loans at the rates permitted by their home State. State banks' ability to transfer enforceable rights in the loans they validly made under the preemptive authority of section 27 is also central to the stability and liquidity of the domestic loan markets. A lack of enforceable rights in the transferred loans' interest rate terms would also result in distressed market values for many loans, frustrating the purpose of the FDI Act, which would also affect the FDIC as a secondary market loan seller. One way the FDIC fulfills its mission to maintain stability and public confidence in the nation's financial system is by carrying out all of the tasks triggered by the closure of an FDIC-insured institution. This includes attempting to find a purchaser for the institution and the liquidation of the assets held by the failed bank. Following a bank closing, the FDIC as conservator or receiver (FDIC–R) is often left with large portfolios of loans.

The FDIC–R has a statutory obligation to maximize the net present value return from the sale or disposition of such assets and minimize the amount of any loss, both to protect the Deposit Insurance Fund (DIF).[32] The DIF would be significantly impacted in a large bank failure scenario if the FDIC–R were forced to sell loans at a large discount to account for impairment in the value of those loans in a distressed secondary market. This uncertainty would also likely reduce overall liquidity in loan markets, further limiting the ability of the FDIC–R to sell loans. The *Madden* decision, as it stands, could significantly impact the FDIC's statutory obligation to resolve failed banks using the least costly resolution option and minimizing losses to the DIF.

To eliminate ambiguity and carry out the purpose of section 27, the proposed regulation makes explicit that the right to assign loans is a component of banks' Federal statutory right to make loans at the rates permitted by section 27. The regulation accomplishes this by providing that the validity and enforceability of the interest rate term of a loan under section 27 is determined at the inception of the loan, and subsequent events such as an assignment do not affect the validity or enforceability of the loan.

The FDIC's proposal, addressing the two statutory gaps in section 27 in a manner that carries out the goals of the Federal statute, is based on Federal law. Specifically, the rule is based on the meaning of the text of the statute, interpreted in light of the statute's purpose and the FDIC's regulatory experience. It is, however, also consistent with state banking powers and common law doctrines such as the ''valid when made'' and ''stand-in-the-shoes'' rules. The ''valid when made'' rule provides that usury must exist at the inception of the loan for a loan to be deemed usurious; as a corollary, if the loan was not usurious at inception, the loan cannot become usurious at a later time, such as upon assignment, and the assignee may lawfully charge interest at the rate contained in the transferred loan.[33] The banks' ability to transfer enforceable rights in the loans they make is also consistent with fundamental principles of contract law. It is well settled that an assignee succeeds to all the assignor's rights in a contract, standing in the shoes of the assignor.[34] This includes the right to receive the consideration agreed upon in the contract, which for a loan includes the interest agreed upon by the parties.[35] Under this ''stand-in-the-shoes'' rule, the non-usurious character of a loan would not change when the loan changes hands, because the assignee is merely enforcing the rights of the assignor and stands in the assignor's shoes. A loan that was not usurious under section 27 when made would thus not become usurious upon assignment.

The FDIC's interpretation of section 27 is also consistent with State banking laws, which typically grant State banks the power to sell or transfer loans, and more generally, to engage in banking activities similar to those listed in the National Bank Act and activities that are ''incidental to banking.'' [36] Similarly,

[30] In 12 U.S.C. 1819(a), Congress gave the FDIC statutory authority to prescribe ''such rules and regulations as it may deem necessary to carry out the provisions of this chapter,'' namely Chapter 16 of Title 12 of the U.S. Code. Section 27, codified at Section 1831d of Chapter 16, is a provision of ''this chapter.''

[31] In *Planters' Bank* v. *Sharp,* 47 U.S. 301, 323 (1848), a case dealing with the powers of a State bank, the Supreme Court held that a statute that explicitly gave banks the power to make loans also implicitly gave them the power to assign the loans because ''in discounting notes and managing its property in legitimate banking business . . . [a bank] must be able to assign or sell those notes when necessary and proper.''

[32] 12 U.S.C. 1821(d).

[33] *See Nichols* v. *Fearson,* 32 U.S. (7. Pet.) 103, 109 (1833) (''a contract, which in its inception, is unaffected by usury, can never be invalidated by any subsequent usurious transaction''); *see also Gaither* v. *Farmers & Merchants Bank of Georgetown,* 26 U.S. 37, 43 (1828) (''the rule cannot be doubted, that if the note free from usury, in its origin, no subsequent usurious transactions respecting it, can affect it with the taint of usury.''); *FDIC* v. *Lattimore Land Corp.,* 656 F.2d 139 (5th Cir. 1981) (bank, as the assignee of the original lender, could enforce a note that was not usurious when made by the original lender even if the bank itself was not permitted to make loans at those interest rates); *FDIC* v. *Tito Castro Constr. Co.,* 548 F. Supp. 1224, 1226 (D. P.R. 1982) (''One of the cardinal rules in the doctrine of usury is that a contract which in its inception is unaffected by usury cannot be invalidated as usurious by subsequent events.'').

[34] *See Dean Witter Reynolds Inc.* v. *Variable Annuity Life Ins. Co.,* 373 F.3d 1100, 1110 (10th Cir. 2004); *see also Tivoli Ventures, Inc.* v. *Bumann,* 870 P.2d 1244, 1248 (Colo. 1994) (''As a general principle of contract law, an assignee stands in the shoes of the assignor.''); *Gould* v. *Jackson,* 42 NW2d 489, 490 (Wis. 1950) (assignee ''stands exactly in the shoes of [the] assignor,'' and ''succeeds to all of his rights and privileges'').

[35] *See Olvera* v. *Blitt & Gaines, P.C.,* 431 F.3d 285, 286–88 (7th Cir. 2005) (assignee of a debt is free to charge the same interest rate that the assignor charged the debtor, even if, unlike the assignor, the assignee does not have a license that expressly permits the charging of a higher rate). As the *Olvera* court noted, ''the common law puts the assignee in the assignor's shoes, whatever the shoe size.'' 431 F.3d at 289.

[36] *See, e.g.,* N.Y Banking Law sec. 961(1) (granting New York-chartered banks the power to ''discount, purchase and negotiate promissory notes, drafts, bills of exchange, other evidences of debt, and obligations in writing to pay in installments or otherwise all or part of the price of personal property or that of the performance of services; purchase accounts receivable. . .; lend money on real or personal security; borrow money and secure such borrowings by pledging assets; buy and sell exchange, coin and bullion; and receive deposits of moneys, securities or other personal property upon such terms as the bank or trust company shall prescribe;. . .; and exercise all such incidental powers as shall be necessary to carry on the business of banking''). States' ''wild card'' or parity statutes typically grant State banks competitive

Continued

the National Bank Act authorizes national banks to sell or transfer loan contracts by allowing ''negotiating'' (*i.e.,* transfer) of ''promissory notes, drafts, bills of exchange, and other evidences of debt.'' [37]

F. Proposed Rule

On December 6, 2019, the FDIC published a notice of proposed rulemaking (NPR) to issue regulations implementing sections 24(j) and 27. Through the proposed regulations, the FDIC sought to clarify the application of section 27 and reaffirm State banks' ability to assign enforceable rights in the loans they made under the preemptive authority of Section 27. The proposed regulations also were intended to maintain parity between national banks and State banks with respect to interest rate authority. The OCC has taken the position that national banks' authority to charge interest at the rate established by section 85 includes the authority to assign the loan to another party at the contractual interest rate.[38] Finally, the proposed regulations also would implement section 24(j) (12 U.S.C. 1831a(j)) to provide that the laws of a State in which a State bank is not chartered in but in which it maintains a branch (host State), shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank.

The comment period for the NPR ended on February 4, 2020. The FDIC received a total of 59 comment letters from a variety of individuals and entities, including trade associations, insured depository institutions, consumer and public interest groups, state banking regulators and state officials, a city treasurer, non-bank lenders, law firms, members of Congress, academics, and think tanks. In developing the final rule, the FDIC carefully considered all of the comments that it received in response to the NPR.

III. Discussion of Comments

In general, the comments submitted by financial services trade associations, depository institutions, and non-bank lenders expressed support for the proposed rule. These commenters stated that the proposed rule would: address legal uncertainty created by the *Madden* decision; reaffirm longstanding views regarding the enforceability of interest rate terms on loans that are sold, transferred, or otherwise assigned; and reaffirm state banks' ability to engage in activities such as securitizations, loan sales, and sales of participation interests in loans, that are crucial to the safety and soundness of these banks' operations. By reaffirming state banks' ability to sell loans, these commenters argued, the proposed rule would ensure that banks have the capacity to continue lending to their customers, including small businesses, a function that is critical to supporting the nation's economy. In addition, these commenters asserted that the proposed rule would promote the availability of credit for higher-risk borrowers.

Comments submitted by consumer advocates were generally critical of the proposed rule. These comments stated that the proposed rule would allow predatory non-bank lenders to evade State law interest rate caps through partnerships with State banks, and the FDIC lacks the authority to regulate the interest rates charged by non-bank lenders. Commenters further asserted that regulation of interest rate limits has historically been a State function, and the FDIC seeks to change that by claiming that non-banks that buy loans from banks should be able to charge interest rates exceeding those provided by State law. These commenters also argued that the proposed rule was unnecessary, asserting that there is no shortage of credit available to consumers and no evidence demonstrating that loan sales are necessary to support banks' liquidity.

In addition to these general themes, commenters raised a number of specific concerns with respect to the FDIC's proposed rule. These issues are discussed in further detail below.

A. Statutory Authority for the Proposed Rule

Some commenters asserted that the proposed rule exceeds the FDIC's authority under section 27 by regulating non-banks or establishing permissible interest rates for non-banks. The FDIC would not regulate non-banks through the proposed rule; rather, the proposed rule would clarify the application of section 27 to State banks' loans. The proposed rule provides that the permissibility of interest on a loan under section 27 would be determined as of the date the loan was made. As the FDIC explained in the NPR, this interpretation of section 27 is necessary to establish a workable rule to determine the timing of compliance with the statute.[39] This rule would apply to loans made by State banks, regardless of whether such loans are subsequently assigned to another bank or to a non-bank. To the extent a non-bank that obtained a State bank's loan would be permitted to charge the contractual interest rate, that is because a State bank's statutory authority under section 27 to make loans at particular rates necessarily includes the power to assign the loans at those rates. The regulation would not become a regulation of assignees simply because it would have an indirect effect on assignees.[40]

Some commenters argued that the FDIC lacks authority to prescribe the effect of the assignment of a State bank loan made under the preemptive authority of section 27 because the statutory provision does not expressly refer to the ''assignment'' of a State bank's loan. The statute's silence, however, reinforces the FDIC's authority to issue interpreting regulations to clarify an aspect of the statute that Congress left open. Agencies are permitted to issue regulations filling statutory gaps and routinely do so.[41] The FDIC used its banking expertise to fill the gaps in section 27, and its interpretation is grounded in the terms and purpose of the statute, read within their proper historical and legal context. The power to assign loans has been traditionally understood as a component of the power to make loans. Thus, the power to make loans at the interest rate permitted by section 27 implicitly includes the power to assign loans at those interest rates. For example, the Supreme Court held that a state banking

equality with national banks under applicable Federal statutory or regulatory authority. Such authority is provided either: (1) Through state legislation or regulation; or (2) by authorization of the state banking supervisor.

[37] 12 U.S.C. 24(Seventh); *see also* 12 CFR 7.4008 (''A national bank may make, sell, purchase, participate in, or otherwise deal in loans . . . subject to such terms, conditions, and limitations prescribed by the Comptroller of the Currency and any other applicable Federal law.''). The OCC has interpreted national banks' authority to sell loans under 12 U.S.C. 24 to reinforce the understanding that national banks' power to charge interest at the rate provided by section 85 includes the authority to convey the ability to continue to charge interest at that rate. As the OCC has explained, application of State usury law in such circumstances would be preempted under the standard set forth in *Barnett Bank of Marion County, N.A.* v. *Nelson,* 517 U.S. 25 (1996). *See* Brief for United States as amicus curiae, *Midland Funding, LLC* v. *Madden* (No. 15–610), at 11.

[38] *See* 85 FR 33530, 33531 (June 2, 2020).

[39] *See* 84 FR 66848.

[40] *See FERC* v. *Elec. Power Supply Ass'n,* 136 S. Ct. 760, 776 (2016) (where Federal statute limited agency jurisdiction to the wholesale market and reserved regulatory authority over retail sales to the States, a regulation directed at wholesale transactions was not outside the agency's authority and did not overstep on the States' authority, even if the regulation had substantial indirect effects on retail transactions).

[41] *See Chevron* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843 (1984) (agencies have authority to make rules to ''fill any [statutory] gap left, implicitly or explicitly, by Congress'').

charter statute providing the power to make loans (as section 27 does here) also confers the power to assign them, even if the power to assign is not explicitly granted in the statute.[42] The California Supreme Court reached a similar conclusion.[43] Viewing the power to assign as an indispensable component of the power to make loans under section 27 would also carry out the purpose of the statute. The power to assign is indispensable in modern commercial transactions, and even more so in banking: State banks need the ability to sell loans in order to properly maintain their capital and liquidity. As the Supreme Court explained, ''in managing its property in legitimate banking business, [a bank] must be able to assign or sell those notes when necessary and proper, as, for instance, to procure more [liquidity] in an emergency, or return an unusual amount of deposits withdrawn, or pay large debts.'' [44] Absent the power to assign loans made under section 27, reliance on the statute could ultimately hurt State banks (instead of benefiting them) should they later face a liquidity crisis or other financial stresses. The FDIC's interpretation of the statute helps to prevent such unintended results.

Commenters argued that the proposed rule is premised upon the assumption that the preemption of State law interest rate limits under section 27 is an assignable property interest. The proposed rule does not purport to allow State banks to assign the ability to preempt State law interest rate limits under section 27. Instead, the proposed rule would allow State banks to assign loans at their contractual interest rates. This is not the same as assigning the authority to preempt State law interest rate limits. For example, the proposed rule would not authorize an assignee to renegotiate the interest rate of a loan to an amount exceeding the contractual rate, even though the assigning bank may have been able to charge interest at such a rate. Consistent with section 27, the proposed rule would allow State banks to assign loans at the same interest rates at which they are permitted to make loans. This effectuates State banks' Federal statutory interest rate authority, and does not represent an extension of that authority.

Commenters stated that Congress has expressly addressed the assignment of loans in other statutory provisions that preempt State usury laws, but did not do so in section 27, suggesting that section 27 was not intended to apply following the assignment of a State bank's loan. In particular, these commenters point to section 501 of DIDMCA,[45] which preempts State law interest rate limits with respect to certain mortgage loans. But careful consideration of section 501 and its legislative history appears to reinforce the view that banks can transfer enforceable rights in the loans they make under section 27. Section 501 does not expressly state that it applies after a loan's assignment.[46] Nevertheless, it is implicit in section 501's text and structure that a loan exempted from State usury laws when it is made continues to be exempt from those laws upon assignment.[47] Like section 501, section 27 is silent regarding the effect of the assignment or transfer of a loan, and should similarly be interpreted to apply following the assignment or transfer of a loan.

Some commenters also argue that the FDIC lacked the authority to issue the proposed rule because they view State banks' power to assign loans as derived from State banking powers laws. The FDIC's authority to issue the rule, however, is not based on State law. Rather, it is based on section 27, which implicitly authorizes State banks to assign the loans they make at the interest rate specified by the statute. Nor is the FDIC's interpretation based on Federal common law or the valid-when-made rule, as some comments argued. In the NPR, the FDIC stated that while the FDIC's interpretation of the statute was ''consistent'' with the valid-when-made rule, it was not based on it.[48] The proposed rule's consistency with common law principles reinforces parties' established expectations, but as stated in the NPR, the FDIC's authority to issue the proposed rule arises under section 27 rather than common law.

One comment letter argued that the FDIC's proposed rule fails for lack of an explicit reference to assignment in the text of section 27, stating that a presumption against preemption applies to the proposed rule. In a case involving the OCC's interpretation of section 85, however, the Supreme Court noted that a similar argument invoking a presumption against preemption ''confuses the question of the substantive (as opposed to pre-emptive) *meaning* of a statute with the question of *whether* a statute is pre-emptive.'' [49] The Court held that the presumption did not apply to OCC regulations filling statutory gaps in section 85 because those regulations addressed the substantive meaning of the statute, not ''the question of whether a statute is pre-emptive.'' [50] The Court reaffirmed that under its prior holdings, ''there is no doubt that § 85 pre-empts state law.'' [51] Like section 85, section 27 also expressly pre-empts State laws that impose an interest rate limit lower than the interest rate permitted by section 27. Just as in *Smiley,* the question is what section 27 means, and thus, just as in *Smiley,* the presumption against preemption is inapplicable.

One commenter argued that the FDIC is bound by *Madden*'s interpretation of section 85 under the Supreme Court's *Brand X* jurisprudence. The FDIC disagrees that the *Madden* decision interpreted section 85. Nevertheless, even if *Madden* did interpret section 85, the Supreme Court expressly stated that its *Brand X* decision does not ''preclude[ ] agencies from revising unwise judicial constructions of ambiguous statutes.'' [52] Because the statute here is ambiguous, *Brand X* does not preclude the FDIC from filling the two statutory gaps addressed by the proposed regulation. In any event, *Madden's* interpretation is binding—at most—only in the Second Circuit, and does not preclude the FDIC from adopting a different interpretation.

B. Evidentiary Basis for the Proposal

Some commenters asserted that the proposed rule violates the Administrative Procedure Act [53] because the FDIC did not provide evidence that State banks were unable to sell loans, or that the market for State

[42] *Planters' Bank of Miss.* v. *Sharp,* 47 U.S. 301, 322–23 (1848) (''in [making] notes and managing its property in legitimate banking business, [a bank] must be able to assign or sell those notes.'').

[43] *Strike* v. *Trans-West Discount Corp.,* 92 Cal. App. 3d 735, 745 (Cal. Ct. App. 4th Dist. 1979).

[44] *Planters,* 47 U.S. at 323.

[45] 12 U.S.C. 1735f–7a.

[46] One comment letter suggested that the statute's reference to ''credit sales'' means that the statute applies to sales of mortgage loans, not just to originations of such loans. But the statute merely states that it applies to (and exempts from State usury laws) ''any loan, mortgage, credit sale, or advance'' that is ''secured by'' first-lien residential mortgages. 12 U.S.C. 1735f–7a. The statute does not state that it applies to credit sales ''of'' first-lien residential mortgages. The statute is silent on what happens—upon assignment or sale—to loans, credits sales, or advances originated pursuant to the statute.

[47] The description of section 501 in the Committee Report appears to confirm this view: ''In connection with the provisions in this section, it is the Committee's intent that loans originated under this usury exemption will not be subject to claims of usury even if they are later sold to an investor who is not exempt under this section.'' Sen. Rpt. 96–368 at 19.

[48] 84 FR 66848 (Dec. 6, 2019).

[49] *Smiley* v. *Citibank (South Dakota), N.A.,* 517 U.S. at 744 (emphasis in original).

[50] *Id.*

[51] *Id.*

[52] *Brand X,* 545 U.S. at 983. Nothing in *Madden* holds that the statute unambiguously forecloses the agency's interpretation.

[53] 5 U.S.C. 551 *et seq.*

banks' loans was distressed. The Administrative Procedure Act does not require an agency to produce empirical evidence in rulemaking; rather, it must justify a rule with a reasoned explanation.[54] Moreover, agencies may adopt prophylactic rules to prevent potential problems before they arise.[55] The FDIC believes that safety and soundness concerns warrant clarification of the application of section 27 to State banks' loans, even if particular State banks or the loan market more generally are not currently experiencing distress. Market conditions can change quickly and without warning, potentially exposing State banks to increased risk in the event they need to sell their loans. The proposed rule would proactively promote State banks' safety and soundness, and it is well-established that empirical evidence is unnecessary where, as here, the ''agency's decision is primarily predictive.'' [56] Nevertheless, the FDIC believes that there is considerable evidence of uncertainty following the *Madden* decision. Commenters pointed to studies discussing the effects of *Madden* in the Second Circuit, as well as anecdotal evidence of increased difficulty selling loans made to borrowers in the Second Circuit post-*Madden.*

One commenter asserted that the proposal failed to include evidence showing that State banks rely on loan sales for liquidity, and stated that the 5,200 banks in the United States provide a robust market for State banks' loans. Securitizations, which the FDIC mentioned in the proposal, are an example of banks' reliance on the loan sale market to non-banks for liquidity.[57] The comment's focus on whether banks obtain liquidity by selling loans to non-banks also is mistaken. The regulation is not directed at ensuring that State banks can assign their loans to non-banks; rather, it is directed at protecting these banks' right to assign their loans to any assignees, whether banks or non-banks. Moreover, under the commenter's interpretation of section 27, not all 5,200 banks in the United States would be able to enforce the interest terms of an assigned loan. Only banks located in States that would permit the loan's contractual interest rate would be able to enforce the interest rate term of the loan. In addition, reliance on sales to banks alone would not address the FDIC's safety and soundness concerns, because banks may be unable to purchase loans sold by other banks in circumstances where there are widespread liquidity crises in the banking sector.[58]

The FDIC stated in the preamble to the proposed rule that it was unaware of ''widespread or significant effects on credit availability or securitization markets having occurred to this point as a result of the *Madden* decision,'' and some commenters misunderstood this statement as contradicting the basis for the proposed rule. This statement was included in the discussion of the proposal's potential effects, which the FDIC suggested might fall into two categories: (1) Immediate effects on loans in the Second Circuit that may have been directly affected by *Madden;* and (2) mitigation of the possibility that State banks located in other States might be impaired in their ability to sell loans in the future. While the available evidence suggested that *Madden's* effects on loan sales and availability of credit were generally limited to the Second Circuit states in which the decision applied, the FDIC still believes there would be benefits to addressing the legal ambiguity in section 27 before these effects become more widespread and pronounced.

Another commenter asserted that the FDIC's proposal left unanswered questions about the effects *Madden* has had on securitization markets, and whether those effects justify the exemption of securitization vehicles and assigned loans from State usury laws. This exaggerates the effect of the proposal, which would not completely exempt loans from compliance with State usury laws. Rather, the proposed rule would clarify which State's usury laws would apply to a loan, and provide that whether interest on a loan is permissible under section 27 is determined as of the date the loan was made. While the proposal did not include evidence regarding the extent of *Madden's* effects on securitizations, commenters noted that State banks rely on the assignment of loans through secondary market securitizations to manage concentrations of credit and access other funding sources. Some commenters stated that *Madden* disrupted secondary markets for loans originated by banks and for interests in loan securitizations, and others provided anecdotal evidence that financial institutions involved in securitization markets have been unwilling to underwrite securitizations that include loans with rates above usury limits in States within the Second Circuit.

Some commenters asserted that the proposal ignores a key aspect of the problem, in that it does not address the question of when a State bank is the true lender with respect to a loan. The commenters argue, in effect, that the question of whether a State bank is the true lender is intertwined with the question addressed by the rule—that is, the effect of the assignment or sale of a loan made by a State bank. While both questions ultimately affect the interest rate that may be charged to the borrower, the FDIC believes that they are not so intertwined that they must be addressed simultaneously by rulemaking.[59] In many cases, there is no dispute that a loan was made by a bank. For example, there may not even be a non-bank involved in making the loan.[60] The proposed rule would provide important clarification on the application of section 27 in such cases, reaffirming the enforceability of interest rate terms of State banks' loans following the sale, transfer, or assignment of the loan.

C. Consumer Protection

Several commenters asserted that the regulation of interest rate limits has historically been a State function, and the proposed rule would change that by allowing non-banks that buy loans from State banks to charge rates exceeding State law limits. The framework that governs the interest rates charged by State banks includes both State and

[54] *Stillwell* v. *Office of Thrift Supervision,* 569 F.3d 514, 519 (D.C. Cir. 2009). Although some statutes directed at other agencies require that rulemakings by those agencies be based on substantial evidence in the record, Section 27 imposes no such requirement, and neither does the APA. ''The APA imposes no general obligation on agencies to produce empirical evidence. Rather, an agency has to justify its rule with a reasoned explanation.'' *Id.*

[55] *Id.* (noting that ''[a]n agency need not suffer the flood before building the levee.'').

[56] *Rural Cellular Ass'n* v. *FCC,* 588 F.3d 1095, 1105 (D.C. Cir. 2009).

[57] Indeed, the comment concedes that securitizations are a source of liquidity for banks, but argues that only the largest banks engage in securitizations of non-mortgage loans. But this actually appears to highlight the need for the regulation.

[58] The comment asserts that banks' primary sources of liquidity are deposits and wholesale funding markets, Federal Home Loan Bank advances, and the government-sponsored enterprises' cash windows, with the Federal Reserve's discount window as a backup. In the FDIC's experience, some of these sources of liquidity may be unavailable in a financial stress scenario. For example, if a bank is in troubled condition, there are significant restrictions on its ability to use the Federal Reserve's discount window to borrow funds to meet liquidity needs.

[59] Agencies have discretion in how to handle related, yet discrete, issues in terms of priorities and need not solve every problem before them in the same proceeding. *Taylor* v. *Federal Aviation Administration,* 895 F.3d 56, 68 (D.C. Cir. 2018).

[60] *Madden* itself was such a case, as the national bank did not write off the loan in question and sell it to a non-bank debt collector until three years after the consumer opened the account. *See* 786 F.3d at 247–48.

Federal laws. As noted above, section 27 generally authorizes State banks to charge interest at the rate permitted by the law of the State in which the bank is located, even if that rate exceeds the rate permitted by the law of the borrower's State. Congress also recognized States' interest in regulating interest rates within their jurisdictions, giving States the authority to opt out of the coverage of section 27 with respect to loans made in the State. Through the proposed rule, the FDIC would clarify the application of this statutory framework. It also would reaffirm the enforceability of interest rate terms following the sale, transfer, or assignment of a loan.

Several commenters asserted that the proposal would facilitate predatory lending. This concern, however, appears to arise from perceived abuses of longstanding statutory authority rather than the proposed rule. Federal court precedents have for decades allowed banks to charge interest at the rate permitted by the law of the bank's home State, even if that rate exceeds the rate permitted by the law of the borrower's State.[61] Under longstanding views regarding the enforceability of interest rate terms on loans that a State bank has sold, transferred, or assigned, non-banks also have been permitted to charge the contract rate when they obtain a loan made by a bank. The rule would reinforce the status quo, which was arguably unsettled by *Madden,* with respect to these authorities, but it is not the basis for them.[62] In addition, if States have concerns that nonbank lenders are using partnerships with out-of-State banks to circumvent State law interest rate limits, States are expressly authorized to opt out of section 27.

Commenters also stated that the proposal would encourage so-called ''rent-a-bank'' arrangements involving non-banks that should be subject to state laws and regulations. The proposed rule would not exempt State banks or non-banks from State laws and regulations. It would only clarify the application of section 27 with respect to the interest rates permitted for State banks' loans. Importantly, the proposed rule would not address or affect the broader licensing or regulatory requirements that apply to banks and non-banks under applicable State law. States also may opt out of the coverage of section 27 if they choose.

Several commenters focused on ''true lender'' theories under which it may be established that a non-bank lender, rather than a bank, is the true lender with respect to a loan, with the effect that section 27 would not govern the loan's interest rate. These commenters asserted that the proposed rule would burden State regulators and private citizens with the impractical task of determining which party is the true lender in such a partnership. Several commenters stated that the FDIC should establish rules for making this determination. The proposal did not address the circumstances under which a non-bank might be the true lender with respect to a loan, and did not allocate the task of making such a determination to any party. Given the policy issues associated with this type of partnership, consideration separate from this rulemaking is warranted. However, that should not delay this rulemaking, which addresses the need to clarify the interest rates that may be charged with respect to State banks' loans and promotes the safety and soundness of State banks.

One commenter recommended that the FDIC revise the text of its proposed rule to reflect the intention not to preempt the true lender doctrine, suggesting that this was important to ensure that the rule is not used in a manner that exceeds the FDIC's stated intent. The FDIC believes that the text of the proposed regulation cannot be reasonably interpreted to foreclose true lender claims. The rule specifies the point in time when it is determined whether interest on a loan is permissible under section 27, but this is premised upon a State bank having made the loan. Moreover, including a specific reference to the true lender doctrine in the regulation could be interpreted to unintentionally limit its use, as courts might refer to this doctrine using different terms. Therefore, as discussed in the NPR, the rule does not address the question of whether a State bank or insured branch of a foreign bank is a real party in interest with respect to a loan or has an economic interest in the loan under state law, *e.g.,* which entity is the true lender.

Commenters also asserted that the FDIC's statement in the preamble to the proposed rule that it views unfavorably certain relationships between banks and non-banks does not square with the failure of regulators to sufficiently address instances of predatory lending. The FDIC believes that this rulemaking does not provide the appropriate avenue to address concerns regarding predatory lending by specific parties. The FDIC believes that it is important to put in place a workable rule clarifying the application of section 27. As discussed above, the proposal is not intended to foreclose remedies available under State law if there are concerns that particular banks or non-banks are violating State law interest rate limits.

D. Effect of Opt Out by a State

A commenter requested that the FDIC clarify how the proposed rule would interact with the right of states to opt out of section 27. As noted in the proposal, pursuant to section 525 of DIDCMA,[63] States may opt out of the coverage of section 27. This opt-out authority is exercised by adopting a law, or certifying that the voters of the State have voted in favor of a provision, stating explicitly that the State does not want section 27 to apply with respect to loans made in such State. If a State opts out, neither section 27 nor its implementing regulations would apply to loans made in the State. In so far as these regulations codify existing law and interpretations of section 27, as reflected in FDIC General Counsel's Opinion No. 10 and 11, and are patterned after the equivalent regulations applicable to national banks, such interpretations would not apply with respect to loans made in a State that has elected to override section 27. These interpretations include the most favored lender doctrine, interest rate exportation, and the Federal definition of interest.[64] Accordingly, if a State opts out of section 27, State banks making loans in that State could not charge interest at a rate exceeding the limit set by the State's laws, even if the law of the State where the State bank is located would permit a higher rate.

E. Other Technical Changes

Several commenters noted that the text of the FDIC's proposed regulations implementing section 27, and specifically proposed § 331.4(e), differed in certain respects from the regulations proposed by the OCC to implement section 85. Commenters suggested that this variance risks different judicial interpretations of statutes historically interpreted *in pari materia,* and recommended that the agencies harmonize the language of these provisions to reinforce that they accomplish the same result.

The FDIC seeks through this rulemaking to maintain parity between State banks and national banks with

[61] *Marquette Nat'l Bank* v. *First of Omaha Service Corp.,* 439 U.S. 299 (1978); *Greenwood Trust Co.* v. *Massachusetts,* 971 F.2d 818, 827 (1st Cir. 1992).

[62] Some commenters described State banks and non-banks that they believe have engaged in predatory lending. Because the proposed rule has yet to take effect, this reinforces the conclusion that such lending is based on existing statutory authority, rather than the proposed rule.

[63] 12 U.S.C. 1831d note.

[64] *See* 12 CFR 331.4(a) and (b), and 12 CFR 331.2, respectively.

respect to interest rate authority. Section 27 has consistently been applied to State banks in the same manner as section 85 has been applied to national banks. The proposed rule is implementing section 27 by adopting a rule that is parallel to those rules adopted by the OCC. The OCC has amended its rules to provide that interest on a loan that is permissible under section 85 and 1463(g)(1), respectively, shall not be affected by the sale, assignment, or other transfer of the loan. Ultimately, the objective and effect of the OCC's rule is fundamentally the same as the FDIC's proposed rule—to reaffirm that banks may assign their loans without affecting the validity or enforceability of the interest.

In response to commenters' concerns, the FDIC is adopting non-substantive revisions to the text of § 331.4(e). Specifically, the second sentence of § 331.4(e) will be more closely aligned with the text of the OCC's regulation. As a result, § 331.4(e) of the final rule provides that whether interest on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined as of the date the loan was made. Interest on a loan that is permissible under section 27 of the Federal Deposit Insurance Act shall not be affected by a change in State law, a change in the relevant commercial paper rate after the loan was made, or the sale, assignment, or other transfer of the loan, in whole or in part. These changes should not result in different outcomes from the proposed rule.

A commenter suggested that the FDIC should consider clarifying the proposed rule to state that all price terms (including fees) on State banks' loans under section 27 remain valid upon sale, transfer, or assignment. The FDIC believes that the text of the proposed rule addresses this issue, as § 331.2 broadly defined the term ''interest'' for purposes of the rule to include fees. Therefore, fees that are permitted under the law of the State where the State bank is located would remain enforceable following the sale, transfer, or assignment of a State bank's loan.

Another commenter suggested that the FDIC clarify that the application of § 331.4(e) of the proposed rule would also include circumstances where a State bank has sold, assigned, or transferred an interest in a loan. The FDIC agrees that the sale, assignment, or transfer of a partial interest in a loan would fall within the scope of proposed § 331.4(e), and the loan's interest rate terms would continue to be enforceable following such a transaction, and has made a clarifying change to the regulatory text to ensure there is no ambiguity.

IV. Description of the Final Rule

A. Application of Host State Law

Section 331.3 of the final rule implements section 24(j)(1) of the FDI Act, which establishes parity between State banks and national banks regarding the application of State law to interstate branches. If a State bank maintains a branch in a State other than its *home State,* the bank is an *out-of-State State bank* with respect to that State, which is designated the *host State.* A State bank's *home State* is defined as the State that chartered the Bank, and a *host State* is another State in which that bank maintains a branch. These definitions correspond with statutory definitions of these terms used by section 24(j).[65] Consistent with section 24(j)(1), the final rule provides that the laws of a host State apply to a branch of an out-of-State State bank only to the extent such laws apply to a branch of an out-of-State national bank in the host State. Thus, to the extent that host State law is preempted for out-of-State national banks, it is also preempted with respect to out-of-State State banks.

B. Interest Rate Authority

Section 331.4 of the final rule implements section 27 of the FDI Act, which provides parity between State banks and national banks regarding the applicability of State law interest-rate restrictions. Paragraph (a) corresponds with section 27(a) of the statute, and provides that a State bank or insured branch of a foreign bank may charge interest of up to the greater of: 1 percent more than the rate on 90-day commercial paper rate; or the rate allowed by the law of the State where the bank is located. Where a State constitutional provision or statute prohibits a State bank or insured branch of a foreign bank from charging interest at the greater of these two rates, the State constitutional provision or statute is expressly preempted by section 27.

In some instances, State law may provide different interest-rate restrictions for specific classes of institutions and loans. Paragraph (b) clarifies the applicability of such restrictions to State banks and insured branches of foreign banks. State banks and insured branches of foreign banks located in a State are permitted to charge interest at the maximum rate permitted to any State-chartered or licensed lending institution by the law of that State. Further, a State bank or insured branch of a foreign bank is subject only to the provisions of State law relating to the class of loans that are material to the determination of the permitted interest rate. For example, assume that a State's laws allow small State-chartered loan companies to charge interest at specific rates, and impose size limitations on such loans. State banks or insured branches of foreign banks located in that State could charge interest at the rate permitted for small State-chartered loan companies without being so licensed. However, in making loans for which that interest rate is permitted, State banks and insured branches of foreign banks would be subject to loan size limitations applicable to small State-chartered loan companies under that State's law. This provision of the final rule is intended to maintain parity between State banks and national banks, and corresponds with the authority provided to national banks under the OCC's regulations at 12 CFR 7.4001(b).

Paragraph (c) of § 331.4 clarifies the effect of the final rule's definition of the term *interest* for purposes of State law. Importantly, the final rule's definition of *interest* does not change how interest is defined by the State or how the State's definition of interest is used solely for purposes of State law. For example, if late fees are not interest under State law where a State bank is located but State law permits its most favored lender to charge late fees, then a State bank located in that State may charge late fees to its intrastate customers. The State bank also may charge late fees to its interstate customers because the fees are interest under the Federal definition of interest and an allowable charge under State law where the State bank is located. However, the late fees are not treated as interest for purposes of evaluating compliance with State usury limitations because State law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations. This provision of the final rule corresponds to a similar provision in the OCC's regulations, 12 CFR 7.4001(c).

Paragraph (d) of § 331.4 clarifies the authority of State banks and insured branches of foreign banks to charge interest to corporate borrowers. If the law of the State in which the State bank or insured branch of a foreign bank is located denies the defense of usury to corporate borrowers, then the State bank or insured branch is permitted to charge

[65] Section 24(j)(4) references definitions in section 44(f) of the FDI Act; however, the Gramm-Leach-Bliley Act redesignated section 44(f) as section 44(g) without updating this reference. The relevant definitions are currently found in section 44(g), 12 U.S.C. 1831u(g).

any rate of interest agreed upon by a corporate borrower. This provision is also intended to maintain parity between State banks and national banks, and corresponds to authority provided to national banks under the OCC's regulations, at 12 CFR 7.4001(d).

Paragraph (e) clarifies that the determination of whether interest on a loan is permissible under section 27 of the FDI Act is made at the time the loan is made. This paragraph further clarifies that interest on a loan permissible under section 27 shall not be affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan, in whole or in part. An assignee can enforce the loan's interest-rate terms to the same extent as the assignor. Paragraph (e) is not intended to affect the application of State law in determining whether a State bank or insured branch of a foreign bank is a real party in interest with respect to a loan or has an economic interest in a loan. The FDIC views unfavorably a State bank's partnership with a non-bank entity for the sole purpose of evading a lower interest rate established under the law of the entity's licensing State(s).

V. Expected Effects

The final rule is intended to address uncertainty regarding the applicability of State law interest rate restrictions to State banks and other market participants. The final rule would reaffirm the ability of State banks to sell and securitize loans they originate. Therefore, as described in more detail below, the final rule should mitigate the potential for future disruption to the markets for loan sales and securitizations, including FDIC–R loan sales and securitizations, and a resulting contraction in availability of consumer credit.

Beneficial effects on availability of consumer credit and securitization markets would fall into two categories. First, the rule would mitigate the possibility that State banks' and FDIC–R's ability to sell loans might be impaired in the future. Second, the rule could have immediate effects on certain types of loans and business models in the Second Circuit that may have been directly affected by the *Madden* decision and outlined by studies raised by commenters.

With regard to these two types of benefits, the *Madden* decision created significant uncertainty in the minds of market participants about banks' future ability to sell loans. For example, one commentator stated, ''[T]he impact on depository institutions will be significant even if the application of the *Madden* decision is limited to third parties that purchase charged off debts. Depository institutions will likely see a reduction in their ability to sell loans originated in the Second Circuit due to significant pricing adjustments in the secondary market.'' [66] Such uncertainty has the potential to chill State banks' willingness to make the types of loans affected by the final rule. By reducing such uncertainty, the final rule should mitigate the potential for future reductions in the availability of credit.

More specifically, some researchers have focused attention on the impact of the decision on so-called marketplace lenders. Since marketplace lending frequently involves a partnership in which a bank originates and immediately sells loans to a nonbank partner, any question about the nonbank's ability to enforce the contractual interest rate could adversely affect the viability of that business model. Thus, for example, regarding the Supreme Court's decision not to hear the appeal of the *Madden* decision, Moody's wrote: ''The denial of the appeal is generally credit negative for marketplace loans and related asset-backed securities (ABS), because it will extend the uncertainty over whether state usury laws apply to consumer loans facilitated by lending platforms that use a partner bank origination model.'' [67] In a related vein, some researchers have stated that marketplace lenders in the affected States did not grow their loans as fast in these states as they did in other States, and that there were pronounced reductions of credit to higher risk borrowers.[68]

Particularly in jurisdictions affected by *Madden,* to the extent the final rule results in the preemption of State usury laws, some consumers may benefit from the improved availability of credit from State banks. For these consumers, this additional credit may be offered at a higher interest rate than otherwise provided by relevant State law. However, in the absence of the final rule, these consumers might be unable to obtain credit from State banks and might instead borrow at higher interest rates from less-regulated lenders.

The FDIC also believes that an important benefit of the final rule is to uphold longstanding principles regarding the ability of banks to sell loans, an ability that has important safety-and-soundness benefits. By reaffirming the ability of State banks to assign loans at the contractual interest rate, the final rule should make State banks' loans more marketable, enhancing State banks' ability to maintain adequate capital and liquidity levels. Avoiding disruption in the market for loans is a safety and soundness issue, as affected State banks would maintain the ability to sell loans they originate in order to properly maintain liquidity. Avoiding such disruption would also maintain the FDIC's ability to fulfill its mission to maintain stability and public confidence in the nation's financial system by carrying out all of the tasks triggered by the closure of an FDIC-insured institution, including selling portfolio of loans from failed financial institutions in the secondary marketplace in order to maximize the net present value return from the sale or disposition of such assets and minimize the amount of any loss, both to protect the DIF. Additionally, securitizing or selling loans gives State banks flexibility to comply with risk-based capital requirements.

Similarly, the final rule is expected to preserve State banks' ability to manage their liquidity. This is important for a number of reasons. For example, the ability to sell loans allows State banks to increase their liquidity in a crisis, to meet unusual deposit withdrawal demands, or to pay unexpected debts. The practice is useful for many State banks, including those that prefer to hold loans to maturity. Any State bank could be faced with an unexpected need to pay large debts or deposit withdrawals, and the ability to sell or securitize loans is a useful tool in such circumstances.

The final rule would also support State banks' ability to use loan sales and securitization to diversify their funding sources and address interest-rate risk. The market for loan sales and securitization is a lower-cost source of funding for State banks, and the proposed rule would support State banks' access to this market.

Finally, to the extent the final rule contributes to a return to the pre-*Madden* status quo regarding market participants' understanding of the applicability of State usury laws, the FDIC does not expect immediate widespread effects on credit availability.

[66] ''*Madden* v. *Midland Funding:* A Sea Change in Secondary Lending Markets,'' Robert Savoie, McGlinchey Stafford PLLC, p. 3.

[67] Moody's Investors Service, ''Uncertainty Lingers as Supreme Court Declines to Hear *Madden* Case'' (Jun. 29, 2016).

[68] See Colleen Honigsberg, Robert Jackson and Richard Squire, ''How Does Legal Enforceability Affect Consumer lending? Evidence from a Natural Experiment,'' *Journal of Law and Economics,* vol. 60 (November 2017); and Piotr Danisewicz and Ilaf Elard, ''The Real Effects of Financial Technology: Marketplace Lending and Personal Bankruptcy'' (July 5, 2018) (*http://ssrn.com/abstract=3209808* or *http://dx.doi.org/10.2139/ssrn.3208908*).

While several commenters cited to studies discussing the adverse effects of *Madden* in the Second Circuit, as well as anecdotal evidence of increased difficulty selling loans made to borrowers in the Second Circuit post-*Madden,* the FDIC is not aware of any widespread or significant negative effects on credit availability or securitization markets having occurred to this point as a result of the *Madden* decision. However, courts across the country continue to address legal questions raised in the *Madden* decision, raising the possibility that future decisions will put further pressure on credit availability or securitization markets, reinforcing the need for clarification by the FDIC.[69]

VI. Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the rule on small entities.[70] However, a final regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[71] The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[72]

Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. The FDIC has considered the potential impact of the final rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the FDIC is presenting this additional information.

Reasons Why This Action Is Being Considered

The Second Circuit's *Madden* decision has created uncertainty as to the ability of an assignee to enforce the interest rate provisions of a loan originated by a bank. *Madden* held that, under the facts presented in that case, nonbank debt collectors who purchase debt[73] from national banks are subject to usury laws of the debtor's State[74] and do not inherit the preemption protection vested in the assignor national bank because such State usury laws do not ''significantly interfere with a national bank's ability to exercise its power under the [National Bank Act].''[75] The court's decision created uncertainty and a lack of uniformity in secondary credit markets. For additional discussion of the reasons why this rulemaking is being finalized please refer to **SUPPLEMENTARY INFORMATION** Section II in this **Federal Register** document entitled ''Background: Current Regulatory Approach and Market Environment.''

Objectives and Legal Basis

The policy objective of the final rule is to eliminate uncertainty regarding the enforceability of loans originated and sold by State banks. The FDIC is finalizing regulations that implement sections 24(j) and 27 of the FDI Act. For additional discussion of the objectives and legal basis of the final rule please refer to the **SUPPLEMENTARY INFORMATION** sections I and II entitled ''Policy Objectives'' and ''Background: Current Regulatory Approach and Market Environment,'' respectively.

Number of Small Entities Affected

As of December 31, 2019, there were 3,740 State-chartered banks insured by the FDIC, of which 2,847 have been identified as ''small entities'' in accordance with the RFA.[76] All 2,847 small State-chartered FDIC-insured banks are covered by the final rule, and therefore, could be affected. However, only 32 small State-chartered FDIC-insured banks are chartered in States within the Second Circuit (New York, Connecticut and Vermont) and therefore, may have been directly affected by ambiguities about the practical implications of the *Madden* decision. Moreover, only State banks actively engaged in, or considering making loans for which the contractual interest rates could exceed State usury limits, would be affected by the proposed rule. Small State-chartered banks that are chartered in States outside the Second Circuit, but that have made loans to borrowers who reside in New York, Connecticut and Vermont also may be directly affected, but only to the extent they are engaged in or considering making loans for which contractual interest rates could exceed State usury limits. It is difficult to estimate the number of small entities that have been directly affected by ambiguity resulting from *Madden* and would be affected by the proposed rule without complete and up-to-date information on the contractual terms of loans and leases held by small State-chartered banks, as well as present and future plans to sell or transfer assets. The FDIC does not have this information.

Expected Effects

The final rule clarifies that the determination of whether interest on a loan is permissible under section 27 of the FDI Act is made when the loan is made, and that the permissibility of interest under section 27 is not affected by subsequent events such as changes in State law or assignment of the loan. As described below, this would be expected to increase some small State banks' willingness to make loans with contractual interest rates that could exceed limits prescribed by State usury laws, either at inception or contingent on loan performance.

As described above, the significant uncertainty resulting from *Madden* may discourage the origination and sale of loan products whose contractual interest rates could potentially exceed State usury limits by small State-chartered banks in the Second Circuit. The final rule could increase the availability of such loans from State banks, but the FDIC believes the number

[69] *Compare In re Rent Rite Superkegs West, Ltd.* 603 B.R. 41 (Bankr. Colo. 2019) (holding assignment of a loan by a bank to a non-bank did not render the interest rate impermissible under Colorado law based upon 12 U.S.C. 1831d) *with Fulford* v. *Marlette Funding, LLC,* No. 2017–CV–30376 (Col. Dist. Ct. City & County of Denver, Mar. 3, 2017) (holding that the non-bank purchasers are prohibited under Colo. Rev. Stat. sec. 5–2–201 from charging interest rates in the designated loans in excess of Colorado's interest caps, that a bank cannot export its interest rate to a nonbank, and finally, that the Colorado statute is not preempted by Section 27).

[70] 5 U.S.C. 601 *et seq.*

[71] 5 U.S.C. 605(b).

[72] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective August 19, 2019). In its determination, the SBA ''counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[73] In *Madden,* the relevant debt was a consumer debt (credit card) account.

[74] A violation of New York's usury laws also subjected the debt collector to potential liability imposed under the Fair Debt Collection Practices Act, 15 U.S.C. 1692e, 1692f.

[75] *Madden,* 786 F.3d at 251 (*referencing Barnett Bank of Marion City, N.A.* v. *Nelson,* 517 U.S. 25, 33 (1996); *Pac. Capital Bank,* 542 F.3d at 533).

[76] FDIC Call Report Data, December 31, 2019.

of State banks materially engaged in making loans of this type to be small.

The small State-chartered banks that are affected would benefit from the ability to sell such loans while assigning to the buyer the right to enforce the contractual loan interest rate. Without the ability to assign the right to enforce the contractual interest rate, the sale value of such loans would be substantially diminished. The final rule does not pose any new reporting, recordkeeping, or other compliance requirements for small State banks.

Duplicative, Overlapping, or Conflicting Federal Regulations

The FDIC has not identified any Federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions.

Public Comments

The FDIC received no public comments on the content of the RFA section of the notice of proposed rulemaking. However, some commenters made general claims that the rule would adversely impact small businesses.[77] As noted above in the discussion of comments, this concern appears to stem from perceived abuses of longstanding statutory authority rather than the final rule. Because the final rule affirms the pre-*Madden* status quo, the FDIC expects small businesses to be as affected by the rule to the same extent they were affected by the state of affairs that prevailed prior to the *Madden* decision. For a discussion of the comments submitted in response to the notice of proposed rulemaking in general, refer to Section III of this document.

Discussion of Significant Alternatives

The FDIC believes the amendments will not have a significant economic impact on a substantial number of small State banks, and therefore believes that there are no significant alternatives to the amendments that would reduce the economic impact on small entities.

B. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[78] The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act. If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[79] The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or Local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[80] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act of 1995

In accordance with the requirements of the Paperwork Reduction Act of 1995,[81] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The final rule does not require any new information collections or revise existing information collections, and therefore, no submission to OMB is necessary.

D. Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[82] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[83]

The final rule does not impose additional reporting or disclosure requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, the FDIC concludes that section 302 of RCDRIA does not apply. The FDIC invited comment regarding the application of RCDRIA to the final rule, but did not receive comments on this topic.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. FDIC staff believes the final rule is presented in a simple and straightforward manner. The FDIC invited comment with respect to the use of plain language, but did not receive any comments on this topic.

List of Subjects in 12 CFR Part 331

Banks, banking, Deposits, Foreign banking, Interest rates.

Authority and Issuance

■ For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends title 12 of the Code of Federal Regulations by adding part 331 to read as follows:

PART 331—FEDERAL INTEREST RATE AUTHORITY

Sec.

[77] *See* Comment Letter, Center for Responsible Lending, et al., at 31.

[78] 5 U.S.C. 801 *et seq.*

[79] 5 U.S.C. 801(a)(3).

[80] 5 U.S.C. 804(2).

[81] 44 U.S.C. 3501 *et seq.*

[82] 12 U.S.C. 4802(a).

[83] 12 U.S.C. 4802(b).

Authority: 12 U.S.C. 1819(a)(Tenth), 1820(g), 1831d.

§ 331.1 Authority, purpose, and scope.

(a) *Authority.* The regulations in this part are issued by the Federal Deposit Insurance Corporation (FDIC) under sections 9(a)(Tenth) and 10(g) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819(a)(Tenth), 1820(g), to implement sections 24(j) and 27 of the FDI Act, 12 U.S.C. 1831a(j), 1831d, and related provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96–221, 94 Stat. 132 (1980).

(b) *Purpose.* Section 24(j) of the FDI Act, as amended by the Riegle-Neal Amendments Act of 1997, Public Law 105–24, 111 Stat. 238 (1997), was enacted to maintain parity between State banks and national banks regarding the application of a host State's laws to branches of out-of-State banks. Section 27 of the FDI Act was enacted to provide State banks with interest rate authority similar to that provided to national banks under the National Bank Act, 12 U.S.C. 85. The regulations in this part clarify that State-chartered banks and insured branches of foreign banks have regulatory authority in these areas parallel to the authority of national banks under regulations issued by the Office of the Comptroller of the Currency, and address other issues the FDIC considers appropriate to implement these statutes.

(c) *Scope.* The regulations in this part apply to State-chartered banks and insured branches of foreign banks.

§ 331.2 Definitions.

For purposes of this part—

Home State means, with respect to a State bank, the State by which the bank is chartered.

Host State means a State, other than the home State of a State bank, in which the State bank maintains a branch.

Insured branch has the same meaning as that term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

Interest means any payment compensating a creditor or prospective creditor for an extension of credit, making available a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. Interest includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates; late fees; creditor-imposed not sufficient funds (NSF) fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds; overlimit fees; annual fees; cash advance fees; and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

Out-of-State State bank means, with respect to any State, a State bank whose home State is another State.

Rate on 90-day commercial paper means the rate quoted by the Federal Reserve Board of Governors for 90-day A2/P2 nonfinancial commercial paper.

State bank has the same meaning as that term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

§ 331.3 Application of host State law.

The laws of a host State shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

§ 331.4 Interest rate authority.

(a) *Interest rates.* In order to prevent discrimination against State-chartered depository institutions, including insured savings banks, or insured branches of foreign banks, if the applicable rate prescribed in this section exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this paragraph (a), such State bank or insured branch of a foreign bank may, notwithstanding any State constitution or statute which is preempted by section 27 of the Federal Deposit Insurance Act, 12 U.S.C. 1831d, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 percent in excess of the rate on 90-day commercial paper or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

(b) *Classes of institutions and loans.* A State bank or insured branch of a foreign bank located in a State may charge interest at the maximum rate permitted to any State-chartered or licensed lending institution by the law of that State. If State law permits different interest charges on specified classes of loans, a State bank or insured branch of a foreign bank making such loans is subject only to the provisions of State law relating to that class of loans that are material to the determination of the permitted interest. For example, a State bank may lawfully charge the highest rate permitted to be charged by a State-licensed small loan company, without being so licensed, but subject to State law limitations on the size of loans made by small loan companies.

(c) *Effect on State law definitions of interest.* The definition of the term *interest* in this part does not change how interest is defined by the individual States or how the State definition of interest is used solely for purposes of State law. For example, if late fees are not *interest* under the State law of the State where a State bank is located but State law permits its most favored lender to charge late fees, then a State bank located in that State may charge late fees to its intrastate customers. The State bank also may charge late fees to its interstate customers because the fees are interest under the Federal definition of interest and an allowable charge under the State law of the State where the bank is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with State usury limitations because State law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

(d) *Corporate borrowers.* A State bank or insured branch of a foreign bank located in a State whose State law denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by the corporate borrower.

(e) *Determination of interest permissible under section 27.* Whether interest on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined as of the date the loan was made. Interest on a loan that is permissible under section 27 of the Federal Deposit Insurance Act shall not be affected by a change in State law, a change in the relevant commercial paper rate after the loan was made, or the sale, assignment, or other transfer of the loan, in whole or in part.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 25, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–14114 Filed 7–21–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1281

RIN 2590–AA82

Federal Home Loan Bank Housing Goals Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule; correction.

SUMMARY: The Federal Housing Finance Agency is making a non-substantive change to correct an erroneous amendatory instruction in the final rule that published on June 25, 2020, amending the existing Federal Home Loan Bank Housing Goals regulation.

DATES: This correction is effective August 24, 2020.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Manager, Housing & Community Investment, (202) 649–3157, *Ted.Wartell@fhfa.gov;* Ethan Handelman, Senior Policy Analyst, Housing and Community Investment, (202) 649–3264, *Ethan.Handelman@fhfa.gov;* or Marshall Adam Pecsek, Assistant General Counsel, Office of General Counsel, (202) 649–3380, *Marshall.Pecsek@fhfa.gov.* These are not toll-free numbers. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339. The mailing address for each contact is: Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: In FR Doc. 2020–12345 appearing on page 38031 in the **Federal Register** of Thursday, June 25, 2020, the following correction is made:

On page 38052, in the first column, amendatory instruction 6 is corrected to read as follows:

''6. Amend § 1281.13 by:''

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2020–15076 Filed 7–21–20; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 200715–0192]

RIN 0694–AI15

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

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

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

DATES: This rule is effective July 22, 2020.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

ERC Entity List Decisions

Additions to the Entity List

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

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

For each of the eleven entities described below, the ERC made the requisite determination under the standard set forth in § 744.11(b). Specifically, the ERC determined that the entities are engaging in or enabling activities contrary to the foreign policy interests of the United States. All eleven entities have been implicated in human rights violations and abuses in the implementation of China's campaign of repression, mass arbitrary detention, forced labor and high-technology surveillance against Uyghurs, Kazakhs, and other members of Muslim minority groups in the Xinjiang Uyghur Autonomous Region (XUAR). Specifically, the ERC determined that Changji Esquel Textile Co. Ltd.; Hefei Bitland Information Technology Co. Ltd.; Hefei Meiling Co. Ltd.; Hetian Haolin Hair Accessories Co. Ltd.; Hetian Taida Apparel Co., Ltd.; KTK Group; Nanjing Synergy Textiles Co. Ltd.; Nanchang O-Film Tech; and Tanyuan Technology Co. Ltd. are engaging in activities contrary to the foreign policy interests of the United States through the practice of forced labor involving members of Muslim minority groups in the XUAR. The ERC also determined that Xinjiang Silk Road BGI and Beijing Liuhe BGI are enabling activities contrary to the foreign policy interests of the United States through conducting genetic analyses used to further the repression of Muslim minority groups in the XUAR.

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

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

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

People's Republic of China

- Beijing Liuhe BGI;
- Changji Esquel Textile Co. Ltd.;
- Hefei Bitland Information Technology Co. Ltd.;
- Hefei Meiling Co. Ltd.;
- Hetian Haolin Hair Accessories Co. Ltd.;
- Hetian Taida Apparel Co., Ltd.;
- KTK Group;
- Nanchang O-Film Tech;
- Nanjing Synergy Textiles Co. Ltd.;
- Tanyuan Technology Co. Ltd.; *and*
- Xinjiang Silk Road BGI.

Modifications and Revisions to the Entity List

In this final rule, BIS is modifying each of the existing entries for the thirty-seven entities that were added to the Entity List under the destination of China on October 9, 2019 (84 FR 54004) and June 5, 2020 (85 FR 34505). Specifically, in light of the current global pandemic, the license review policy for these thirty-seven entries is being modified to reflect a policy of case-by-case review for items subject to the EAR that are necessary to detect, identify and treat infectious disease. The license review policy for these entities otherwise remains the same.

In addition, this final rule revises two entries for entities on the Entity List under the destination of China. BIS is revising the entity name in the entry for ''Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau,'' which was added to the Entity List on October 9, 2019 (84 FR 54004), and revising an address in the entry for the entity ''Ministry of Public Security's Institute of Forensic Science of China,'' which was added to the Entity List on June 5, 2020 (85 FR 34505). Both revisions replace the term ''Uighur'' with ''Uyghur'' consistent with the standardized spelling utilized by the United States Government in official communications and documents.

Savings Clause

Shipments of items removed from eligibility for a License Exception or for export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on July 22, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

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

Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

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

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

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

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—[AMENDED]

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

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

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

■ a. By adding in alphabetical order, the Chinese entities ''Beijing Liuhe BGI'', ''Changji Esquel Textile Co. Ltd.'', ''Hefei Bitland Information Technology Co. Ltd.'', ''Hefei Meiling Co. Ltd.'', ''Hetian Haolin Hair Accessories Co. Ltd.'', ''Hetian Taida Apparel Co., Ltd.'', ''KTK Group'', ''Nanchang O-Film Tech'', ''Nanjing Synergy Textiles Co. Ltd.'', ''Tanyuan Technology Co. Ltd.'', and ''Xinjiang Silk Road BGI''; and

■ b. By revising the Chinese entities ''Aksu District Public Security Bureau'', ''Aksu Huafu Textiles Co.'', ''Altay Municipality Public Security Bureau'', ''Bayingolin Mongolian Autonomous Prefecture Public Security Bureau'', ''Beijing Sensetime Technology Development Co., Ltd.'', ''Boertala Mongolian Autonomous Prefecture Public Security Bureau'', ''Changji Hui Autonomous Prefecture Public Security Bureau'', ''Cloudwalk Technology'', ''Dahua Technology'', ''FiberHome Technologies Group'', ''Hami Municipality Public Security Bureau'', ''Hangzhou Hikvision Digital Technology Co., Ltd.'', ''Hetian Prefecture Public Security Bureau'', ''IFLYTEK'', ''Intellifusion'', ''IS'Vision'', ''Kashgar Prefecture Public Security Bureau'', ''Kelamayi Municipality Public Security Bureau'', ''Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau'', ''Megvii Technology'', ''Ministry of Public Security's Institute of Forensic Science of China'', ''Nanjing FiberHome Starrysky Communication Development Co'', ''NetPosa'', ''SenseNets'', ''Shihezi Municipality Public Security Bureau'', ''Tacheng Prefecture Public Security Bureau'', ''Tumushuke Municipal Public Security Bureau'', ''Turfan Municipality Public Security Bureau'', ''Urumqi Municipal Public Security Bureau'', ''Wujiaqu Municipality Public Security Bureau'', ''Xiamen Meiya Pico Information Co. Ltd.'', ''Xinjiang Police College'', ''Xinjiang Production and Construction Corps (XPCC) Public Security Bureau'', ''Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau'', ''Yili Kazakh Autonomous Prefecture Public Security Bureau'', ''Yitu Technologies'' and ''Yixin Science and Technology Co. Ltd.''.

The additions and revisions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
* * *	* * *	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	* *	*	* *	*
	Aksu District Public Security Bureau, a.k.a., the following one alias: —Aqsu District Public Security Bureau. Yingbin Rd., Akesu City XUAR 843000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Aksu Huafu Textiles Co., a.k.a., the following two aliases: —Akesu Huafu; *and* —Aksu Huafu Dyed Melange Yarn. 992 Kilometers Place Wuka Road, Akesu, China; *and* Building B 538 Fengting Avenue, Suzhou Jiangsu Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Altay Municipality Public Security Bureau, North West Rd., Altay City, XUAR, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	* *	*	* *	*

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Bayingolin Mongolian Autonomous Prefecture Public Security Bureau, Yingxia Rd., Korla City, XUAR 841000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	Beijing Liuhe BGI, a.k.a., the following one alias: —Beijing Liuhe Huada Gene Technology. Room 106, Building 1, No. 25, North Taipingzhuang Road, Haidian District, Beijing.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	Beijing Sensetime Technology Development Co., Ltd., a.k.a., the following two aliases: —Beijing Shangtang Technology Development Co., Ltd.; *and* —Sense Time. 5F Block B, Science and Technology Building, Tsing-hua Science Park, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	Boertala Mongolian Autonomous Prefecture Public Security Bureau, a.k.a., the following one alias: —Bortala Mongolian Autonomous Prefecture Public Security Bureau. Qingdeli St., Bole City, XUAR, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	Changji Esquel Textile Co. Ltd., a.k.a., the following one alias: —Changji Yida Textile. No. 12 Oasis South Road, Changji City, Changji State, Xinjiang (District 55, 2 Hills); *and* 2 Hill, Area 55, No. 12, Oasis South Road, Changji City, Changji State, Xinjiang.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Changji Hui Autonomous Prefecture Public Security Bureau, 56 Yan'an N Rd., Changji City, XUAR 831100, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	CloudWalk Technology, a.k.a., the following four aliases: —Chongqing Cloudwalk Technology Co., Ltd.; —Guangzhou Yunshang Information Technology Co., Ltd.; —Yun Cong Information Technology Co. Ltd.; *and* —Yun Cong Technology. 1306 Room, No. 26, Jinlong Road, Nansha District, Guangzhou, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	Dahua Technology, 807, Block A, Meike Building No. 506, Beijing South Road, New City, Urumqi, Xinjiang, China; 1199 Bin'an Road, Binjiang High-tech Zone, Hangzhou, China; *and* 6/F, Block A, Dacheng Erya, Huizhan Avenue, Urumqi, China; *and* No. 1187, Bin'an Road, Binjiang District, Hangzhou City, Zhejiang Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	FiberHome Technologies Group, a.k.a., the following eight aliases: —FiberHome; —FiberHome International Technology Co., Ltd.; —FiberHome Networks; —FiberHome Networks Co. Ltd.; —FiberHome Telecommunication Technologies Co., Ltd.; —Haohuo Xiangyun Network Technology Co., Ltd; —Wuhan Fiberhome International; *and* —Wuhan Institute of Posts and Telecommunications. No. 6, Gaoxinsilu, East Lake High-Tech Development Zone, Wuhan, Hubei Province, 430205, China; *and* 88 Youkeyuan Road, Hongshan District, Wuhan China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
*	*	*	*	*
	Hami Municipality Public Security Bureau, a.k.a., the following two aliases: —Kumul Municipality Public Security Bureau, *and* —Qumul Municipality Public Security Bureau. Huancheng Rd., Hami District, Hami City, XUAR, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Hangzhou Hikvision Digital Technology Co., Ltd., a.k.a., the following one alias: —Hikvision. No. 555 Qianmo Road, Binjiang District, Hangzhou 310052, China; *and* 23rd Floor, Block A, Yingke Plaza, No. 217 Gaoxin Street, Gaoxin District, Urumqi, China; *and* 700 Dongliu Road, Binjiang District, Hanzhou, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Hefei Bitland Information Technology Co. Ltd., a.k.a., the following three aliases: —Anhui Hefei Baolongda Information Technology; —Hefei Baolongda Information Technology Co., Ltd.; *and* —Hefei Bitland Optoelectronic Technology Co., Ltd. No. 4088 Jinxiu Avenue, Economic and Technological Development Zone, Hefei City, Anhui Province.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Hefei Meiling Co. Ltd., a.k.a., the following one alias: —Hefei Meiling Group Holdings Limited. Main Factory Building No. 2 East of Lianhua Road, South of Tangkou Road, Economic *and* Technological Development Zone, Hefei City, Anhui Province.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Hetian Haolin Hair Accessories Co. Ltd., a.k.a., the following two aliases: —Hotan Haolin Hair Accessories; *and* —Hollin Hair Accessories. No. 4 Yulongwan Road, Beijing Industrial Park, Luopu County, Hotan District, Xinjiang; *and* No. 4 Yulong Bay Road, Beijing Industrial Park, Lopu County, Hetian, Xinjiang, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Hetian Prefecture Public Security Bureau, a.k.a., the following one alias: —Hotan Prefecture Public Security Bureau. 92 Beijing W Rd., Heitan City, Hetian Prefecture, XUAR 848000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Hetian Taida Apparel Co., Ltd., a.k.a., the following one alias: —Hetian TEDA Garment. No. 2 Jingdong Road, Hetian City, Hetian District, Xinjiang *and* Standardized Factory of Adelaide Industrial Park, Hetian Industrial Park, Hetian City, Hetian City, Xinjiang; *and* Standardized Plant of Edates, Beijing, Hetian Industrial Park, Hetian City, Hetian Area, Xinjiang, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	IFLYTEK, National Intelligent Speech High-tech Industrialization Base, No. 666, Wangjiang Road West, Hefei City, Anhui Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Intellifusion, a.k.a., the following two aliases: —Shenzhen Yuntian Lifei Technology Co., Ltd. —Yuntian Lifei. 1st Floor, Building 17, Shenzhen Dayun Software Town, 8288 Longgang Avenue, Yuanshan District, Longgang District, Shenzhen, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	IS'Vision, a.k.a., the following six aliases: —Chengdu Yinchen Netcom Technology Co., Ltd; —Isvision Tech; —Isvision Technologies Co., Ltd.; —Shanghai Is'vision Co.; —Shanghai Isvision Technologies Co., Ltd.; *and* —Yinchen Technology. Building 3, No. 498, Guoshoujing Road, Pudong, Shanghai, China; *and* 4F, No. 9 Building of Pudong Software Park, 498 GuoShoujing Road, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Kashgar Prefecture Public Security Bureau, a.k.a., the following one alias: —Kashi Prefecture Public Security Bureau. Youmulake Xiehai'er Rd., Kashgar ("Kashi") City, XUAR 844000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Kelamayi Municipality Public Security Bureau, a.k.a, the following two aliases: —Karamay Municipality Public Security Bureau; *and* —Qaramay Municipality Public Security Bureau. 52 Yingbin Rd., Kelamayi City, Kelamayi District, XUAR 834000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau, a.k.a., the following one alias: —Kizilsu Autonomous Prefecture Public Security Bureau. Guangming Rd., Atushi City, XUAR 845350, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	KTK Group, a.k.a., the following three aliases: —Jiangsu Jinchuang Group; —Jiangsu Jinchuang Holding Group; *and* —KTK Holding. No. 88, Jinchuang Road, Yaoguan Town, Wujin District, Changzhou City.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Megvii Technology, 3rd Floor, Block A, Rongke Information Center, No. 2 South Road, Haidian District, Beijing, China; *and* Floor 3rd Unit A Raycom Infotech Park, No 2 Kexueyuan, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Ministry of Public Security's Institute of Forensic Science of China, a.k.a., the following two aliases: —Forensic Identification Center of the Ministry of Public Security of the People's Republic of China; *and* —Material Identification Center of the Ministry of Public Security of the People's Republic of China. No. 18 West Dongbeiwang Road, Haidian District, China; and Ministry of Public Security, Xicheng District, Beijing, China; and No. 17 Mulidi South Lane, Xicheng District, Beijing, China; and Tumushuke Municipal Public Security Bureau, Qian Hai West Road, Tumushuke City, Xinjiang Uyghur Autonomous Region.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Nanchang O-Film Tech., a.k.a., the following one alias: —Nanchang Oufeiguang Technology. Huangjiahu Road, Nanchang Economic and Technological Development Zone, Jiangxi Province; *and* Oufeiguang Technology Park, Aviation City Avenue, Nanchang High-tech Industrial Development Zone, Jiangxi Province; *and* No. 1588, Huangjiahu West Road, Nanchang Economic and Technological Development Zone, Jiangxi Province; *and* No. 369 Longtan Road, Nanchang Economic and Technological Development Zone, Jiangxi Province; *and* No. 18 Fuying Road, Nanchang Economic and Technological Development Zone, Jiangxi Province; *and* No. 68/69, Xianghe First Road, Ganjiang New District, Nanchang City, Jiangxi Province; *and* No. 698 Tianxiang Avenue, Nanchang High-tech Industrial Development Zone, Jiangxi Province; *and* No. 189, Export Processing Zone, Huoju Road, Nanchang High-tech Industrial Development Zone, Jiangxi Province.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Nanjing FiberHome Starrysky Communication Development Co., a.k.a., the following two aliases: —Nanjing Fenghuo Xingkong Communication Development Co.; *and* —Fiberhome StarrySky Co., Ltd. 88 Yunlongshan Road, Jianye District, Nanjing China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20.
	Nanjing Synergy Textiles Co. Ltd., a.k.a., the following two aliases: —Nanjing Xinyi Cotton Textile Printing and Dyeing; *and* —Nanjing Xinyi Cotton Textile. No. 2 Shengan Avenue, Binjiang Economic Development Zone, Jiangning, Nanjing.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	NetPosa, a.k.a., the following three aliases: —Dongfang Netpower Technology Co.; —Dongfang Wangli Technology; *and* —NetPosa Technologies Ltd., Room 408, 4th Floor, Shining Xueyuan Road, Haidian District, Beijing, China; *and* Room 3603, Wanda Plaza, No. 555 Xuanwuhu Road, Economic and Technological Development Zone, Urumqi, China; *and* 26F, BLK C, Wangjing SOHO Tower 2, #1 Futong Ave, Chaoyang District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20.
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	SenseNets, a.k.a., the following six aliases: —Deep Net Vision; —Deep Network Vision; —Sensenets Corporation; —Shenzhen Net Vision; —Shenzhen Shenwang Vision Technology Co., Ltd.; *and* —Shenzhen Vision. 8th Floor, East Tower, Skyworth Semiconductor Design Building, No. 18 Gaoxin South 4th Road, Yuehai Street, Nanshan District, Shenzhen, China; *and* 16F, China Merchants Development Center, No. 1063, Nanhai Avenue, Nanshan District, Shenzhen, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20.
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	Shihezi Municipality Public Security Bureau, 209 N Fourth Rd., Shihezi City, XUAR 832000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19.
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SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Tacheng Prefecture Public Security Bureau, Tuanjie Rd. Tacheng City, XUAR 834700, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Tanyuan Technology Co. Ltd., a.k.a., the following five aliases: —Carbon Yuan Technology; —Changzhou Carbon Yuan Technology Development; —Carbon Element Technology —Jiangsu Carbon Element Technology; *and* —Tanyuan Technology Development. No. 7 Lanxiang Road, Wujin Economic Development Zone, Jiangsu.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Tumushuke Municipal Public Security Bureau, a.k.a., the following one alias: —Tumxuk Municipal Public Security Bureau. Qian Hai West Rd., Tumushuke City, XUAR S21866, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Turfan Municipality Public Security Bureau, a.k.a., the following one alias: —Turpan Municipality Public Security Bureau. 2447 Gaochang N Rd., Turfan City, Gaocheng District, XUAR 838000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Urumqi Municipal Public Security Bureau, 339 Hebei East Rd., Urumqi XUAR, China and New China North Road, XUAR, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Wujiaqu Municipality Public Security Bureau, 676 Changan W Rd., Wujiaqu City, XUAR 831300, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Xiamen Meiya Pico Information Co. Ltd., No. 131, Unit 1, Building 1, Tuman Road Construction Company, Kashi City, Xinjiang; *and* Room 1504, Block B, Sunshine 100 Commercial Complex 333, Qiantangjiang Road, Urumqi, Xinjiang, China; *and* Meiya Pico Building,12,Guanri Road,2nd Phase of Xiamen Software Park, Xiamen, Fujian, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Xinjiang Police College, Xinshi District, Changsha Road, No. 1108, Urumqi, Xinjiang, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Xinjiang Production and Construction Corps (XPCC) Public Security Bureau, 106 Guangming Rd., Urumqi, Tianshan, XUAR, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Xinjiang Silk Road BGI, a.k.a., the following one alias: —Xinjiang Silk Road Huada Gene Technology. Xinjiang Urumqi High-tech Industrial Development Zone (New Urban District) No.258 Gaoxin Street Cyberport Building 2015–891.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 7/22/20.
	Xinjiang Uyghur Autonomous Region (XUAR) People's Government Public Security Bureau, 28 Qiantangjiang Rd., Shayibake District, Urumqi, XUAR, 830006, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Yili Kazakh Autonomous Prefecture Public Security Bureau, a.k.a., the following one alias: —Ili Kazakh Autonomous Prefecture Public Security Bureau. Sidalin W Rd., Yining City, XUAR 835000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Yitu Technologies, 23F, Shanghai Arch Tower I, 523 Loushanguan Rd, Changning District, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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	Yixin Science and Technology Co. Ltd., a.k.a., the following four aliases: —Yixin Technology; —Yuxin Technology; —Yuxin Science and Technology; *and* —Ecguard. 216 Qiantangjiang Rd., Urumqi, Xinjiang, China; *and* 17th Floor Tong Guang Building, No 12 Beijing Agricultural Exhibition South, Chaoyang District, Beijing, China; and 17F Tongguang Mansion # 12 Nongzhannanli, Chaoyang, Beijing, China; *and* 216 Qiantangjiang Road, Urumqi, Xinjiang.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 7/22/20.
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Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020–15827 Filed 7–20–20; 11:15 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AE92

Exemption From the Swap Clearing Requirement for Certain Affiliated Entities—Alternative Compliance Frameworks for Anti-Evasionary Measures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting amendments to Commission regulation 50.52, which exempts certain affiliated entities within a corporate group from the swap clearing requirement under the applicable provision of the Commodity Exchange Act (CEA or Act). These amendments concern the anti-evasionary condition that swaps subject to the clearing requirement entered into with unaffiliated counterparties either be cleared or be eligible for an exception to or exemption from the clearing requirement. Specifically, the amendments make permanent certain temporary alternative compliance frameworks intended to make this anti-evasionary condition workable for international corporate groups in the absence of foreign clearing regimes determined to be comparable to CFTC requirements.

DATES: The effective date for this final rule is August 21, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, Division of Clearing and Risk, at 202–418–5684 or *sjosephson@cftc.gov;* Melissa A. D'Arcy, Special Counsel, Division of Clearing and Risk, at 202–418–5086 or *mdarcy@cftc.gov;* or Stephen A. Kane, Office of the Chief Economist, at 202–418–5911 or *skane@cftc.gov,* in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Swap Clearing Requirement

Part 50 of the Commission's regulations implements the swap clearing requirement under section 2(h) of the CEA and certain exceptions and exemptions thereto. The swap clearing requirement under section 2(h)(1)(A) of the CEA states that if the Commission requires a swap to be cleared, then it is unlawful for any person to engage in that swap unless the swap is submitted for clearing to a derivatives clearing organization (DCO) that is registered under the CEA or a DCO that the Commission has exempted from registration.

The Commission has adopted swap clearing requirement determinations for certain classes of interest rate swaps and credit default swaps.[1] Swaps that are subject to the Commission's swap clearing requirement are described in Commission regulation 50.4 (Clearing Requirement). Part 50 of the Commission's regulations also includes a number of exceptions to and exemptions from the Clearing Requirement. Certain of these exceptions or exemptions are based on statutory principles (*e.g.,* the end-user exception),[2] and others were adopted pursuant to the Commission's public interest exemption authority (*e.g.,* the exemption for cooperatives).[3]

In April 2013 the Commission adopted a limited exemption from the Clearing Requirement for certain affiliated entities pursuant to its public interest authority (Inter-Affiliate Exemption).[4] The Inter-Affiliate Exemption is subject to certain conditions that limit the availability of the exemption and are designed to ensure that the Clearing Requirement is not circumvented. When the Commission adopted the Inter-Affiliate Exemption, it concluded that, an exemption subject to certain conditions is appropriate for the transactions at issue, promotes responsible financial innovation and fair competition, and is consistent with the public interest.[5] These conditions are an important element of the Inter-Affiliate Exemption and continue to be an area of the Commission's focus. This final rule amends certain regulatory provisions in Commission regulation 50.52 relating to the conditions of electing the Inter-Affiliate Exemption.

B. Commission Regulation 50.52

Commission regulation 50.52 governs the eligibility and compliance requirements for market participants electing not to clear inter-affiliate swaps pursuant to the Inter-Affiliate Exemption. This regulation has been in effect since June 2013, and Commission staff has monitored the election and availability of the Inter-Affiliate Exemption over time. Certain assumptions about the global adoption of swap clearing mandates were not realized, and the Commission's conditions to the Inter-Affiliate Exemption that were adopted and implemented in 2013 no longer serve the function intended.[6] This final rule amends those conditions to the Inter-Affiliate Exemption in order to reflect current regulatory practices.

1. Eligible Affiliate Counterparties

First, to qualify for the Inter-Affiliate Exemption, each counterparty to a swap must meet the definition of an ''eligible affiliate counterparty'' set forth in Commission regulation 50.52(a). The terms of the exempted swap must comply with a documentation requirement and be subject to a centralized risk management program. The election of the Inter-Affiliate Exemption, as well as how the requirements of the exemption are met, must be reported to a Commission-registered swap data repository. Finally, the Inter-Affiliate Exemption generally requires each eligible affiliate counterparty to clear swaps executed with unaffiliated counterparties (*i.e.,* outward-facing swaps), if the swaps are covered by the Commission's Clearing Requirement and do not otherwise qualify for an exception to or exemption from the Clearing Requirement (Outward-Facing Swaps Condition).[7]

The Commission continues to believe that it is necessary to impose risk-mitigating conditions on inter-affiliate swaps to uphold the Clearing Requirement, deter evasion, and help protect against systemic risk to the U.S. As the Commission stated in the adopting release issuing the Inter-Affiliate Exemption, entities that are affiliated with each other are separate legal entities notwithstanding their affiliation.[8] As separate legal entities, affiliates generally are not legally responsible for each other's contractual obligations. This legal reality becomes readily apparent when one or more affiliate(s) become insolvent. Affiliates, as separate legal entities, are managed in bankruptcy as separate estates, and the trustee for each debtor estate has a duty to the creditors of the affiliate, not the corporate family, the parent of the affiliates, or the corporate family's creditors.

2. Outward-Facing Swaps Condition

The Outward-Facing Swaps Condition requires that an eligible affiliate counterparty relying on the Inter-Affiliate Exemption clear any swap covered by the Clearing Requirement (*i.e.,* an interest rate or credit default swap identified in Commission regulation 50.4) that is entered into with an unaffiliated counterparty, unless the swap qualifies for an exception or exemption from the Clearing Requirement under part 50. This provision applies to any eligible affiliate counterparty electing the Inter-Affiliate Exemption, including an eligible affiliate counterparty located outside of the United States.

The Outward-Facing Swaps Condition is intended to prevent swap market participants from using the Inter-Affiliate Exemption to evade the Clearing Requirement or to transfer risk to U.S. firms by entering into uncleared swaps with non-U.S. affiliates in jurisdictions that do not have mandatory clearing regimes comparable to the Commission's clearing requirement regime. Such evasion could be accomplished if the non-U.S. affiliate enters into a swap with an unaffiliated party also located outside of the U.S. and that swap is related on a back-to-back or matched book basis with the swap executed with the affiliated party located in the U.S. In the adopting release to the Inter-Affiliate Exemption,

[1] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) and Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 71202 (Oct. 14, 2016).

[2] *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560 (Jul. 19, 2012).

[3] *See* Clearing Exemption for Certain Swaps Entered Into by Cooperatives, 78 FR 52286 (Aug. 22, 2013).

[4] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750 (Apr. 11, 2013).

[5] *Id.* at 21754.

[6] Some non-U.S. jurisdictions are still in the process of adopting their domestic mandatory clearing regimes, some non-U.S. jurisdictions may never implement clearing for swaps, and a number of non-U.S. regimes vary significantly in terms of product and participant scope from the Commission's Clearing Requirement.

[7] Commission regulation 50.52(b)(4)(i).

[8] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, at 21752–21753 (Apr. 11, 2013).

the Commission noted that section 2(h)(4)(A) of the CEA requires the Commission to prescribe rules to prevent evasion of the Clearing Requirement.[9]

The Commission did not propose and is not adopting any substantive changes to the definition of ''eligible affiliate counterparty'' or the Outward-Facing Swaps Condition. The final rule today adopts changes to the alternative conditions for complying with the Outward-Facing Swaps Condition.

II. The Proposal To Amend Commission Regulation 50.52

A. The Commission's Proposal To Revise the Alternative Compliance Frameworks

On December 23, 2019, the Commission published a notice of proposed rulemaking (the Proposal) to amend Commission regulation 50.52.[10] The Commission proposed changes that would establish the same conditions and requirements to comply with the Inter-Affiliate Exemption as those provided for in current no-action relief granted to eligible affiliate counterparties under CFTC Letter No. 17–66.[11] The Commission requested comments from market participants about their experiences electing and complying with conditions of the Inter-Affiliate Exemption and on all other aspects of the Proposal.

The revisions outlined in the Proposal would effectively codify CFTC Letter No. 17–66 by reinstating and revising the two alternative compliance frameworks set forth in Commission regulations 50.52(b)(4)(ii) and (iii) (together, the Alternative Compliance Frameworks) and make additional minor changes. The Alternative Compliance Frameworks were adopted for a limited time period and expired on March 11, 2014.

Under the Proposal, the Commission regulation subsections 50.52(b)(4)(ii)(A) and 50.52(b)(4)(ii)(B), which both expired on March 11, 2014, would be reinstated and combined in revised subsection 50.52(b)(4)(ii). The Commission proposed to delete the expiration date, expand the list of jurisdictions in which one of the counterparties may be located and still comply with the Alternative Compliance Frameworks, and streamline the variation margining requirement. As explained in the Proposal, eligible affiliate counterparties continue to rely on the Alternative Compliance Frameworks made available through no-action relief. Deleting the March 11, 2014 expiration date reinstates this portion of the Alternative Compliance Framework. Revised Commission regulation 50.52(b)(4)(ii) permits non-U.S. eligible affiliate counterparties located in Australia, Canada, Hong Kong, Mexico, Switzerland, or the United Kingdom, to comply with this Alternative Compliance Framework, as well as eligible affiliate counterparties located in the European Union, Japan, or Singapore. Finally, for the reasons discussed below, the variation margin requirement in revised Commission regulation 50.52(b)(4)(ii) does not include the option to pay and collect full variation margin daily on all swaps entered into between the eligible affiliate counterparty located in the listed jurisdictions and an unaffiliated counterparty, because market participants have not relied on this provision.

Under the Proposal, the Commission did not revise the five percent test, described below, other than to delete the expiration date, modify the jurisdictions in which an eligible affiliate counterparty may be located for purposes of complying with that provision, and streamline the variation margining requirement. The five percent test is a provision in the Alternative Compliance Framework that permitted (until its expiration on March 11, 2014), an eligible affiliate counterparty located in the U.S. to comply with certain variation margin provisions in lieu of clearing, with respect to a swap executed opposite an eligible affiliate counterparty located in a non-U.S. jurisdiction other than the European Union, Japan, or Singapore.[12] According to this test, the aggregate notional value of swaps included in a class of swaps identified by Commission regulation 50.4 (classes of swaps covered by the Clearing Requirement) executed between an eligible affiliate counterparty located in the U.S. and an eligible affiliate counterparty located in a non-U.S. jurisdiction other than the European Union, Japan, or Singapore may not exceed five percent of the aggregate notional value of all swaps included in a class of swaps identified by Commission regulation 50.4 that are executed by the U.S. eligible affiliate counterparty. If the five percent threshold was exceeded, the Alternative Compliance Framework was unavailable under existing Commission regulation 50.52(b)(4)(iii), in connection with swaps with eligible affiliate counterparties located in a non-U.S. jurisdiction other than the European Union, Japan, or Singapore.

Eligible affiliates in certain jurisdictions have been granted relief through CFTC staff letters with respect to the Alternative Compliance Framework under Commission regulation 50.52(b)(4)(ii), but CFTC staff had not issued no-action relief to remove those jurisdictions from the category of ''other jurisdictions'' contemplated by Commission regulation 50.52(b)(4)(iii). The Commission made these amendments in the Proposal to no longer categorize those jurisdictions as ''other jurisdictions,'' in order to appropriately broaden the availability of the Alternative Compliance Framework while maintaining protections against evasion of the Clearing Requirement.

As the Commission explained in the Proposal, the five percent test establishes a relative limit on the amount of uncleared swaps activity—activity that would otherwise be subject to the Commission's Clearing Requirement—that any one U.S. eligible affiliate counterparty may conduct with its affiliated counterparties in certain ''other jurisdictions.'' In other words, the U.S. affiliate cannot enter into swaps that total (in aggregate) more than five percent of all of its swaps that are subject to the Commission's Clearing Requirement, with affiliates in the ''other jurisdictions.'' The five percent test has the practical effect of limiting the relative notional amount of uncleared swaps activity that affiliates conduct in jurisdictions that are not identified in Commission regulation 50.52(b)(4)(ii). The Commission continues to believe that limiting the relative notional amount of uncleared

[9] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, at 21761 (Apr. 11, 2013). The Commission also notes that Commission regulation 1.6 makes it unlawful to conduct activities outside the United States, including entering into agreements, contracts, and transactions and structuring entities, to willfully evade or attempt to evade any provision of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including the swap clearing requirement under section 2(h)(1) of the CEA. Any such evasionary conduct will be subject to the relevant provisions of Title VII. In determining whether a transaction or entity structure is designed to evade, the Commission considers the extent to which there is a legitimate business purpose for such structure. 77 FR 48208, at 48301 (Aug. 13, 2012).

[10] Exemption From the Swap Clearing Requirement for Certain Affiliated Entities—Alternative Compliance Frameworks for Anti-Evasionary Measures, 84 FR 70446 (Dec. 23, 2019).

[11] CFTC Letter No. 17–66 (Dec. 14, 2017), available at *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm. See also,* previously granted relief under CFTC Letter Nos. 14–135 (Nov. 7, 2014), 15–63 (Nov. 17, 2015), 16–81 (Nov. 28, 2016), and 16–84 (Dec. 15, 2016). CFTC Letter No. 17–66 expires on the earlier of (i) December 31, 2020 at 11:59 p.m. (Eastern Time); or (ii) the effective date of amendments to Commission regulation 50.52.

[12] Commission regulation 50.52(b)(4)(iii).

swaps executed in jurisdictions that have not established or implemented clearing regimes, along with conditioning relief on the use of variation margin, protects the eligible affiliate counterparty located in the United States from exposure to the risks associated with material swaps exposure in jurisdictions that do not have their own domestic clearing regime. The changes adopted today will decrease the number of ''other jurisdictions'' and as a result market participants may increase the notional amount of swap activity in those jurisdictions while still remaining below the five percent limit. The Commission did not receive any comments regarding this change. Furthermore, the Commission believes that the revised five percent test facilitates effective risk management among affiliated entities while protecting U.S. affiliates from transferring unmitigated risk into the U.S. from other jurisdictions.

Finally, under the Proposal, the variation margin requirement in revised Commission regulation 50.52(b)(4)(iii) did not include the option to pay and collect full variation margin daily on all swaps entered into between the eligible affiliate counterparty located in the listed jurisdictions and an unaffiliated counterparty, because market participants have not been electing this option.

The Proposal did not include any changes to the requirement that any swaps that are exempted from the Clearing Requirement under the Inter-Affiliate Exemption must be subject to a centralized risk management program.[13] Also, all swaps exempted from the Clearing Requirement pursuant to the Inter-Affiliate Exemption will continue to be subject to the reporting requirements outlined in Commission regulation 50.52(c)–(d) and part 45 of the Commission's regulations. The Commission relies on these reporting requirements to monitor the number of entities electing the Inter-Affiliate Exemption, as well as the number of inter-affiliate swaps for which the exemption is claimed. As discussed in greater detail below, data on the election of the Inter-Affiliate Exemption has been considered by the Commission and supports its belief that this final rule to reinstate the Alternative Compliance Frameworks will not increase opportunities for affiliated entities to evade the Clearing Requirement.

[13] Commission regulation 50.52(b)(3).

B. Comments Received

The Commission received one comment letter in response to the Proposal from the International Swaps and Derivatives Association, Inc. (ISDA). ISDA supported the Proposal and stated that the revisions would provide legal certainty to market participants operating under Commission staff no-action relief. ISDA suggested two changes to the Proposal: (1) A modification to the variation margin requirements in the Proposal; and (2) a clarification related to the Commission's swap trade execution requirement under section 2(h)(8) of the CEA (Trade Execution Requirement).

ISDA recommended that the Commission allow eligible affiliate counterparties exchanging variation margin payments with other eligible affiliate counterparties under the Alternative Compliance Frameworks to comply with non-U.S. uncleared margin requirements that have been deemed comparable by the Commission. The Commission has issued comparability determinations regarding uncleared swap margin regimes for swap dealers and major swaps participants in Japan, the European Union, Australia, and the United Kingdom (by staff no-action relief as a former member of the European Union).[14] In ISDA's view, the Commission should allow eligible affiliate counterparties to rely on these comparability determinations in order to satisfy any variation margin requirements under the Alternative Compliance Frameworks. ISDA did not suggest a specific change to the regulatory text under Commission regulation 50.52, but argued that applying the comparability determinations in this context would be consistent with the Commission's efforts and policies relating to cross-border swaps activities.

For a number of reasons, the Commission declines to adopt any changes to the variation margin requirements under the Alternative Compliance Frameworks, other than the amendments that were considered in the Proposal. In response to ISDA's request, the Commission notes that while it has adopted uncleared margin comparability determinations for certain jurisdictions (but not all jurisdictions in which an eligible affiliate counterparty may be located), the application of a non-U.S. jurisdiction's uncleared margin regime would not be appropriate for counterparties electing the Inter-Affiliate Exemption. First, changing the Commission's approach to the variation margin requirements for counterparties using the Alternative Compliance Frameworks would require at least some counterparties to alter their existing variation margining practices with respect to inter-affiliate swaps. Eligible affiliate counterparties have been relying on the Alternative Compliance Frameworks in practice for approximately seven years and imposing a new standard for the variation margin requirement for certain entities would represent a significant change from a well-established status quo that the Commission believes has been working well over that period of time.

As discussed below, the condition requiring eligible affiliate counterparties to pay and collect variation margin provides risk-mitigating benefits and acts as a protection against accumulating uncollateralized risks in affiliated counterparties that do not clear their outward-facing swaps. The variation margin condition under the Inter-Affiliate Exemption also serves a distinct purpose in preventing the transfer of risk back to the United States. Permitting counterparties to comply with a non-U.S. uncleared margin regime in some instances may eliminate the risk-mitigation effects of the variation margin condition in the Alternative Compliance Frameworks because there may not necessarily be corresponding variation margin requirements under the non-U.S. jurisdiction's uncleared margin regime.

For instance, the Japanese inter-affiliate regime does not require counterparties to inter-affiliate swaps to pay or collect variation margin. If the Commission applied its findings from its comparability determination with respect to Japan in the Alternative Compliance Frameworks, then the eligible affiliate counterparties would not be required to pay or collect any variation margin on their swaps with other eligible affiliate counterparties.

The Commission understands that each non-U.S. jurisdiction may have a different treatment of inter-affiliate derivative transactions that is tailored to its own legal framework and market conditions. The Commission recognized

[14] Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 63376 (Sept. 15, 2016); Amendment to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12074 (Apr. 1, 2019); Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 82 FR 48394 (Oct. 18, 2017); and Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12908 (Apr. 3, 2019). *See also* CFTC Letter No. 19–08, available at: *https://www.cftc.gov/csl/19-08/download.*

this point and looked at the broader market framework in its comparability determinations with respect to margin requirements for uncleared swaps for swap dealers and major swap participants.[15] The comparability determinations analyze the uncleared margin regimes using broad, outcomes-based measures to assess compliance with the CFTC's margin requirements. The variation margin requirements included in the Alternative Compliance Frameworks can be distinguished from the analysis undertaken in the comparability determinations with respect to the uncleared margin regimes because the variation margin requirements under the Alternative Compliance Framework are more specifically designed to protect against the evasion of the Clearing Requirement and the transfer of risk back to the United States. The variation margin required under the Alternative Compliance Frameworks provides assurance that counterparties electing the Inter-Affiliate Exemption are not entering into uncollateralized uncleared outward-facing swaps that would otherwise be subject to the Clearing Requirement without taking important risk-mitigating precautions.

For these reasons, the Commission believes the Alternative Compliance Frameworks serve a unique risk mitigating function that protects against evasion of the Clearing Requirement and guards against systemic risks to the United States that could arise from uncleared swaps entered into by eligible affiliate counterparties. Accordingly, the Commission will not apply its comparability determinations to the variation margin requirements under revised Commission regulation 50.52(b)(4).

ISDA's comment letter also asked the Commission for confirmation that the eligible affiliate counterparties electing the Inter-Affiliate Exemption would be eligible for an automatic exemption from the Trade Execution Requirement. ISDA cited to Commission statements in 2013 in which the Commission determined that swaps between certain affiliated entities electing the Inter-Affiliate Exemption would not be subject to the Trade Execution Requirement.[16] The Commission reaffirms its previous statement in this final rule. However, the Commission is not making any findings or determinations related to the Trade Execution Requirement at this time. A further discussion of the Trade Execution Requirement is included below.

After considering ISDA's comment letter and the Commission's experience administering the Inter-Affiliate Exemption, the Commission is adopting amendments to Commission regulation 50.52 as proposed. Adopting these revisions provides legal certainty to swaps market participants and increases the flexibility offered to counterparties electing not to clear inter-affiliate swaps, while also guarding against the unmitigated transfer of risk into U.S. markets.

C. Trade Execution Requirement

The Inter-Affiliate Exemption provides relief from the Commission's Clearing Requirement. The Commission's Trade Execution Requirement is related to the Clearing Requirement because it applies to a subset of swaps that are subject to a clearing requirement determination under Commission regulation 50.4. The Trade Execution Requirement applies to swaps that have been made available to trade and requires that the counterparties execute a swap in accordance with the execution methods described in Commission regulation 37.9(a)(2).[17]

In the Proposal, the Commission stated that it was ''not considering any changes with regard to the trade execution requirement because those are the subject of another ongoing rulemaking.'' [18] The Commission did not request comment regarding the Trade Execution Requirement and did not include a policy position in the Proposal. Therefore, the application of the Trade Execution Requirement is beyond the scope of this final rule.

The Commission continues to evaluate its 2018 proposal related to swap execution facilities and the Trade Execution Requirement (SEF Proposal).[19] Under the SEF Proposal, the Commission proposed to exempt swaps relying on the Inter-Affiliate Exemption from the Trade Execution Requirement.[20] Because the SEF proposal addresses a broader set of exemptions from the Trade Execution Requirement (*i.e.,* more than swap transactions relying on the Inter-Affiliate Exemption from the Clearing Requirement), the Commission believes a final rule comprehensively addressing the Trade Execution Requirement is preferable to making a limited determination in this context.

In addition, Commission staff has provided no-action relief from the Trade Execution Requirement to eligible affiliate counterparties executing inter-affiliate swaps with other eligible affiliate counterparties, even if the Inter-Affiliate Exemption is not elected.[21] ISDA's comment to the Proposal included a request that the Commission adopt relief similar to the no-action relief provided in CFTC Letter No. 17–67. CFTC Letter No. 17–67 was not subject to any discussion in the Proposal and continues to be the staff's position. The Commission may address separately no-action relief from the Trade Execution Requirement for eligible affiliated entities.

III. Final Rule

A. Amendments to Commission Regulation 50.52

The Commission has considered the comment from ISDA and is adopting the amendments to Commission regulation 50.52 as proposed.

The Commission is inserting a new definition for the term ''United States'' under Commission regulation 50.52(a)(2)(iii). The Commission received no comments on this definition and is adopting the change as proposed.

The Commission is deleting references to the March 11, 2014 expiration date in Commission regulations 50.52(b)(4)(ii) and (iii) as proposed. This will reinstate the Alternative Compliance Frameworks as an option available in the Commission's regulations for complying with the Outward-Facing Swaps Condition.

The Commission is deleting Commission regulation 50.52(b)(4)(ii)(B) as proposed. This regulation permitted certain affiliate counterparties to comply with the Alternative Compliance Framework, provided,

[15] *See* Amendment to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12074, at 12078 (Apr. 1, 2019).

[16] Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606, at n. 1 (June 4, 2013).

[17] Under Commission regulation 37.9(a)(2), swaps subject to the Trade Execution Requirement that are not block trades must be executed on an order book, as defined in Commission regulation 37.3(a)(3) or a request for quote system, as defined in Commission regulation 37.9(a)(3) in conjunction with an order book. For the current list of swaps that are subject to the Trade Execution Requirement, *see* Swaps Made Available To Trade, available at: *https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/file/swapsmadeavailablechart.pdf.*

[18] Exemption From the Swap Clearing Requirement for Certain Affiliated Entities—Alternative Compliance Frameworks for Anti-Evasionary Measures, 84 FR 70446, at 70447 (Dec. 23, 2019).

[19] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

[20] *Id.* at 62038.

[21] CFTC Letter No. 17–67, available at: *https://www.cftc.gov/csl/17-67/download.*

among other conditions, that neither eligible affiliate counterparty is affiliated with an entity that is a swap dealer or major swap participant. In the Proposal, the Commission noted that it had reviewed swap data and found that entities that elected to comply with the Alternative Compliance Framework were financial entities or affiliated with swap dealers and did not rely on this provision of the Alternative Compliance Framework. In response to the Proposal, no commenter addressed this point or reported having relied on this provision without being so affiliated. Thus, the Commission believes it is appropriate to delete it.

The Commission is deleting Commission regulation 50.52(b)(4)(iii)(A) as proposed. Similar to the point above, the Commission noted in the Proposal that it was not aware of any eligible affiliate counterparty that has opted to use this provision, and requested comment on whether any market participant relied on this provision in the past, or intended to rely on this provision if it were reinstated. Since the Commission received no reports of use of this provision or other comments, it believes it is appropriate to delete it.

The Commission is adopting the revisions to the lists of jurisdictions included or excluded from Commission regulations 50.52(b)(4)(ii) and (iii) as proposed. The only comment on this point, from ISDA, supported the Commission's effort to provide legal certainty to market participants who have been operating under no-action relief pursuant to a series of CFTC staff letters.

Commission regulation 50.52(b)(4)(ii), as reinstated and revised, will permit each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, to pay and collect full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties, if at least one of the eligible affiliate counterparties is located in Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, or the United Kingdom.[22] Under this provision, eligible affiliate counterparties electing the exemption must pay and collect variation margin on swaps with all other eligible affiliate counterparties with whom they enter into swaps. The variation margin requirement does not extend beyond these swaps to include swaps between counterparties not electing the exemption.

Commission regulation 50.52(b)(4)(iii), as reinstated and revised, will permit each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, to pay and collect full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties, if the eligible affiliate counterparty that is located in the United States enters into swaps, included in the class of Commission regulation 50.4 swaps, with eligible affiliate counterparties located in jurisdictions *other than* Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, or the United Kingdom. However, if relying on this provision, the aggregate notional value of swaps with such counterparties included in the class of Commission regulation 50.4 swaps may not exceed five percent of the aggregate notional value of all swaps included in the class of Commission regulation 50.4 swaps entered into by the eligible affiliate counterparty located in the U.S. As noted above, the eligible affiliate counterparties electing the exemption must pay and collect variation margin on swaps with all other eligible affiliate counterparties with whom they enter into swaps.

The Commission is adopting the revisions to the variation margining requirements under Commission regulation 50.52(b)(4)(ii)–(iii) as proposed. The Commission sought comment from market participants about the two different variation margining options offered in current Commission regulations 50.52(b)(4)(ii)(A)(1) and (2), and Commission regulations 50.52(b)(4)(iii)(A) and (B). In particular, the Commission asked commenters whether compliance with the Outward-Facing Swaps Condition via the Alternative Compliance Frameworks was consistent or inconsistent with margin requirements in non-U.S. jurisdictions.[23] The Commission did not receive an independent analysis of the comparability between the Alternative Compliance Frameworks and margin requirements in non-U.S. jurisdictions. ISDA's comment letter requested that the Commission apply the uncleared margin requirement comparability determinations to the margin requirements in the Alternative Compliance Framework. As discussed above, the Commission is not implementing that change.

The Commission believes that amendments to Commission regulation 50.52(b)(4) adopted in this final rule provide an exemption from the Clearing Requirement in a manner that is demonstrated to be workable, while imposing conditions necessary to ensure that the Inter-Affiliate Exemption is not used to evade the Clearing Requirement and that inter-affiliate swaps exempted from required clearing meet certain risk-mitigating conditions to protect the U.S. financial system. In addition, the Commission believes that these amendments provide flexibility to eligible affiliate counterparties electing the Inter-Affiliate Exemption and increase legal certainty for the reasons stated above.

B. Commission's Section 4(c) Authority

In the Proposal, the Commission requested comment on whether the amendments to Commission regulation 50.52 were an appropriate exercise of the Commission's authority under section 4(c) of the CEA and whether they were in the public interest. The Commission received no comments regarding the Commission's use of its section 4(c) authority in this context.

The Commission continues to believe that its use of section 4(c) authority, which was used to adopt the Inter-Affiliate Exemption pursuant to section 4(c)(1) of the CEA, is appropriate to provide certain eligible affiliate counterparties with a limited exemption from the Clearing Requirement. Section 4(c)(1) of the CEA grants the Commission the authority to exempt any transaction or class of transactions, including swaps, from certain provisions of the CEA, including the Commission's Clearing Requirement, in order to ''promote responsible economic or financial innovation and fair competition.'' Section 4(c)(2) of the CEA further provides that the Commission may not grant exemptive relief unless it determines that: (1) The exemption is appropriate for the transaction and consistent with the public interest; (2) the exemption is consistent with the purposes of the CEA; (3) the transaction will be entered into solely between ''appropriate persons''; and (4) the exemption will not have a material adverse effect on the ability of the

[22] The Commission is expanding the list of jurisdictions under Commission regulation 50.52(b)(4)(ii) to include the United Kingdom as a separate jurisdiction from the European Union, in order to codify the no-action relief issued in preparation for the United Kingdom's withdrawal from the European Union, commonly referred to as ''Brexit.'' CFTC Letter No. 19–09 (Apr. 5, 2019), *available at https://www.cftc.gov/csl/19-09/download.*

[23] Exemption From the Swap Clearing Requirement for Certain Affiliated Entities—Alternative Compliance Frameworks for Anti-Evasionary Measures, 84 FR 70446, at 70452 (Dec. 23, 2019).

Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA. In enacting section 4(c), Congress noted that the purpose of the provision is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.[24]

The Commission believes that the Inter-Affiliate Exemption, including the Alternative Compliance Frameworks, as modified by this final rule, is consistent with the public interest and the purposes of the CEA. As the Commission noted in the adopting release for the Inter-Affiliate Exemption final rulemaking, inter-affiliate swaps fulfill an important risk management role within corporate groups.[25] These swaps may be beneficial to the entity as a whole. These amendments to the Outward-Facing Swaps Condition and the Alternative Compliance Frameworks will permit the variation margin provisions under revised Commission regulations 50.52(b)(4)(ii) and (iii) to be used in connection with swaps with eligible affiliate counterparties located in any non-U.S. jurisdiction, not only those located in the European Union, Japan, or Singapore. Pursuant to staff no-action relief, as discussed above, these provisions have been in use since 2013.

Based on the Commission's review of recent data reported to the Depository Trust & Clearing Corporation's swap data repository, DTCC Data Repository (U.S.) LLC, the Alternative Compliance Framework provisions under Commission regulation 50.52(b)(4)(ii) appear to be working. The Commission has identified approximately 55 entities located in Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, or the United Kingdom that elected the Inter-Affiliate Exemption between January 1, 2019 to December 31, 2019.[26] The Commission believes that these entities chose to, or could have, complied with the Alternative Compliance Framework under Commission regulation 50.52(b)(4)(ii) because of the jurisdiction in which they are organized. Based on the same data set from January 1, 2019 to December 31, 2019, the Commission identified 16 entities located in jurisdictions other than Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, the United Kingdom, or the United States that elected the Inter-Affiliate Exemption and chose to, or could have, complied with the Alternative Compliance Framework under Commission regulation 50.52(b)(4)(iii). During the same time period, the data showed that approximately 110 U.S. entities elected the Inter-Affiliate Exemption.

The Commission believes that adopting amendments to the Alternative Compliance Frameworks, including reinstating the provisions and extending the availability of the first framework under Commission regulation 50.52(b)(4)(ii) to eligible affiliate counterparties located in Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, and the United Kingdom, while correspondingly narrowing the availability of the second framework under Commission regulation 50.52(b)(4)(iii), is appropriate for purposes of swaps between affiliated entities, promotes responsible financial innovation and fair competition, and is consistent with the public interest.

In this regard, the Commission considered whether the availability of the Alternative Compliance Frameworks might result in fewer affiliated counterparties clearing their outward-facing swaps and the significance of any such reduction in terms of the use of inter-affiliate swaps as a risk management tool. Generally speaking, it is difficult to estimate whether the final rule will reduce central clearing of outward-facing swaps. Among other factors, the application of mandatory clearing and the availability of central clearing for particular types of swaps vary by jurisdiction. Also, market participants' response to the final rule may depend on which of their swaps are eligible for the Inter-Affiliate Exemption. Despite this uncertainty, the Commission believes that there may be a significant number of affiliated counterparties that will continue to engage in uncleared swaps activity as permitted under the amended Alternative Compliance Frameworks, subject to the conditions imposed by this final rule.[27]

Swap dealers electing the exemption use inter-affiliate swaps as an important risk management tool within corporate groups, and these affiliated groups are subject to a range of regulatory and other controls as part of their swap activities in the United States and in other jurisdictions. This includes the requirement to maintain a risk management program that takes into account risks posed by the swap dealer's affiliates and is integrated into the risk management of the broader corporate group.[28] In addition, the conditions to the Inter-Affiliate Exemption itself require the swaps covered by the exemption to be subject to a centralized risk management program. In sum, in considering whether the amendments in this final rule promote responsible financial innovation and fair competition and are consistent with the public interest, the Commission took the factors discussed above into account—*i.e.,* the value of inter-affiliate swaps as a risk management tool, the extent to which the Alternative Compliance Frameworks foster this use of inter-affiliate swaps, and the potential for more elections not to clear outward-facing swaps.

The Commission continues to believe that the amendments to the Outward-Facing Swaps Condition and Alternative Compliance Frameworks will be available only to ''appropriate persons.'' Section 4(c)(3) of the CEA includes within the term ''appropriate person'' a number of specified categories of persons, including such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections. In the 2013 Inter-Affiliate Exemption final rulemaking, the Commission found that eligible contract participants (ECPs) are appropriate persons within the scope of section 4(c)(3)(K) of the CEA.[29] The Commission noted that the elements of the ECP definition (as set forth in section 1a(18)(A) of the CEA and Commission regulation 1.3(m))

[24] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, at 3213.

[25] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, at 21754 (Apr. 11, 2013) (citing to commenters and the proposal in support of the conclusion that ''inter-affiliate transactions provide an important risk management role within corporate groups'' and that ''swaps entered into between corporate affiliates, if properly risk-managed, may be beneficial to the entity as a whole.'').

[26] The Commission notes that although current Commission regulation 50.52 does not permit entities to comply with either of the Alternative Compliance Frameworks because they have expired, the relief provided by staff no-action letters means that market participants have continued to use and report swaps activity in compliance with the Alternative Compliance Frameworks.

[27] Based on a recent review of swap data reflecting use of the Inter-Affiliate Exemption, the Commission estimates that over 70 eligible affiliate counterparties located outside of the United States may elect to comply with one of the reinstated Alternative Compliance Frameworks thereby choosing not to clear their outward-facing swaps and rather to pay and collect variation margin on all swaps with other eligible affiliate counterparties instead. These entities include affiliates of swap dealers that are active in multiple jurisdictions.

[28] Commission regulation 23.600(c)(ii).

[29] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, at 21754 (Apr. 11, 2013).

generally are more restrictive than the comparable elements of the enumerated ''appropriate person'' definition. Given that only ECPs are permitted to enter into uncleared swaps, there is no risk that a non-ECP or a person who does not satisfy the requirements for an ''appropriate person'' could enter into an uncleared swap using the Inter-Affiliate Exemption. Consistent with its finding in the 2013 Inter-Affiliate Exemption final rulemaking, the Commission reaffirms that the class of persons eligible to rely on the Inter-Affiliate Exemption is limited to ''appropriate persons'' within the scope of section 4(c)(3) of the CEA.

Finally, the Commission expects, based on its past experiences and the comment received, that the amendments to Commission regulation 50.52 will not have a material effect on the ability of the Commission to discharge its regulatory responsibilities. The Inter-Affiliate Exemption continues to be limited in scope and the Commission receives information regarding the election and use of exempt swaps between eligible affiliated entities because they are reported to a swap data repository. In fact, the Commission hopes that future changes to part 45 reporting requirements may improve the Commission's ability to ascertain quickly which swaps are subject to the Inter-Affiliate Exemption versus other available exemptions or exceptions to the Clearing Requirement.[30] As the Commission has done in the past, it will monitor swap counterparties' elections of the Inter-Affiliate Exemption and swap activity through reported data. The Commission's special call, anti-fraud, and anti-evasion authorities are unaffected by these amendments and remain in place. The Commission may exercise its special call, anti-fraud, or anti-evasion authorities in response to concerns about the use of the Inter-Affiliate Exemption. For all of these reasons, the Commission remains confident that it can discharge its regulatory responsibilities under the CEA.

C. Effective Date and Compliance Date

This final rule will be effective 30 days after publication in the **Federal Register**. Compliance with the revised Alternative Compliance Frameworks will be required on the effective date. Eligible affiliate counterparties entering into a swap on or after the effective date and claiming the Inter-Affiliate Exemption must comply with the revised Alternative Compliance Frameworks in Commission regulation 50.52.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they issue will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the impact on those entities.[31] Each Federal agency is required to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.[32]

As discussed in the Proposal, the amendments to the Inter-Affiliate Exemption will not affect any small entities, as the RFA uses that term. Pursuant to section 2(e) of the CEA, only ECPs may enter into swaps, unless the swap is listed on a DCM. The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[33] The amendments to the Inter-Affiliate Exemption will affect only market participants that qualify as ECPs. All persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation, not by operation of any Clearing Requirement. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the amendments adopted in this final rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [34] imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, 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 control number from the Office of Management and Budget (OMB).

This final rule will not require a new collection of information from any persons or entities. The Commission is not amending any reporting requirements related to the Inter-Affiliate Exemption in this final rule. The reporting requirement and collection of information related to the Inter-Affiliate Exemption, under Commission regulations 50.52(c) and (d), has been assigned control number 3038–0104 by OMB and will continue to be reviewed periodically.

C. Cost-Benefit Considerations

1. Statutory and Regulatory Background

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors). The Commission considers the costs and benefits resulting from its discretionary determination to adopt this final rulemaking with respect to each of the Section 15(a) Factors below.

The regulatory baseline for the Commission's consideration of the costs and benefits of this final rule is the regulatory status quo. The regulatory status quo is determined by the Commission's existing regulations governing the Clearing Requirement and the Inter-Affiliate Exemption in part 50 of the Commission's regulations. The Commission recognizes, however, that to the extent that market participants have relied upon relevant Commission staff no-action relief, the actual costs and benefits of this final rule, as realized in the market, may not be as significant. For example, the Alternative Compliance Frameworks in current Commission regulation 50.52 expired on March 11, 2014. As a practical matter, market participants have continued to comply with the Inter-Affiliate Exemption using the Alternative Compliance Frameworks because a series of staff no-action letters stated that staff would not recommend that the Commission commence an enforcement action against entities using the Alternative Compliance Frameworks. Thus, the costs and benefits considered below are likely to be different than those faced by a current swap counterparty electing the Inter-Affiliate Exemption.

The Commission notes that the consideration of costs and benefits

[30] *See generally,* Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578 (Apr. 17, 2020).

[31] 5 U.S.C. 601 *et seq.*

[32] *Id.*

[33] 66 FR 20740, at 20743 (Apr. 25, 2001).

[34] 44 U.S.C. 3507(d).

below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of this final rule on all activity subject to the amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i) of the CEA.[35] In particular, the Commission notes that a significant number of entities affected by this final rule are located outside of the United States.

The Commission sought comments on all aspects of the cost and benefit considerations in the Proposal. In particular, the Commission requested that commenters provide any data or other information that would be useful in quantifying costs and benefits of the Proposal. The Commission also requested specific comments on two alternatives considered by the Commission: (i) Adopting modified Alternative Compliance Frameworks including expiration dates; and (ii) making no amendments to the Outward-Facing Swaps Condition. The Commission received no comments in response to the Proposal that discussed cost and benefit considerations. Despite this fact, the Commission has endeavored to assess the costs and benefits of the amendments adopted by this final rule in quantitative terms wherever possible.

In the sections that follow, the Commission considers the costs and benefits of adopting this final rule, and the impact on the Section 15(a) Factors of adopting the final rule.

2. Considerations of the Costs and Benefits of the Commission's Action

a. Costs

The Commission believes that there will be some costs associated with adopting the final rule, as compared to the regulatory baseline. Under this final rule, eligible affiliate counterparties could increase their counterparty credit risk by electing to comply with one of the Alternative Compliance Frameworks instead of choosing to clear any outward-facing swap. Clearing, along with the Commission's requirements related to swap clearing, mitigates counterparty credit risk in the following ways: (1) A futures commission merchant guarantees the performance of a customer and in so doing, takes steps to monitor and mitigate the risk of a counterparty default; (2) a clearinghouse collects sufficient initial margin to cover potential future exposures and regularly collects and pays variation margin to cover current exposures; (3) a clearinghouse has rules, and enforcement mechanisms to ensure the rules are followed, to mark a swap to market and to require that margin be posted in a timely fashion; (4) a clearinghouse facilitates netting within portfolios of swaps and among counterparties; and (5) a clearinghouse holds collateral in a guaranty fund in order to mutualize the remaining tail risk not covered by initial margin contributions among clearing members.[36] The risk-mitigating benefits of clearing outward-facing swaps will not be realized if the affiliated counterparties elect to use the Alternative Compliance Frameworks. This final rule may produce a marginal increase in systemic risk and related costs because certain outward-facing swaps that were required to be cleared may now remain uncleared as long as the affiliated counterparties exchange variation margin daily under the Alternative Compliance Frameworks.

Moreover, there may be an increased risk of contagion and systemic risk to the financial system that results from permitting additional market participants to use the Alternative Clearing Frameworks to avoid clearing certain swaps subject to the Clearing Requirement. Swap clearing mitigates risk on a transaction level, as outlined above, and it also provides protection against risk transfer throughout the financial system. While counterparty credit risk between affiliated entities represents a slightly lower risk to the overall financial system than counterparty credit risk between non-affiliated entities, it is still the case that clearing provides the most complete protection against counterparty credit risk. Systemic risk, and the costs associated with it, is minimized to the extent that affiliated counterparties exchange variation margin as a condition to the Alternative Compliance Frameworks.[37]

Swap market participants could experience overall increases in the costs of clearing under the final rule. Fewer entities may choose to clear swaps in order to comply with the Outward-Facing Swaps Condition once the Alternative Compliance Frameworks are available.[38] Certain entities that had become members of a clearinghouse to clear outward-facing swaps may no longer need those relationships. The decrease in clearing activity could result in decreased liquidity in non-U.S. markets and at clearinghouses where eligible counterparties previously cleared outward-facing swaps. Collectively, these changes could make clearing swaps more expensive in those less liquid markets.

Finally, the availability of the modified Alternative Compliance Frameworks may increase costs to any third party creditor of an entity using an Alternative Compliance Framework instead of clearing its outward-facing swaps. While the variation margin requirements under the Alternative Compliance Frameworks mitigate the buildup of credit risk within a corporate group that uses a centralized risk management structure, it is still possible that requiring affiliated counterparties to exchange variation margin instead of clearing outward-facing swaps could produce additional risk to external creditors and/or third parties. As noted above, clearing provides the most complete protection against counterparty credit risk, even though that risk, when it is between affiliated entities, represents a slightly lower risk to the overall financial system than when between non-affiliates.

In addition, the combination of reinstating the Alternative Compliance Frameworks while expanding the number of jurisdictions excluded from the five percent limitation may cause market participants to alter their swaps trading behavior. To the extent that affiliated entities under current requirements face a choice between clearing the outward-facing swap and satisfying some other exception or exemption from the Clearing Requirement, they may have a different internal calculation under the final rule

[35] 7 U.S.C. 2(i).

[36] *See* Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 71230 (Oct. 14, 2016).

[37] Requiring counterparties to exchange variation margin daily is one effective risk management tool that prevents swap market participants from accumulating uncollateralized risk.

[38] As a practical matter, many market participants relied on Commission staff no-action relief to comply with the Outward-Facing Swaps Condition through modified alternative compliance frameworks. However, for purposes of this analysis of costs, the Commission assumes that the Alternative Compliance Frameworks have expired.

for determining whether to engage in a swap or shift risk among affiliated entities depending on whether the swap would cause it to exceed the five percent test under new Commission regulation 50.52(b)(4)(iii). The new limitations and geographical restrictions in the final rule may incentivize affiliated entities to transition their swaps to counterparties located in swaps markets which do not have local clearing mandates or well-developed clearing infrastructures. Swaps entered into with counterparties in those locations may pose higher systemic risks and costs related to those risks could increase.

b. Benefits

The Commission believes that there will be significant benefits associated with adopting this final rule, as compared to the regulatory baseline. The final rule amendments to Commission regulation 50.52 will permit eligible affiliate counterparties to use the Alternative Compliance Frameworks. Swap counterparties will benefit from this additional flexibility in their inter-affiliate swap risk management. In addition to this qualitative benefit, the Commission expects that there will be cost saving benefits for certain entities as well.

Affiliated counterparties that elect to comply with one of the Alternative Compliance Frameworks and exchange variation margin may experience cost savings if their variation margining practices are less expensive than clearing the outward-facing swap. The costs of clearing an outward-facing swap would include initial margin (paid to either a futures commission merchant or the clearinghouse) and clearing fees. This final rule does not specify the methods or calculations required for affiliated entities exchanging variation margin daily on all swaps with other eligible affiliate counterparties. Therefore, the level of these cost savings may differ from entity to entity, and from swap to swap.

Certain corporate entities might be incentivized by the new availability of the Alternative Compliance Frameworks to increase their inter-affiliate swap activity (or to start entering into swaps between affiliates). An increase in inter-affiliate swap activity between eligible entities complying with the conditions to the Inter-Affiliate Exemption could result in enhanced centralized risk management for those entities. The availability of, and improvements to, centralized risk management systems can produce long-term cost savings driven by efficiency, resiliency, and stability. Entities that increase or start to engage in inter-affiliate swaps may experience cost savings across their swaps books because they can use inter-affiliate swap transactions to shift swaps activity to the jurisdictions with more liquid markets (resulting in lower costs).

As discussed in the Proposal, the Commission estimated the number of entities that have used or potentially would use the Alternative Compliance Frameworks adopted in this final rule under Commission regulation 50.52(b)(4)(ii) and (iii).[39] Since the Commission published the Proposal, Commission staff continued to examine swap data reported to the Depository Trust & Clearing Corporation's swap data repository, DTCC Data Repository (U.S.) LLC. The Commission's most recent data indicate that approximately 55 entities might elect to use the revised Alternative Compliance Framework under Commission regulation 50.52(b)(4)(ii) and as many as 16 entities might elect to use the revised Alternative Compliance Framework under Commission regulation 50.52(b)(4)(iii). Although historical data has limited benefit in predicting future use, the Commission notes that the number of entities that it estimates have used, or potentially would use, the Alternative Compliance Frameworks is similar to the data the Commission has collected in the past.

Besides the difficulty in determining which entities might use the revised Alternative Compliance Frameworks, the estimate of the benefit to each entity is further complicated by the differing costs and capital structures related to each entity. Further, the Commission realizes that there may be even higher numbers of entities in the future that would benefit from this final rule and elect to satisfy the requirements in the Alternative Compliance Framework rather than clear an outward-facing swap.

3. Alternative of Allowing Eligible Affiliate Counterparties To Rely on Comparability Determinations in Order To Satisfy Any Variation Margin Requirements Under the Alternative Compliance Frameworks

The Commission considered the alternative of allowing eligible affiliate counterparties to rely on comparability determinations to satisfy the Alternative Compliance Frameworks. The Commission understands that each non-U.S. jurisdiction may have different requirements for inter-affiliate derivative transactions that are customized to its own market structure and legal framework. The Commission acknowledges this, and in conducting its comparability determination uses a holistic, outcomes-based approach. The Commission's comparability determinations do not require identical margin rules, including affiliated variation margin requirements. The variation margin required under the Alternative Compliance Frameworks provides important risk-mitigating safeguards that protect market participants and the public and are a sound risk management practice that helps reduce the buildup of credit exposure between affiliates. The design of the Commission's variation margin requirements under the Alternative Compliance Framework is to guard against evasion of the Clearing Requirement and the transmission of losses back to the United States. Thus, the Commission will not apply its comparability determinations to the variation margin requirements under revised Commission regulation 50.52(b)(4).

4. Section 15(a) Factors

a. Protection of Market Participants and the Public

In revising the Outward-Facing Swaps Condition and Alternative Compliance Frameworks, the Commission considered various ways to appropriately protect affiliated entities, third parties in the swaps market, and the public. The Commission seeks to ensure that the final rule prevents swap market participants from evading the Commission's Clearing Requirement and/or transferring excessive risk to an affiliated U.S. entity through the use of uncleared inter-affiliate swaps. The Commission is permitting eligible affiliate counterparties to elect not to clear an outward-facing swap subject to the Clearing Requirement, but only if eligible affiliates pay and collect daily variation margin on swaps.

The Commission also considered the potential effects on the public of providing this alternative to clearing outward-facing swaps subject to the Clearing Requirement. In particular, the Commission considered the extent to which the Alternative Compliance Frameworks might result in fewer affiliated counterparties clearing their outward-facing swaps. One difficulty in estimating the effect of this final rule is the fact that the application of mandatory clearing and the availability of central clearing for particular types of swaps vary by jurisdiction. Also, many market participants enter into swaps

[39] *See* Exemption From the Swap Clearing Requirement for Certain Affiliated Entities—Alternative Compliance Frameworks for Anti-Evasionary Measures, 84 FR 70446, at 70454 and 70457 (Dec. 23, 2019).

and other financial instruments in multiple jurisdictions, which may give them the ability to adjust their financial and risk management activity in response to variations in regulatory requirements.

In the face of this uncertainty, the Commission believes that, even if the change in clearing activity and business for clearinghouses is uncertain, there may be a significant number of affiliated counterparties that will continue to engage in swaps activity permitted under the Alternative Compliance Frameworks.[40] The Commission understands that the swap dealers conduct their swaps activities using affiliates in various jurisdictions. Swap dealers engage in inter-affiliate swaps in order to distribute risk among their affiliates. Thus, inter-affiliate swaps are an important part of prudent risk management, and a significant number of swap dealers and other market participants engage in inter-affiliate swaps. This inter-affiliate swaps activity is subject to a range of regulatory and other controls.

In considering how the final rule would affect the protection of market participants and the public, the Commission took into account the value of inter-affiliate swaps as a risk management tool and the extent to which the Alternative Compliance Frameworks would foster this use of inter-affiliate swaps. The Commission also considered potential increases in systemic risk if affiliates elect not to clear outward-facing swaps and use the Alternative Compliance Frameworks instead. In view of these factors, the Commission believes that the potential increases in systemic risk will be mitigated by the controls on the use of inter-affiliate swaps, their inherent risk management features, and the conditions set out in the Alternative Compliance Frameworks.

This final rule also would create certain costs that would be borne by entities electing the Inter-Affiliate Exemption. Under revised Commission regulation 50.52, entities that choose to comply with an Alternative Compliance Framework would be required to pay and collect variation margin on their inter-affiliate swaps, which could be a significant cost for those entities. However, an entity electing the Inter-Affiliate Exemption may continue to choose to clear an outward-facing swap with an unaffiliated counterparty instead of paying and collecting variation margin on all swaps with other eligible affiliate counterparties. Therefore, affected entities are free to choose which of these alternatives is best for them.

b. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

The Commission believes that the amendments to the Inter-Affiliate Exemption may have some, but not a significant, impact on the efficiency or competiveness of swaps markets. As noted above, inter-affiliate swaps are an important risk management tool for affiliated corporate groups. To the extent that swap dealers may participate more extensively in swap markets in non-U.S. jurisdictions because they can use inter-affiliate swaps to manage risk efficiently, the amendments to the Inter-Affiliate Exemption may increase the efficiency, competitiveness, and financial integrity of swap markets by increasing the range of swaps that are available to market participants. The Commission also believes that the revised Outward-Facing Swaps Condition and Alternative Compliance Frameworks should discourage misuse of the Inter-Affiliate Exemption. For example, the Commission recognizes that internal calculations and swaps portfolio management are required to comply with the five percent test under Commission regulation 50.52(b)(4)(iii). If the Commission had not expanded the list of non-U.S. jurisdictions in which an affiliated counterparty may be located for purposes of Commission regulation 50.52(b)(4)(ii), entities may have failed to appropriately calculate the permissible limits under the five percent test under Commission regulation 50.52(b)(4)(iii). Aligning the scope of jurisdictions included in the Alternative Compliance Frameworks with the jurisdictions for which the domestic currency is subject to the Commission's Clearing Requirement may help to make these calculations and compliance with the provisions easier. This part of the final rule should promote the financial integrity of swap markets and financial markets as a whole.

c. Price Discovery

Under Commission regulation 43.2, a ''publicly reportable swap transaction,'' means, among other things, any executed swap that is an arms'-length transaction between two parties that results in a corresponding change in the market risk position between the two parties.[41] The Commission generally believes that non-arms'-length swaps do not contribute to price discovery in the markets, as they are not publically reported.[42] Given that inter-affiliate swaps as defined in this final rule are usually not arms'-length transactions, the Commission believes that these amendments to the Inter-Affiliate Exemption will not have a significant effect on price discovery.[43] However, if the availability of the Alternative Compliance Frameworks reduces the use of outward-facing swaps, which may or may not be publicly reported depending on the jurisdiction, there could be a negative impact on price discovery when outward-facing swaps would otherwise be publically reported.

d. Sound Risk Management Practices

The conditions of the Inter-Affiliate Exemption do not eliminate the possibility that risk may impact an entity, its affiliates, and counterparties of those affiliates.[44] Without clearing a swap to mitigate the transmission of risk among affiliates, the risk that any one affiliate takes on through its swap transactions, and any contagion that may result through that risk, increases. This makes the risk mitigation requirements for outward-facing swaps more important as risk can be transferred more easily between affiliates.

Exempting certain inter-affiliate swaps from the Clearing Requirement creates additional counterparty

[40] Based on a recent review of swap data reflecting use of the Inter-Affiliate Exemption, the Commission estimates that over 70 eligible affiliate counterparties located outside of the United States may elect to comply with one of the reinstated Alternative Compliance Frameworks thereby choosing not to clear their outward-facing swaps and rather to pay and collect variation margin on all swaps with other eligible affiliate counterparties instead. These entities include affiliates of swap dealers that are active in multiple jurisdictions.

[41] Commission regulation 43.2. *See also* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012).

[42] Transactions that fall outside the definition of ''publicly reportable swap transaction''—that is, transactions that are not arms-length—''do not serve the price discovery objective of CEA section 2(a)(13)(B).'' Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, at 1195 (Jan. 9, 2012). *See also id.* at 1187 (discussing ''Swaps Between Affiliates and Portfolio Compression Exercises''), *and also* Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, at 21780 (Apr. 11, 2013).

[43] The definition of ''publicly reportable swap transaction'' identifies two examples of transactions that fall outside the definition, including internal swaps between one-hundred percent owned subsidiaries of the same parent entity. Commission regulation 43.2 (adopted by Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, at 1244 (Jan. 9, 2012)). The Commission notes that the list of examples is not exhaustive.

[44] The Commission notes that even in the absence of required clearing or margin requirements for swaps between certain affiliated entities, such entities may choose to use initial and variation margin to manage risks that could otherwise be transferred from one affiliate to another. Similarly, third parties that have entered into swaps with affiliates also may include variation margin requirements in their swap agreements.

exposure for affiliates.[45] DCOs have many tools to mitigate risks. This increased counterparty credit risk among affiliates may increase the likelihood that a default of one affiliate could cause significant losses in other affiliated entities. If the default causes other affiliated entities to default, third parties that have entered into uncleared swaps or other agreements with those entities also could be affected.

In 2013, when the Commission finalized the Inter-Affiliate Exemption, it assessed the risks of inter-affiliate swaps and stated that the partial internalization of costs among affiliated entities, combined with the documentation, risk management, reporting, and treatment of outward-facing swaps requirements for electing the exception, would mitigate some of the risks associated with uncleared inter-affiliate swaps.[46] However, the Commission indicated that these mitigants are not a perfect substitute for the protections that would otherwise be provided by clearing, or by a requirement to use more of the risk management tools that a clearinghouse uses to mitigate counterparty credit risk (*i.e.,* both initial and variation margin, futures commission merchants monitoring the credit risk of customers, clearing member contributions to default funds, etc.).[47]

e. Other Public Interest Considerations

The Commission has identified no other public interest considerations.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[48] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested comments on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws and received no comments.

The Commission has considered this final rule to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requested comment on whether the Proposal was anticompetitive and, if it was, what the anticompetitive effects were, and received no comments.

Because the Commission has determined that the final rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 50 as set forth below:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 7 U.S.C. 2(h), and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 2. Amend § 50.52 by:
■ a. Revising paragraphs (a)(2)(i) and (ii);
■ b. Adding paragraph (a)(2)(iii); and
■ c. Revising paragraph (b)(4).

The revisions and additions read as follows:

§ 50.52 Exemption for swaps between affiliates.

(a) * * *

(2) * * *

(i) A counterparty or third party directly or indirectly holds a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership;

(ii) The term ''eligible affiliate counterparty'' means an entity that meets the requirements of this paragraph; and

(iii) The term ''United States'' means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) * * *

(4)(i) Subject to paragraphs (b)(4)(ii) and (iii) of this section, each eligible affiliate counterparty that enters into a swap, which is included in a class of swaps identified in § 50.4, with an unaffiliated counterparty shall:

(A) Comply with the requirements for clearing the swap in section 2(h) of the Act and this part;

(B) Comply with the requirements for clearing the swap under a foreign jurisdiction's clearing mandate that is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and this part, as determined by the Commission;

(C) Comply with an exception or exemption under section 2(h)(7) of the Act or this part;

(D) Comply with an exception or exemption under a foreign jurisdiction's clearing mandate, provided that:

(*1*) The foreign jurisdiction's clearing mandate is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and this part, as determined by the Commission; and

(*2*) The foreign jurisdiction's exception or exemption is comparable to an exception or exemption under section 2(h)(7) of the Act or this part, as determined by the Commission; or

(E) Clear such swap through a registered derivatives clearing organization or a clearing organization that is subject to supervision by appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the Principles for Financial Market Infrastructures.

(ii) If one of the eligible affiliate counterparties is located in Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, or the United Kingdom and each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties, the requirements of paragraph (b)(4)(i) of this section shall be satisfied.

(iii) If an eligible affiliate counterparty located in the United States enters into swaps, which are included in a class of swaps identified in § 50.4, with eligible affiliate counterparties located in jurisdictions other than Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, the United Kingdom, or the United States, and the aggregate notional value of such swaps, which are included in a class of swaps identified in § 50.4, does not exceed five percent of the aggregate notional value of all swaps, which are included in a class of swaps identified in § 50.4, in each instance the notional value as measured

[45] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, at 21780–21781 (Apr. 11, 2013).

[46] *Id.*

[47] *Id.* at 21778.

[48] 7 U.S.C. 19(b).

in U.S. dollar equivalents and calculated for each calendar quarter, entered into by the eligible affiliate counterparty located in the United States, then the requirements of paragraph (b)(4)(i) of this section shall be satisfied when each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties.

* * * * *

Issued in Washington, DC, on June 29, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Exemption From the Swap Clearing Requirement for Certain Affiliated Entities—Alternative Compliance Frameworks for Anti-Evasionary Measures—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Supporting Statement of Chairman Heath P. Tarbert

I am pleased to support our final rule codifying the alternative compliance framework for the Commission's inter-affiliate swap clearing exemption, which has been in place via the CFTC's staff no-action relief since 2014. As I previously stated in connection with the proposed rule, codifying this relief is good policy and good government.[1]

From a policy perspective, the rule advances the goals of our swap clearing requirements by making anti-evasionary provisions of the inter-affiliate exemption workable for cross-border corporate groups. Stepping back for a moment and looking at the bigger picture, our clearing and initial margin requirements are meant to address counterparty credit risk. These measures generally are not appropriate for credit exposures between members of a single corporate group, where risk is managed internally on a centralized basis.[2]

However, the CFTC has long been concerned that U.S. entities may misuse the inter-affiliate exemption to evade the clearing requirements more generally. For example, a U.S. entity may use back-to-back swaps to interpose a non-U.S. affiliate in the middle of the U.S. entity's trade with a non-U.S. counterparty, where the non-U.S. affiliate and counterparty are in jurisdictions that do not have mandatory clearing regimes comparable to the Commission's. In this way, the U.S. entity could improperly circumvent the clearing obligations that would apply if it were trading directly with the non-U.S. counterparty (because it would be exempted from clearing the trade with its non-U.S. affiliate, and the non-U.S. affiliate's back-to-back trade with the non-U.S. counterparty could fall outside U.S. clearing requirements).

This evasion concern was particularly acute in the early years of the CFTC's clearing regime, when a number of other jurisdictions had yet to implement their own clearing requirements in accordance with the G20 commitments at the 2009 Pittsburgh Summit. Moreover, section 2(h)(4)(A) of the Commodity Exchange Act requires us to prescribe rules to prevent evasion of the clearing requirement. Accordingly, as an anti-evasionary measure, the Commission required members of a corporate group taking advantage of the inter-affiliate exemption to clear their outward-facing swaps if such swaps would be clearing-mandated under CFTC rules, regardless whether the parties to the outward-facing swap were in fact subject to such rules.[3]

The ''clearing outward-facing swaps'' condition to the inter-affiliate exemption is unworkable for many market participants, however, because of inter-jurisdictional mismatches in clearing requirements and infrastructures. Accordingly, the CFTC's staff no-action relief has extended the rule's time-limited alternative compliance framework allowing affiliates to exchange variation margin in lieu of clearing outward-facing swaps.[4]

This alternative compliance option has allowed cross-border corporate groups to attain the risk-mitigating benefits of inter-affiliate swaps,[5] while complying with important anti-evasion measures in a way that is practicable for their global business. Indeed, the CFTC staff's review of recent swap data indicates that over 70 eligible affiliate counterparties located outside the United States rely on the alternative compliance framework under the available staff no-action relief. By codifying this relief, we are providing the swaps market with clarity, certainty, and transparency—consistent with the CFTC's mission, core values, and strategic objectives.[6] I commend my fellow Commissioners and the CFTC's staff for working to finalize the rule before us today, and I look forward to further efforts to advance these principles and goals in the near future.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I support today's final rule providing legal certainty to swap counterparties electing the inter-affiliate exemption from the Commission's requirement that certain interest rate swaps and credit default swaps be cleared. At issue is an important condition of the exemption that reduces the likelihood that uncollateralized exposures can build up at a U.S. swap participant.[1] I support the policy, made permanent by today's rule, that permits variation margin to be exchanged by affiliated counterparties in lieu of clearing swaps with foreign counterparties. This provision appropriately balances an anti-evasionary measure with providing flexibility to market participants. The provision has functioned well since 2013, and it is appropriate to make the provision permanent after several extensions of the no-action relief.[2]

I would like to highlight that today's final rule acknowledges that five additional jurisdictions have enacted swap clearing requirements since the first version of this rule was issued in 2013.[3] Today's rule therefore serves as another example of the Commission appropriately deferring to foreign regulatory regimes in order to reduce compliance burdens and promote market liquidity internationally.

Not only do I support today's final rule because it makes a sound policy permanent, but also because it codifies no-action relief that has proven workable for market participants. Codifying no-action relief makes the Commission's regulatory framework more transparent and simplifies compliance. I would support continuing to codify other no-action relief, for example with respect to providing relief from the trade execution requirement for a swap exempted from the clearing requirement.[4]

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[1] Statement of Chairman Heath P. Tarbert: ''Tripling Down on Transparency'' n.12 (Dec. 10, 2019), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement121019.*

[2] *See* Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750, 21753 (Apr. 11, 2013) (justifying the inter-affiliate clearing exemption in view of incentives to avoid defaulting to affiliates and the common practice of centralized risk allocation decisions and default remedies, which reduce inter-affiliate default risk).

[3] 17 CFR 50.52(b)(4).

[4] CFTC Letter No. 17–66 (Dec. 14, 2017), *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm; see also* previously granted relief under CFTC Letter Nos. 14–135 (Nov. 7, 2014), 15–63 (Nov. 17, 2015), 16–81 (Nov. 28, 2016), and 16–84 (Dec. 15, 2016). CFTC Letter No. 17–66 expires on the earlier of (i) December 31, 2020 at 11:59 p.m. (Eastern Time); or (ii) the effective date of amendments to Commission regulation 50.52.

[5] *See* 78 FR at 21754 (citing to commenters and the 2012 inter-affiliate exemption notice of proposed rulemaking in support of the conclusion that ''inter-affiliate transactions provide an important risk management role within corporate groups'' and that ''swaps entered into between corporate affiliates, if properly risk-managed, may be beneficial to the entity as a whole'').

[6] *See* Draft CFTC 2020–2024 Strategic Plan, 85 FR 29,935 (May 19, 2020), *https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10676.pdf.*

[1] CFTC regulation 50.52(b)(4)(ii)–(iii) (17 CFR 50.52(b)(4)(ii)–(iii)).

[2] CFTC Letters 14–135, 15–63, 16–81, 16–84, and 17–66.

[3] The first version of the rule had permitted, until 2014, unlimited variation margining when an affiliate was located in the E.U., Japan, and Singapore. Today's version expands the list of eligible jurisdictions to include Australia, Canada, Hong Kong, Mexico, Switzerland, as well as the U.K.

[4] CFTC Letter 17–67, proposed to be codified by the Commission's 2018 proposed revised rules for swap execution facilities, 83 FR 61,946 (Nov. 30, 2018).

Finally, I would like to thank the staff of DCR for their diligence in completing this rulemaking.

Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I support today's adoption of amendments to the exemption from the swap clearing requirement for certain affiliated entities within a corporate group. The amendments that update the conditions for the exemption incorporate several years of observation and analysis to build upon its utility within the global regulatory landscape, while affirming the Commission's appropriate use of its public interest authority under section 4(c) of the Commodity Exchange Act. It can be tempting to use somewhat fluid and undeniably desirable objectives such as the promotion of responsible economic and financial innovation and fair competition to support all manner of regulatory changes. And I have not hesitated to highlight my own concerns for the imprudent use of 4(c) exemptive authority. However, I am pleased that when it comes to the risks associated with U.S firms entering into uncleared swaps with non-U.S. affiliates or evading the clearing requirement altogether, the Commission has consistently demonstrated that its reliance on the 4(c) authority provides the checks to ensure that the policy and outcomes remain legally sound and rational.

I support today's final rule, as I did the proposal, because it provides legal certainty, benefits from careful analysis and consideration of the data as well as the global regulatory landscape as it has developed, and leaves in place critical tools for Commission monitoring, oversight, and enforcement.[1] However, I am mindful that guardrails put firmly in place by today's amendments as a substitute for clearing outward-facing swaps may produce additional risk to external creditors and/or third parties, and that there may be an increased likelihood of risk to the financial system resulting from the availability of the exemption. While I encouraged interested parties to comment on this aspect of the exemption—the alternative compliance framework—the Commission did not receive any responsive comments.[2] Without comments, the Commission's findings and conclusions remain neither vigorously supported nor expressly undermined, and we will continue to discharge our regulatory responsibilities, remaining quick to respond as we closely monitor the data and global regulatory developments to ensure that the exemption does not add unnecessary and preventable risk to the U.S. financial system.

I thank staff from the Division of Clearing and Risk for their thoughtful responses to my questions, and for making edits that reflect my comments and suggestions.

[1] Exemption from the Swap Clearing Requirement for Certain Affiliated Entities, 84 FR 70446, 70460–1 (proposed Dec. 23, 2019).

[2] *Id.* at 70461.

Appendix 5—Statement of Commissioner Dan M. Berkovitz

I support today's final rule making permanent the alternative compliance frameworks for certain swaps involving the foreign affiliates of U.S. firms and their non-U.S. counterparties. The final rule upholds the Dodd-Frank Act's clearing mandate, deters evasion, and protects against systemic risk from swaps executed overseas by foreign affiliates. The final rule, which adopts the rule as proposed,[1] codifies existing practice and addresses anti-evasion provisions governing inter-affiliate swaps that the Commission first issued in 2013 and later extended through staff no-action letters.

Commission regulations provide a limited, conditional ''Inter-Affiliate Exemption'' from clearing for swaps between certain affiliate counterparties, including U.S. firms and their foreign affiliates. Notably, the Inter-Affiliate Exemption includes an important ''Outward-Facing Swaps Condition'' to prevent U.S. firms from routing swaps through foreign affiliates to evade the Commission's clearing requirement.[2] The Outward-Facing Swaps Condition allows outward-facing swaps to be cleared pursuant to a comparable and comprehensive foreign clearing regime.

Where the Commission has not made a comparability determination, the alternative compliance frameworks permit the foreign affiliate to exchange full, daily variation margin for the swap with its U.S. affiliate or its non-U.S. counterparty, rather than clearing the outward-facing swap. The alternative compliance frameworks preserve the competitiveness of the foreign affiliates of U.S. firms without importing significant risks into the U.S. Today's final rule makes the alternative compliance frameworks permanent, with certain modifications.[3]

I support the final rule's emphasis on clearing, anti-evasion, and systemic risk. The final rule also expands the jurisdictions subject to one of the alternative compliance frameworks to include additional jurisdictions that have adopted and implemented their respective domestic clearing mandates. By extending and making permanent the alternative compliance frameworks, the final rule addresses the lack of comparability determinations for foreign clearing regimes, while ensuring the continued operation of anti-evasion and anti-systemic risk provisions in the Commission's rules.

I thank staff of the Division of Clearing and Risk for their work on this final rule and for their effective cooperation with my office.

[FR Doc. 2020–14390 Filed 7–21–20; 8:45 am]

BILLING CODE 6351–01–P

[1] Exemption From the Swap Clearing Requirement for Certain Affiliated Entities—Alternative Compliance Frameworks for Anti-Evasionary Measures, 84 FR 70446 (Dec. 23, 2019).

[2] The Outward-Facing Swaps Condition requires the foreign affiliates of U.S. firms to clear their outward-facing swaps if such swaps are subject to the Commission's clearing requirement and entered into with unaffiliated counterparties in foreign jurisdictions.

[3] The original alternative compliance frameworks expired in 2014, but have been repeatedly extended through no-action letters.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on July 22, 2020 and will remain in effect until 11:59 p.m. EDT on August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico posed a ''specific threat to human life or national interests.'' The Secretary later published a series of

[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

notifications continuing such limitations on travel until 11:59 p.m. EDT on July 21, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of July 16, there are over 13.3 million confirmed cases globally, with over 580,000 confirmed deaths.[3] There are over 3.4 million confirmed and probable cases within the United States,[4] over 311,000 confirmed cases in Mexico,[5] and over 108,000 confirmed cases in Canada.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing ''specific threat to human life or national interests.''

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Mexico);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on August 20, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–15954 Filed 7–21–20; 8:45 am]

BILLING CODE 9112–FP–P

[2] *See* 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel.'' *See* 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—178 (July 16, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200716-covid-19-sitrep-178.pdf?sfvrsn=28ee165b_2.*

[4] CDC, Cases of COVID–19 in the U.S. (last updated July 16, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[5] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—178 (July 16, 2020).

[6] *Id.*

[7] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable To Land Ports of Entry and Ferries Service Between the United States and Canada

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on July 22, 2020 and will remain in effect until 11:59 p.m. EDT on August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a ''specific threat to human life or national interests.'' The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on July 21, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of July 16, there are over 13.3 million confirmed cases globally, with over 580,000 confirmed deaths.[3] There are over 3.4 million confirmed and probable cases within the United States,[4] over 108,000 confirmed cases in Canada,[5] and over 311,000 confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing ''specific threat to human life or national interests.''

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers

[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

[2] *See* 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel.'' *See* 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—178 (July 16, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200716-covid-19-sitrep-178.pdf?sfvrsn=28ee165b_2.*

[4] CDC, Cases of COVID–19 in the U.S. (last updated July 16, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[5] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—178 (July 16, 2020).

[6] *Id.*

[7] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

supporting the movement of cargo between the United States and Canada);

- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on August 20, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–15955 Filed 7–21–20; 8:45 am]

BILLING CODE 9112–FP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 884, 888, and 890

[Docket No. FDA–2019–N–2686]

Medical Devices; Exemptions From Premarket Notification: Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is publishing an order setting forth the Agency's final determination to exempt a list of class II devices from premarket notification (510(k)) requirements, subject to certain limitations. This exemption from 510(k), subject to certain limitations, is immediately in effect for the list of class II devices. The exemption will decrease regulatory burdens on the medical device industry and will eliminate private costs and expenditures required to comply with certain Federal regulations. FDA is also amending the codified language for the list of class II devices to reflect this final determination. FDA is publishing this order in accordance with the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: This order is effective July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Jismi Johnson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1528, Silver Spring, MD 20993, 301–796–6424, *Jismi.johnson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and its implementing regulations in part 807, subpart E (21 CFR part 807, subpart E), persons who propose to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use are required to submit a 510(k) to FDA. The device may not be marketed until FDA finds it ''substantially equivalent'' within the meaning of section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a legally marketed device that does not require premarket approval.

On December 13, 2016, the 21st Century Cures Act (Cures Act) (Pub. L. 114–255) was signed into law. Section 3054 of the Cures Act amended section 510(m) of the FD&C Act. As amended, section 510(m)(2) of the FD&C Act provides that, 1 calendar day after the date of publication of the final list under section 510(m)(1)(B) of the FD&C Act,[1] FDA may exempt a class II device from the requirement to submit a report under section 510(k) of the FD&C Act, upon its own initiative or a petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and provide a 60-calendar-day comment period. Within 120 days of publication of such notice, FDA shall publish an order in the **Federal Register** that sets forth its final determination regarding the exemption of the device that was the subject of the notice.

In the **Federal Register** of October 25, 2019 (84 FR 57445), in accordance with the amendments to section 510(m)(2) of the FD&C Act, on its own initiative, FDA issued a notice of intent to exempt the identified class II devices from premarket notification requirements under section 510(k) of the FD&C Act, subject to certain limitations. Having received no comments to the docket following a 60-day comment period, FDA is issuing this order to set forth our final determination to exempt the class II devices that were the subject of the notice. Through this action, FDA is now amending the codified language for each identified classification regulation to reflect our final determinations for these class II exemptions.[2]

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the January 21, 1998, **Federal Register** notice (63 FR 3142) and subsequently in the guidance we issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and

[1] FDA published the final list under section 510(m)(1)(B) of the FD&C Act in the **Federal Register** of July 11, 2017 (82 FR 31976).

[2] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

CDRH Staff'' (''Class II 510(k) Exemption Guidance''). That guidance can be obtained through the internet at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080199.pdf* or by sending an email request to *CDRH-Guidance@fda.hhs.gov* to receive a copy of the document. Please use the document number 159 to identify the guidance you are requesting.

III. Limitations on Exemptions

FDA has determined that premarket notification is not necessary to provide a reasonable assurance of safety and effectiveness of the class II devices listed in table 1. This determination is based, in part, on the Agency's knowledge of the device, including past experience and relevant reports or studies on device performance (as appropriate), the applicability of general and special controls, and the Agency's ability to limit an exemption.

A. General Limitations of Exemptions

FDA's exemption from premarket notification for the class II devices listed in table 1 applies only to those devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type. A manufacturer of a listed device would still be required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into commercial distribution when the device meets any of the conditions described in 21 CFR 884.9, 888.9, and 890.9.

B. Partial Limitations of Exemptions

In addition to the general limitations, FDA may also partially limit an exemption from premarket notification requirements to specific devices within a listed device type when an initial Agency assessment determines that the factors laid out in the Class II 510(k) Exemption Guidance do not weigh in favor of exemption for all devices in a particular group. In such situations where a partial exemption limitation has been identified, FDA has determined that premarket notification is necessary to provide a reasonable assurance of safety and effectiveness for these devices. In table 1, for example, FDA is listing the exemption of the optical position/movement recording system but limits the exemption to such devices that are for prescription use only. FDA believes that premarket review (*e.g.,* premarket notification) of an optical position/movement recording system for over-the-counter (OTC) use is necessary to ensure that the exercises and activities led by the system are appropriate for a user's rehabilitation and to assess the measurement accuracy of the system. Additionally, a therapeutic massager to internally massage trigger points in the pelvic floor musculature would exceed the exemption limitation and would require 510(k) review if it is indicated for OTC use, lacks a quantitative feedback mechanism, or lacks a disposable covering.

IV. List of Class II Devices

In this final order, FDA is identifying the following list of class II devices that no longer require premarket notification under section 510(k) of the FD&C Act, subject to the general limitations to the exemptions found in 21 CFR 884.9, 888.9, and 890.9 and any partial exemption limitations identified in Table 1.

FDA assigned new product codes to the device types that are exempt subject to the partial limitations to ensure that these devices can be separated from devices that do not fall within the partial exemption limitation under the existing product code (*i.e.,* exempt and non-exempt devices within a device type now have distinct product codes).

TABLE 1—CLASS II DEVICES

21 CFR section	Device type	Exempt product code	Non-exempt product code (non-exempt)	Partial exemption limitation (if applicable)
884.6120	Accessory, Assisted Reproduction.	QKH	MQG	Exemption is limited to assisted reproduction laminar flow workstations.
884.6180	Media, Reproductive	QKI	MQL	Exemption is limited to phosphate-buffered saline used for washing, and short-term handling and manipulation of gametes and embryos; culture oil used as an overlay for culture media containing gametes and embryos; and water for assisted reproduction applications.
888.4505	Instruments Designed for Press-Fit Osteochondral implants.	Not Applicable	QBO	Not Applicable.
890.5360 *	Interactive Rehabilitation Exercise Devices.	QKC	LXJ	Exemption is limited to prescription (Rx) use only.
890.5670	Massager, Therapeutic, to Internally Massage Trigger Points in the Pelvic Floor Musculature.	QKD	OSD	Exemption is limited to prescription (Rx) use only devices which incorporate a quantitative feedback mechanism and a disposable covering.

* FDA is revising the name of the device type under product code LXJ from ''System, Optical Position/Movement Recording'' to ''Interactive Rehabilitation Exercise Devices.''

FDA is also revising the name of product code LXJ to further clarify the device type that this product code is intended to represent, identified with an asterisk in table 1. The device type was previously ''System, Optical Position/Movement Recording.'' This product code also includes types of rehabilitation devices other than optical position/movement recording systems; therefore, to more accurately reflect the devices which fall within this device type (product code LXJ), the device type has been renamed ''Interactive Rehabilitation Exercise Devices.'' The new product code, QKC, which represents the class II exempt counterpart of LXJ and reflects the partial exemption limited to prescription use, also reflects this name change.

V. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final order contains no new collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) is not required. This final order refers to previously approved FDA collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in in 21 CFR part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485; and the collections of information in part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073.

List of Subjects in 21 CFR Parts 884, 888, and 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 884, 888, and 890 are amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. In § 884.6120, revise paragraph (b) to read as follows:

§ 884.6120 Assisted reproduction accessories.

* * * * *

(b) *Classification.* Class II (special controls) (design specifications, labeling requirements, and clinical testing). The device, when it is a simple embryo incubator with only temperature, gas, and humidity control; a syringe pump; a collection tube warmer; a dish/plate/ microscope stage warmer; a controlled-rate cryopreservation freezer; or an assisted reproduction laminar flow workstation is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 3. In § 884.6180, revise paragraph (b) to read as follows:

§ 884.6180 Reproductive media and supplements.

* * * * *

(b) *Classification.* Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, biocompatibility testing, and clinical testing). The device, when it is phosphate-buffered saline used for washing, and short-term handling and manipulation of gametes and embryos; culture oil used as an overlay for culture media containing gametes and embryos; and water for assisted reproduction applications, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

PART 888—ORTHOPEDIC DEVICES

■ 4. The authority citation for part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 5. Amend § 888.4505 by revising paragraph (b) introductory text to read as follows:

§ 888.4505 Orthopedic surgical instrumentation designed for osteochondral implants with press-fit fixation.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 888.9. The special controls for this device are:

* * * * *

PART 890—PHYSICAL MEDICINE DEVICES

■ 6. The authority citation for part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 7. In § 890.5360, revise paragraph (b) to read as follows:

§ 890.5360 Measuring exercise equipment.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a measuring exerciser or an interactive rehabilitation exercise device for prescription use only, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

■ 8. Amend § 890.5670 by revising paragraph (b) introductory text to read as follows:

§ 890.5670 Internal therapeutic massager.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is for prescription use only with a quantitative feedback mechanism and a disposable covering, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9. The special controls for this device are:

* * * * *

Dated: July 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15256 Filed 7–21–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 10969]

RIN 1400–AE97

International Traffic in Arms Regulations: Amendment of Central African Republic

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect recently adopted United Nations Security Council Resolutions (UNSCRs) concerning the Central African Republic.

DATES: The rule is effective on July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Engda Wubneh, Foreign Affairs Officer, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–1809, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, ITAR Section 126.1 Central African Republic Update 2020.

SUPPLEMENTARY INFORMATION: On September 12, 2019, the United Nations Security Council (UNSC) adopted resolution 2488, which adjusted the arms embargo on the Central African Republic (CAR) to allow additional exceptions to the embargo and committed to further review of the sanctions regime within four months. On January 31, 2020, four months later, the UNSC adopted resolution 2507 renewing that arms embargo until July 31, 2020 and providing additional exceptions to those adopted by resolution 2488. The UNSC initially imposed an arms embargo on the country with certain enumerated exceptions in 2013. The CAR government has made progress since, including the signing of a peace agreement between the CAR government and fourteen armed groups on February 6, 2019. These resolutions are intended to support the CAR government as it works to implement the peace agreement and extend state control over the entire territory of the country. The Department of State is amending ITAR § 126.1(u) to implement the changes to the embargo. Further, in accordance with ITAR § 129.7, no broker, as described in ITAR § 129.2, may engage in or make a proposal to engage in brokering activities subject to the ITAR that involve the Central African Republic without first obtaining the approval of the Directorate of Defense Trade Controls. Lastly, this rule revises the authority citation to Part 126 by removing reference to E.O. 12918, 59 FR 28205. Rwanda, was removed from ITAR § 126.1 in 2008, and this non-substantive edit reflects the current defense trade posture toward Rwanda.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since this rule is exempt from 5 U.S.C. 553, the provisions of § 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards the aforementioned country, there is good cause for the effective date of this rule to be the date of publication, as provided by 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Since this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Because the scope of this rule implements a governmental policy limiting defense trade with a country the Department believes costs associated with this rule will be minimal. The Department also finds that any costs of this rulemaking do not outweigh the foreign policy benefits, as described in the preamble. This rule has been designated non-significant by the Office and Information and Regulatory Affairs under Executive Order 12866 Sec. 3(d)(2).

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Order 13771

This rule is not subject to the requirements of Executive Order 13771 because it is issued with respect to a foreign affairs function of the United States.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2780, 2791, and 2797; 22 U.S.C. 2651a; 22 U.S.C. 287c; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 2. Amend § 126.1 by revising paragraph (u) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(u) *Central African Republic.* It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in the Central African Republic, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles intended solely for the support of or use by the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) and the European Union training missions deployed to the Central African Republic; French forces within the provisions of their bilateral agreement with the Central African Republic and the limits of their capacities and areas of deployment, and other Member States' forces providing training and assistance as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(2) Non-lethal equipment and the provision of assistance, including operational and non-operational training to the Central African Republic

security forces, including state civilian law enforcement institutions, intended solely for the support of or use in the Central African Republic process of security sector reform, in coordination with MINUSCA, and as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(3) Supplies brought into the Central African Republic by Chadian or Sudanese forces solely for their use in international patrols of the tripartite force to enhance security in the common border areas, in cooperation with MINUSCA, as approved in advance by the Committee of the Security Council concerning the Central African Republic;

(4) Non-lethal military equipment and related technical assistance or training intended solely for humanitarian and protective use, as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(5) Personal protective equipment temporarily exported to the Central African Republic by United Nations personnel, representatives of the media, and humanitarian and developmental workers and associated personnel, for their personal use only;

(6) Small arms and related equipment intended solely for use in international-led patrols providing security in the Sangha River Tri-national Protected Area and by armed wildlife rangers of the Chinko Project and the Bamingui-Bangoran National Park to defend against poaching, smuggling of ivory and arms, and other activities contrary to the laws of the Central African Republic or its international legal obligations, as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(7) Defense articles with a caliber of 14.5mm or less, and ammunition and components specially designed for such weapons, and defense articles that are unarmed ground military vehicles and ground military vehicles mounted with weapons with a caliber of 14.5mm or less, to the Central African Republic security forces, including state civilian law enforcement institutions, and intended solely for the support of or use in the Central African Republic security sector reform process, as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(8) Defense articles and any related lethal equipment that are not listed in (u)(7) to the Central African Republic security forces, including state civilian law enforcement institutions, and intended solely for the support of or use in the Central African Republic process of security sector reform, as approved in advance by the Committee of the Security Council concerning the Central African Republic; or

(9) Other sales or supply of defense articles and related materiel, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning the Central African Republic.

* * * * *

Zachary A. Parker,

Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2020–13511 Filed 7–21–20; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2020–0438]

Special Local Regulation; Olympia Harbor Days Tug Boat Races, Budd Inlet, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Olympia Harbor Days Tug Boat Races, Budd, Inlet, WA, from 11 a.m. until 4 p.m. on September 6, 2020. This action is necessary to limit vessel movement within the specified race area immediately prior to, during, and immediately after racing activity in order to ensure the safety of participants, spectators, and the maritime public. Entry into, transit through, mooring, or anchoring within the specified race area is prohibited unless authorized by the Captain of the Port Puget Sound or Designated Representatives.

DATES: The regulations in 33 CFR 100.1309 will be enforced from 11 a.m. until 4 p.m. on September 6, 2020.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email CWO2 William E. Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Special Local Regulations for Olympia Harbor Days Tug Boat Races, Budd Inlet, WA in 33 CFR 100.1309(a), which encompasses approximately 2 nautical miles of the navigable waters in Budd Inlet south of Big Tykle Cove to west of Priest Point.

Under the provisions of 33 CFR 100.1309, the regulated area shall be closed immediately prior to, during, and immediately after the event to all persons and vessels not participating in the event and authorized by the event sponsor. This action is necessary to ensure the safety of participants, spectators, and the maritime public. Entry into, transit through, mooring, or anchoring within the specified race area is prohibited unless authorized by the Captain of the Port Puget Sound or Designated Representatives. All persons or vessels who desire to enter the race area while it is enforced must obtain permission from the on-scene patrol craft on VHF–FM channel 13.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 14, 2020.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2020–15705 Filed 7–21–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0433]

RIN 1625–AA00

Safety Zone; West Side of Moran Bay St. Ignace, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 560-foot radius of a recurring fireworks display. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically

authorized by the Captain of the Port (COTP) Sault Sainte Marie.

DATES: This rule is effective without actual notice from July 22, 2020 through September 6, 2020. For the purposes of enforcement, actual notice will be used from July 18, 2020 through July 22, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0433 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email BOSN4 Robert Gruschow, Waterways Management, U.S. Coast Guard Sector Sault Sainte Marie; telephone (906)-253–2462, email *Robert.A.Gruschow@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable due to late notification from the event sponsor of the particulars of the fireworks display. This safety zone is needed to be established by July 18, 2020 and remain established through September 6, 2020 in order to protect the public from the dangers associated with a fireworks display.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Sault Sainte Marie has determined that potential hazards associated with fireworks displays from July 18, 2020 through September 6, 2020, occurring weekly on Saturdays, will be a safety concern for anyone within a 560-foot radius of the navigable waters surrounding the fireworks launching location. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 11 p.m. each Saturday from July 18, 2020 through September 6, 2020. The safety zone will cover all navigable waters within 560 feet of a fireworks display at position 45°52′11″ N, 84°43′37″ W, West side of Moran Bay in St. Ignace, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Moran Bay in St. Ignace, MI. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 2 hours that will prohibit entry within 560 feet of a fireworks display in the west side of Moran Bay in St. Ignace, MI. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0433 to read as follows

§ 165.T09–0433 Safety Zone; West side of Moran Bay St. Ignace, MI.

(a) *Location.* The following area is a safety zone: All navigable water within 560 feet of the fireworks launching location at position 45°52′11″ N, 84°43′37″ W (NAD 83).

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

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) is prohibited unless authorized by the COTP Sault Sainte Marie or a designated representative.

(2) Before a vessel operator may enter or operate within the safety zone, they must obtain permission from the COTP Sault Sainte Marie or a designated representative via VHF Channel 16 or telephone at (906) 635–3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the COTP Sault Sainte Marie or a designated representative.

(d) *Enforcement period.* This section will be enforced from 9:30 p.m. through 11 p.m., occurring on Saturdays each week from July 18, 2020 through September 6, 2020.

Dated: July 17, 2020.

A.R. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2020–15972 Filed 7–21–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0318; FRL–10011–44–Region 9]

Clean Air Plans; 2006 Fine Particulate Matter Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or ''Agency'') is approving portions of three state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''Act'') requirements for the 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley (SJV) ''Serious'' nonattainment area. Specifically, the EPA is approving those portions of the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' and the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' that pertain to the 2006 $PM_{2.5}$ NAAQS and address certain CAA requirements for Serious $PM_{2.5}$ nonattainment areas. In addition, the EPA is approving the ''Revision to the California State Implementation Plan for $PM_{2.5}$ Standards in the San Joaquin Valley'' (''$PM_{2.5}$ Prior Commitment Revision'' or ''Revision'') and finding that the State has complied with this commitment. The EPA is also approving motor vehicle emission budgets and inter-pollutant trading ratios for use in transportation conformity analyses for the 2006 $PM_{2.5}$ NAAQS. Finally, as part of this action, the EPA is granting an extension of the Serious area attainment date for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley from December 31, 2019, to December 31, 2024, based on a determination that the State has

satisfied the statutory criteria for this extension.

DATES: This rule is effective August 21, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0318. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) 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 through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3227, *mays.rory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

Table of Contents

I. Summary of Proposed Rules

On March 27, 2020, the EPA proposed to approve portions of two SIP revisions submitted by the California Air Resources Board (CARB) to meet certain Serious nonattainment area requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley.[1] In our proposed rule, we provided background information on the $PM_{2.5}$ standards, area designations and related SIP revision requirements under the CAA, relevant EPA guidance, and the EPA's implementing regulations for the $PM_{2.5}$ standards, referred to as the "$PM_{2.5}$ SIP Requirements Rule."[2]

The EPA proposed to act on certain portions of the following two plan submissions that pertain to the 2006 24-hour $PM_{2.5}$ NAAQS: The "2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards," adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District") on November 15, 2018, and by CARB on January 24, 2019 ("2018 $PM_{2.5}$ Plan"), including a revised Appendix H submitted by CARB as a technical correction on February 11, 2020; and the "San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan," adopted by CARB on October 25, 2018 ("Valley State SIP Strategy"). We refer to the relevant portions of these SIP submissions collectively as the "SJV $PM_{2.5}$ Plan" or "Plan." The SJV $PM_{2.5}$ Plan addresses the Serious area attainment plan requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley and includes a request under CAA section 188(e) for an extension of the Serious area attainment date for the area for this NAAQS. CARB submitted the SJV $PM_{2.5}$ Plan to the EPA as a revision to the SIP on May 10, 2019.[3]

The EPA proposed to approve, as a revision to the California SIP, the following portions of the SJV $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS:

- The 2013 base year emission inventories (CAA section 172(c)(3));
- The demonstration that best available control measures (BACM), including best available control technology (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors will be implemented no later than 4 years after the area was reclassified (CAA section 189(b)(1)(B));
- The demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable but no later than December 31, 2024 (CAA sections 189(b)(1)(A) and 188(e));
- Plan provisions that require reasonable further progress (RFP) toward attainment by the applicable date (CAA section 172(c)(2));
- Quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable attainment date (CAA section 189(c));
- Motor vehicle emissions budgets for 2020, 2023, and 2024 as shown in Table 14 of the EPA's proposed rule (CAA section 176(c) and 40 CFR part 93, subpart A);[4] and
- The inter-pollutant trading mechanism provided for use in transportation conformity analyses for the 2006 $PM_{2.5}$ NAAQS, in accordance with 40 CFR 93.124(b).

We did not propose any action on the contingency measure element of the SJV $PM_{2.5}$ Plan.

The EPA also proposed to grant the State's request for extension of the Serious area attainment date from December 31, 2019, to December 31, 2024, based on a conclusion that the State has satisfied the requirements for such extensions in section 188(e) of the Act. To support this proposal, we proposed to find that the SJVUAPCD had complied with its aggregate commitment in the 2012 $PM_{2.5}$ Plan to achieve total emission reductions of 1.9 tons per day (tpd) of direct $PM_{2.5}$ by 2017.[5] We also noted, however, that the 2018 $PM_{2.5}$ Plan included updated emissions inventories for the residential wood burning source category that differed from previous inventory estimates and showed a 0.86 tpd reduction in winter season direct $PM_{2.5}$ emissions from wood burning devices between 2013 and 2017.[6] We sought comment as to whether the State and District had met their commitment. In response to the EPA's proposed finding and request for comment, CARB developed the $PM_{2.5}$ Prior Commitment Revision to revise the State's aggregate commitment in the 2012 $PM_{2.5}$ Plan to reflect the updated inventories submitted in the 2018 $PM_{2.5}$ Plan and submitted it to the EPA on April 24, 2020, for parallel processing. In a supplemental proposal published May 12, 2020, the EPA proposed to approve the $PM_{2.5}$ Prior Commitment Revision via parallel processing and proposed to determine that the State has met the 0.86 tpd commitment.[7]

On June 19, 2020, CARB submitted the final version of the $PM_{2.5}$ Prior Commitment Revision. We have reviewed this submittal and find that it fulfills the SIP completeness criteria of 40 CFR part 51, appendix V. The SIP submission also includes evidence that adequate public notice was given and that an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102. Specifically, CARB provided public notice and opportunity for public

[1] 85 FR 17382.

[2] "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." (August 24, 2016).

[3] Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9.

[4] In light of CARB's request to limit the duration of the approval of the budgets in the 2018 $PM_{2.5}$ Plan and in anticipation of the EPA's approval, in the near term, of an updated version of CARB's EMFAC (short for EMission FACtor) model for use in SIP development and transportation conformity in California to include updated vehicle mix and emissions data, we proposed to limit the duration of our approval of the budgets to the period before replacement budgets have been found adequate. 85 FR 17382, 17428–17430.

[5] 85 FR 17382, 17409.

[6] Id. See also, 2018 $PM_{2.5}$ Plan, App. C, C–257 and letter dated August 12, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, transmitting "Attachment: Supplemental Information and Clarifications to 2017 Quantitative Milestones."

[7] 85 FR 27976 (May 12, 2020).

comment prior to its May 28, 2020 public hearing on and adoption of the $PM_{2.5}$ Prior Commitment Revision.[8] The SIP submission includes proof of publication of notices for the public hearing and includes copies of the written and oral comments received during the State's public review processes and CARB's responses thereto.[9] Therefore, we find that the $PM_{2.5}$ Prior Commitment Revision meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

Our proposed rule, supplemental proposal, and associated technical support documents (TSDs)[10] provide a more detailed discussion of the rationale for our proposed actions.

II. Public Comments and EPA Responses

The public comment period on the EPA's March 27, 2020 proposed rule closed on April 27, 2020. During this period, the EPA received two letters requesting a 30-day extension of the comment period on our proposed rule.[11] The EPA denied these requests for extension of the comment period because our statutory timeframe for considering California's request for an extended attainment date under section 188(e) of the CAA for the 2006 $PM_{2.5}$ NAAQS for the San Joaquin Valley ends on June 30, 2020.[12]

The EPA received four comment submissions on the EPA's March 27, 2020 proposed rule, from the following entities: (1) An anonymous commenter,[13] (2) the SJVUAPCD,[14] (3) a coalition of seven environmental and community organizations (collectively referred to herein as ''NPCA''),[15] and (4) the California Safflower Growers Association (CSGA).[16]

The public comment period on the EPA's May 12, 2020 supplemental proposal closed on June 11, 2020. During this period, the EPA received one comment submission from a private citizen.[17]

We respond below to a selection of the most significant comments on our March 27, 2020 proposed rule. We respond to all other comments that are germane to the proposed rule and all comments on the supplemental proposal in our separate Response to Comments document available at *https://www.regulations.gov,* Docket ID No. EPA–R09–OAR–2019–0318.

Comment 1: NPCA claims that the EPA's approval of the State's and District's aggregate commitments in the SJV $PM_{2.5}$ Plan would be arbitrary and capricious. Specifically, NPCA states that, although the vast majority of these tonnage commitments are to be achieved through incentive programs to accelerate the turnover of mobile sources, most of the EPA's discussion for finding these commitments reasonable focuses on the rulemaking commitments that provide relatively little toward meeting these aggregate tons of emission reductions. NPCA also states that the bulk of the aggregate tonnage commitments rely on unfunded incentive measures that the EPA proposes to approve with no record to support their likelihood of success.

Response 1: For the reasons provided in Response 2 through Response 3.C below, and further in our Response to Comments document, we disagree with NPCA's claim that our approval of the aggregate commitments in the Plan would be arbitrary and capricious.

We also disagree with NPCA's suggestion that the vast majority of the aggregate tonnage commitments must necessarily be achieved through incentive programs. As we explained in our proposed rule, CARB has committed to present to its Board each of 15 regulatory and incentive-based control measures listed in Attachment A to the resolution of adoption (*i.e.,* Resolution 18–49), according to the schedule set forth in Attachment A,[18] and to achieve a total of 32 tpd of NO_X emissions reductions and 0.9 tpd of $PM_{2.5}$ emissions reductions in the San Joaquin Valley by 2024 either through the listed measures or through appropriate substitute measures.[19] Although the Valley State SIP Strategy indicates that CARB anticipates achieving 23 tpd of the necessary NO_X emission reductions and 0.8 tpd of the necessary $PM_{2.5}$ emissions reductions through implementation of the incentive-based measures listed in Attachment A,[20] CARB has not specifically committed to adopt any of these listed measures and may ultimately achieve the required emission reductions through adoption and implementation of other enforceable control measures. By email dated November 12, 2019, CARB identified a number of potential additional State measures on which it intends to begin public rule development processes this year, including a Tier 5 offroad diesel engine standard, a ''state green contracting'' measure, and a ''reduction in growth of single-occupancy vehicle travel'' measure.[21] Under the terms of its commitment, CARB may adopt and implement any of these new control measures or other substitute measures to achieve its aggregate tonnage commitment.

Similarly, the District has committed to present to its Board each of 12 regulatory and incentive-based control measures listed in Table 4–4 and Table 4–5 of the 2018 $PM_{2.5}$ Plan, according to

[8] California Air Resources Board, ''Notice of Public Meeting to Consider Adoption of a Technical Revision to the San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' dated April 24, 2020.

[9] J&K Court Reporting, LLC, ''Videoconference Meeting, State of California Air Resources Board,'' May 28, 2020 (transcript of CARB's public hearing), and ''Responses to Comments Received on the Technical Revision to the San Joaquin Valley $PM_{2.5}$ State Implementation Plan.''

[10] The docket includes the following four technical support documents for the March 27, 2020 proposed rule: (1) ''Technical Support Document, General Evaluation, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's General Evaluation TSD''); (2)''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's $PM_{2.5}$ Precursor TSD''); (3) ''Technical Support Document, EPA Evaluation of BACM/MSM, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's BACM/MSM TSD''); and (4) ''Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's Modeling TSD'').

[11] Letter received April 6, 2020, from Mark Rose, Sierra Nevada Program Manager, National Parks Conservation Association (NPCA) and Nayamin Martinez, Executive Director, Central California Environmental Justice Network (CCEJN) to Rory Mays, EPA; and letter received April 15, 2020, from Catherina Garoupa White, Executive Director, CVAQ, et al. to Rory Mays, EPA.

[12] Email dated April 8, 2020, from Rory Mays, EPA to Mark Rose, Sierra Nevada Program Manager, NPCA and Nayamin Martinez, Executive Director, CCEJN; and email dated April 21, 2020, from Rory Mays, EPA to Catherine Garoupa White, Executive Director, CVAQ, et al.

[13] Anonymous comment received March 29, 2020.

[14] Comment letter dated and received April 27, 2020, from Samir Sheikh, Executive Officer/APCO, SJVUAPCD to Administrator Wheeler, EPA.

[15] Comment letter dated and received April 27, 2020, from Mark Rose, NPCA, et al. to Rory Mays, EPA, including Appendices A through G. The seven environmental and community organizations, in order of appearance in the letter, are NPCA, Earthjustice, Central Valley Air Quality Coalition, Coalition for Clean Air, Central Valley Environmental Justice Network, The Climate Center, and Central Valley Asthma Collaborative (collectively ''NPCA'').

[16] Comment letter dated and received April 27, 2020, from Laura Brown, Executive Director, California Safflower Growers Association to Rory Mays, EPA.

[17] Email dated June 10, 2020, from Thomas Menz to Rory Mays, EPA Region IX, with attachments.

[18] The list of proposed SIP measures included in Attachment A to CARB Resolution 18–49 is also provided in tables 7 and 8 of the Valley State SIP Strategy and in tables 4–8 and 4–9 of the 2018 $PM_{2.5}$ Plan. See also, 85 FR 17382, 17413–17414 (Table 7).

[19] CARB Resolution 18–49 (October 25, 2018), 5. See also 85 FR 17382, 17413.

[20] Valley State SIP Strategy, 38 (Table 8) (identifying expected emission reductions from proposed State measures).

[21] Email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, ''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress'').

the schedule set forth in those tables,[22] and to ''achieve the aggregate emissions reductions of 1.88 tpd of NO_X and 1.3 tpd of $PM_{2.5}$ by 2024/2025'' through adoption and implementation of these listed measures or appropriate substitute control measures ''in the same implementation timeframes or in the timeframes needed to meet CAA milestones.'' [23] The 2018 $PM_{2.5}$ Plan provides, in Table 4–3, anticipated emission reductions for each of the nine District rules listed in Table 4–4 but does not quantify the emission reductions anticipated from implementation of the incentive-based measures listed in Table 4–5. Like CARB, the District has not specifically committed to adopt any of the listed measures and may ultimately achieve the required emission reductions through adoption and implementation of other enforceable control measures.

Thus, CARB and the SJVUAPCD will not necessarily achieve the aggregate tonnage commitments through incentive programs, as NPCA suggests. Instead, although both CARB and the SJVUAPCD must take action to develop and propose specific regulatory and incentive-based measures identified in the Plan, they may ultimately elect to meet the NO_X and $PM_{2.5}$ aggregate tonnage commitments through adoption and implementation of these listed measures or appropriate substitute control measures by January 1, 2024. See Response 2.

Finally, NPCA states that the bulk of the aggregate tonnage commitments rely on unfunded incentive measures that the EPA ''proposes to approve with no record to support their likelihood of success.'' To the extent NPCA intended to assert that the EPA has proposed to approve all of the incentive-based measures listed in the State's and District's control measure commitments, this is factually incorrect. The EPA proposed to approve the State's and District's commitments to take action with respect to the listed measures, including the identified incentive-based measures, and to achieve emission reductions by 2024. To date, the EPA has proposed to approve only one of the three incentive-based measures listed in CARB's control measure commitment (*i.e.,* the ''Agricultural Equipment Incentive Measure'' or ''Valley Incentive Measure'') [24] and has not yet proposed action on any of the other incentive-based measures that CARB or the District have committed to develop and present to their respective boards, as neither agency has yet adopted and submitted any such additional measures.

To the extent NPCA intended to argue, with respect to the Valley Incentive Measure, that the EPA is proposing to approve this measure with no record to support its likelihood of success, this comment is outside the scope of this action. The EPA proposed to approve the Valley Incentive Measure in a separate rulemaking [25] and will respond to all comments received on that proposal, as appropriate, in a separate final rule.

Comment 2: NPCA states that the aggregate emission reduction commitments are not enforceable as required by section 110(a)(2)(A) of the CAA. Citing an EPA memorandum to the docket for a rulemaking entitled ''State Implementation Plans: Response to Petition for Rulemaking; Finding of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,'' NPCA states that to be ''enforceable,'' a measure must be enforceable by the state, the EPA, and citizens. NPCA also states that the mere approval of a measure into the SIP does not convert an unenforceable provision into an enforceable one, and that the EPA's SIP rulemaking must explain how the aggregate emission reduction commitments can be enforced.

Response 2: We agree with NPCA's statement that the mere approval of a measure into the SIP does not convert an unenforceable provision into an enforceable one, but we disagree with NPCA's claim that the aggregate commitments in the SJV $PM_{2.5}$ Plan are not enforceable. We explain below how the EPA and citizens may enforce the provisions of CARB's and the District's respective SIP commitments in the SJV $PM_{2.5}$ Plan. We respond to NPCA's more specific comments concerning enforceability in our responses to comments 2.A through 2.E, in the Response to Comments document.

Under CAA section 110(a)(2)(A), SIPs must include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the Act, as well as timetables for compliance. Similarly, section 172(c)(6) provides that nonattainment area SIPs must include enforceable emission limitations and such other control measures, means or techniques as may be necessary or appropriate to provide for attainment of the NAAQS by the applicable attainment date.

Control measures, including commitments in SIPs, are enforced through CAA section 304(a), which provides for citizen suits to be brought against any ''person,'' including a state,[26] who is alleged ''to be in violation of . . . an emission standard or limitation. . . .'' ''Emission standard or limitation'' is defined in subsection (f) of section 304.[27] As observed in *Conservation Law Foundation, Inc.* v. *James Busey et al.,* 79 F.3d 1250, 1258 (1st Cir. 1996):

> Courts interpreting citizen suit jurisdiction have largely focused on whether the particular standard or requirement plaintiffs sought to enforce was sufficiently specific. Thus, interpreting citizen suit jurisdiction as limited to claims ''for violations of specific provisions of the act or specific provisions of an applicable implementation plan,'' the Second Circuit held that suits can be brought to enforce specific measures, strategies, or commitments designed to ensure compliance with the NAAQS, but not to enforce the NAAQS directly. See, *e.g., Wilder,* 854 F.2d at 613–14. Courts have repeatedly applied this test as the linchpin of citizen suit jurisdiction. See, *e.g., Coalition Against Columbus Ctr.* v. *City of New York,* 967 F.2d 764, 769–71 (2d Cir. 1992); *Cate* v. *Transcontinental Gas Pipe Line Corp.,* 904 F. Supp. 526, 530–32 (W.D. Va. 1995); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, 1454–59 (N.D. Cal.), modified, 746 F. Supp. 976 (1990).

Thus, courts have found that the citizen suit provision cannot be used to enforce the aspirational goal of attaining the NAAQS but can be used to enforce specific strategies to achieve that goal.[28]

SIP control measures and commitments may also be enforced by the EPA under section 113(a)(1) of the Act, which authorizes the EPA to issue notices and compliance orders, assess administrative penalties, and bring civil

[22] See also 85 FR 17382, 17414–17415 (Table 8).

[23] SJVUAPCD Governing Board Resolution 18–11–16 (November 15, 2018), 10–11. See also 85 FR 17382, 17413.

[24] 85 FR 16588 (March 24, 2020) (proposal to approve Valley Incentive Measure).

[25] *Id.*

[26] CAA section 302(e) (defining ''person'' to include a State or political subdivision thereof).

[27] Section 304(f) of the CAA defines ''emission standard or limitation,'' in relevant part, to mean ''a schedule or timetable of compliance'' which is in effect under the Act ''or under an applicable implementation plan.'' Section 302(p) of the Act defines ''schedule and timetable of compliance'' to mean ''a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.'' Section 302(q) of the Act defines ''[a]pplicable implementation plan,'' in relevant part, as ''the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of [title I of the Act]. . . and which implements the relevant requirements of [the Act].''

[28] See also *Committee for a Better Arvin, et al.* v. *EPA,* 786 F.3d 1169, 1181 (9th Cir. 2015) (finding that California's commitments to propose and adopt emission control measures and to achieve aggregate emission reductions are enforceable ''emission standards or limitations'' under the CAA).

actions against any ''person,'' including a state, who ''has violated or is in violation of any requirement or prohibition of an applicable implementation plan. . . .'' [29]

CARB's commitments are contained in CARB Resolution 18–49 (October 25, 2018) and the Valley State SIP Strategy and consist of two parts: a control measure commitment and an aggregate tonnage commitment.[30] CARB's control measure commitment is to ''begin the measure's public process and bring to the Board for consideration the list of proposed SIP measures outlined in the *Valley State SIP Strategy* and included in Attachment A, according to the schedule set forth.'' [31] By email dated November 12, 2019, CARB clarified that it intended to begin the public process on each listed measure by discussing the proposed regulation or program at a public meeting (workshop, working group, or Board hearing) or in a publicly-released document, after which it would propose the regulation or program to its Board.[32] CARB's aggregate tonnage commitment is ''to achieve the aggregate emissions reductions outlined in the *Valley State SIP Strategy* of 32 tpd of NO_X and 0.9 tpd of $PM_{2.5}$ emissions reductions in the San Joaquin Valley by 2024.'' [33] In the Valley State SIP Strategy, CARB describes this commitment as a ''commitment for new emission reductions'' that the State must achieve by 2024 through implementation of control measures, incentive-based measures, or other enforceable measures.[34] CARB further describes its aggregate tonnage commitment in the Valley State SIP Strategy as follows:

> While Table 8 [of the Valley State SIP Strategy] includes estimates of the emission reductions from each of the individual measures, final measures as proposed by staff to the Board or adopted by the Board may provide more or less than the initial emission reduction estimates. CARB's overall commitment is to achieve the total emission reductions necessary to attain the federal air quality standards while reflecting the combined reductions from the existing control strategy and new measures. Therefore, if a particular measure does not get its expected emission reductions, the State is still committed to achieving the total aggregate emission reductions. If actual emission decreases occur that exceed the projections reflected in the current emissions inventory and the Valley State SIP Strategy, CARB will submit an updated emissions inventory to U.S. EPA as part of a SIP revision. The SIP revision would outline the changes that have occurred and provide appropriate tracking to demonstrate that aggregate emission reductions sufficient for attainment are being achieved through enforceable emission reduction measures.[35]

The District's commitments are contained in SJVUAPCD Governing Board Resolution 18–11–16 (November 15, 2018) and Chapter 4 of the 2018 $PM_{2.5}$ Plan and similarly consist of two parts: A control measure commitment and an aggregate tonnage commitment.[36] The control measure commitment is to ''take action on the rules and measures committed to in Chapter 4 of the Plan by the dates specified therein, and to submit these rules and measures, as appropriate, to CARB within 30 days of adoption for transmittal to EPA as a revision to the [SIP].'' [37] By email dated November 12, 2019, the District clarified that it intended to take action on the rules and measures listed in Chapter 4 of the 2018 $PM_{2.5}$ Plan by beginning the public process on each measure, *i.e.,* discussing the proposed regulation or program at a public meeting, including a workshop, working group, or Board hearing, or in a publicly-released document, after which it would propose the rule or measure to the SJVUAPCD Governing Board.[38] The District's aggregate tonnage commitment is to ''achieve the aggregate emissions reductions of 1.88 tpd of NO_X and 1.3 tpd of $PM_{2.5}$ by 2024/2025'' through adoption and implementation of these measures or, if the total emission reductions from these rules or measures are less than these amounts, ''to adopt, submit, and implement substitute rules and measures that achieve equivalent reductions in emissions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors in the same implementation timeframes or in the timeframes needed to meet CAA milestones.'' [39] Because the District's 2019 amendment to Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters'') achieves 0.2 tpd of SIP-creditable direct $PM_{2.5}$ emissions reductions in 2024, the District's remaining $PM_{2.5}$ emissions reduction commitment for 2024 is 1.1 tpd.[40]

Upon the EPA's approval of these commitments into the SIP under CAA section 110, the commitments will become federally enforceable requirements of an ''applicable implementation plan'' as defined in CAA section 302(q). Therefore, as discussed below, both citizens and the EPA may enforce these commitments under CAA sections 304(a)(1) and 113(a)(1), respectively. The enforceable components of these commitments are as follows.

First, both CARB and the District have committed to begin a public process on each of the proposed control measures listed in their respective control measure commitments [41] by discussing

[29] CAA section 113(a)(1)–(2) (establishing EPA's SIP enforcement authorities), section 302(e) (defining ''person'' to include a state or political subdivision thereof), and section 302(q) (defining ''applicable implementation plan'' to include the portion(s) of the implementation plan approved under CAA section 110 that implement relevant CAA requirements).

[30] 85 FR 17382, 17413.

[31] CARB Resolution 18–49 (October 25, 2018), 5. The list of proposed SIP measures included in Attachment A to CARB Resolution 18–49 is also provided in tables 7 and 8 of the Valley State SIP Strategy and in tables 4–8 and 4–9 of the 2018 $PM_{2.5}$ Plan.

[32] Email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, ''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress'') and CARB Staff Report, 14.

[33] CARB Resolution 18–49 (October 25, 2018), 5.

[34] Valley State SIP Strategy, 35 and 37.

[35] *Id.* at 37.

[36] 85 FR 17382, 17413.

[37] SJVUAPCD Governing Board Resolution 18–11–16 (November 15, 2018), 10–11.

[38] Email dated November 12, 2019, from Jon Klassen, SJVUAPCD to Wienke Tax, EPA Region IX, ''RE: follow up on aggregate commitments in SJV $PM_{2.5}$ plan'' (attaching ''District Progress In Implementing Commitments with 2018 $PM_{2.5}$ Plan''). Although neither this submission nor Table 4–3 of the 2018 $PM_{2.5}$ Plan quantifies expected emission reductions from the three proposed incentive-based measures listed in Table 4–5 of the 2018 $PM_{2.5}$ Plan, these proposed incentive-based measures are also measures ''committed to in Chapter 4 of the Plan'' and are, therefore, covered by the District's control measure commitment. Thus, the District has committed to begin the public process on each regulatory measure listed in Table 4–4 and on each incentive-based measure listed in Table 4–5 by the relevant ''public process begins'' date specified in those tables, and to then propose each measure to the SJVUAPCD Governing Board by the relevant ''action date'' specified in those tables.

[39] SJVUAPCD Governing Board Resolution 18–11–16 (November 15, 2018), 10–11.

[40] 85 FR 17382, 17415. As shown in row C of Table 9 of our proposal, the EPA proposed to credit the District's Rule 4901 (as amended June 20, 2019) with 0.2 tpd of direct $PM_{2.5}$ reductions in 2024 and to credit the Valley Incentive Measure with 5.9 tpd of NO_X reductions and 0.3 tpd of direct $PM_{2.5}$ reductions in 2024. Because we have not yet taken final action to approve the Valley Incentive Measure, however, we cannot credit this measure with emission reductions at this time. Accordingly, the only SIP-creditable control measure beyond baseline measures in the SJV $PM_{2.5}$ Plan is the District's Rule 4901 (as amended June 20, 2019). After crediting this rule with 0.2 tpd of direct $PM_{2.5}$ reductions in 2024 (*i.e.,* subtracting 0.2 tpd from the District's $PM_{2.5}$ tonnage commitment for 2024, which is 1.3 tpd), the District's remaining $PM_{2.5}$ tonnage commitment for 2024 is 1.1 tpd.

[41] CARB's 15 proposed control measures and the related schedules for starting public process, action, and implementation are listed in Attachment A to Board Resolution 18–49 and in Table 7 of the Valley State SIP Strategy. The SJVUAPCD's 12 proposed control measures and the related schedules for starting public process, action, and implementation are listed in tables 4–4 and 4–5 of the 2018 $PM_{2.5}$ Plan. We refer to these tables as CARB's and the District's ''control measure commitments.'' Table 7 of our proposed rule summarizes the information in CARB's control measure commitment, and Table 8 of our proposed rule summarizes the information in the SJVUAPCD's control measure commitment. 85 FR 17382, 17413–17415.

the proposed regulation or program at a public meeting (workshop, working group, or Board hearing) or in a publicly-released document. If CARB fails to begin a public process on any of its 15 proposed control measures by the date specified under the ''public process begins'' column in its control measure commitment, that failure would constitute a violation of the SIP commitment. Likewise, if the District fails to begin a public process on any of its 12 proposed control measures by the date specified under the ''public process begins'' column in its control measure commitment, that failure would constitute a violation of the SIP commitment.

Second, both the State and District have committed to propose, to their respective boards, each of the control measures listed in their respective control measure commitments by specific dates. If CARB fails to propose to its Board any of its 15 proposed control measures by the relevant ''action'' date specified in its control measure commitment, that failure would constitute a violation of the SIP commitment. Likewise, if the District fails to propose to its Board any of its 12 proposed control measures by the relevant ''action'' date specified in its control measure commitment, that failure would constitute a violation of the SIP commitment.

Finally, both the State and District have committed to an aggregate tonnage commitment—*i.e.,* to ''achieve'' specific amounts of NO_X and direct $PM_{2.5}$ emissions reductions in the San Joaquin Valley by 2024, through implementation of either the measures listed in their respective control measure commitments or appropriate substitute measures. Because the deadline for implementation of all control measures necessary for attainment in this plan is January 1, 2024,[42] we understand that both the State and District have committed to achieve the necessary emission reductions no later than January 1, 2024.[43] To ''achieve'' specified amounts of emissions reductions through implementation of control measures, a regulatory agency must require compliance with measures designed to accomplish such reductions. To require such compliance by January 1, 2024, in turn, necessitates a sequence of regulatory actions well in advance of that date, ultimately leading to full adoption of measures that achieve the requisite amounts of emission reductions, following adequate public process.[44] Thus, all of the rules and other control measures that CARB or the SJVUAPCD adopt to satisfy their respective tonnage commitments will be subject to state rulemaking processes through which the EPA and the public may track the agencies' progress in achieving the requisite emissions reductions in the years leading up to 2024 and before the December 31, 2024 attainment date.

CARB regularly informs the public of ways to participate in its rulemaking processes [45] and provides guidelines for accessing public records under the State Public Records Act.[46] Should either CARB or the SJVUAPCD fail to commence, prior to January 1, 2024, rulemaking proceedings as necessary to require full implementation of (*i.e.,* compliance with) measures achieving the required tonnages of emission reductions by January 1, 2024, CARB or the District would be in violation of its SIP commitment.[47] CARB must also submit each adopted measure to the EPA for approval into the SIP, after which the EPA determines, through notice-and-comment rulemaking, whether to approve the measure under CAA section 110 and the appropriate amounts of SIP emission reduction credit to attribute to the measure, if approved.

These procedures mandated by the State and District commitments constitute a specific enforceable strategy designed to bring the San Joaquin Valley into attainment of the $PM_{2.5}$ NAAQS by the end of 2024. The fact that CARB and the District may meet their SIP commitments by adopting measures that are not specifically identified in the SIP, or through one of several available techniques, does not render the requirement to achieve the aggregate emissions reductions unenforceable.[48] For over 20 years, the EPA has approved aggregate tonnage commitments under which the state is required to achieve specified amounts of emission reductions through enforceable control measures to be adopted and implemented by a later date.[49]

For all of these reasons, we conclude that these enforceable commitments to adopt and implement additional control measures to achieve aggregate emission reductions on a fixed schedule are appropriate means, techniques, or schedules for compliance under sections 110(a)(2)(A) and 172(c)(6) of the Act.

Comment 3: NPCA states that approval of the aggregate commitments under the EPA's three-factor test is unreasonable, and that the EPA's

[42] 40 CFR 51.1011(b)(5) (requiring implementation of all control measures needed for attainment as expeditiously as practicable and no later than the beginning of the year containing the applicable attainment date).

[43] This interpretation is consistent with CARB's statement in its resolution of adoption that ''CARB's mobile source reduction schedule for the Valley provides measures to be considered throughout the years with all emissions reductions in place by January 1, 2024.'' CARB Resolution 18–49 (October 25, 2018), 4.

[44] The California Administrative Procedure Act (Cal. Gov't Code, section 11340 *et seq.*) requires all state agencies to provide, at minimum, a 45-day opportunity to comment in writing, by fax, or email on any new or revised regulation, with limited exceptions. Cal. Gov't Code, section 11346.4. The 45-day opportunity to submit comments starts with publication in the California Regulatory Notice Register of a notice of proposed rulemaking, which must be posted on the rulemaking agency's website and mailed to ''every person who has filed a request for notice of regulatory actions with the state agency,'' among others. Id. For proposed regulations involving ''complex proposals'' or a large number of proposals, the state agency must involve the public in workshops or other public discussions well before the start of the formal rulemaking process. Cal. Gov't Code, section 11346.45.

[45] See, *e.g.,* CARB's rulemaking schedules at *https://ww2.arb.ca.gov/rulemaking-activity.*

[46] ''Guidelines for Accessing Public Records,'' available at *http://www.arb.ca.gov/html/pubrecsguidelines.htm.*

[47] Furthermore, if either agency fails to meet its commitments, the EPA could make a finding of failure to implement the SIP under CAA section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed.

[48] *Citizens for a Better Environment* v. *Deukmejian,* 731 F. Supp. 1448, 1454–59 (N.D. Cal.) (''the basic commitment to adopt and implement additional measures, should the identified conditions occur, constitutes a specific strategy, fully enforceable in a citizens action, although the exact contours of those measures are not spelled out''), modified, 746 F. Supp. 976 (1990) (holding state and district liable for failing to satisfy SIP commitment).

[49] See, *e.g.,* ''*http://www.lexis.com/research/buttonTFLink?_m=b8271650ac023d9ce93fab43ee478a8f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20FR%2057160%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=24&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b62%20FR%201150%2cat%201187%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAW&_md5=6d0b8c64e7cb22f330ae9f1798feea9b*'' 62 FR 1150, 1187 (Jan. 8, 1997) (approving ozone attainment demonstration for the South Coast Air Basin); ''*http://www.lexis.com/research/buttonTFLink?_m=b8271650ac023d9ce93fab43ee478a8f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20FR%2057160%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=25&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b65%20FR%2018903%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAW&_md5=6721a3f19a584849c189d2c9f3765afa*'' 65 FR 18903 (Apr. 10, 2000) (approving revisions to ozone attainment demonstration for the South Coast Air Basin); 66 FR 57160 (Nov. 14, 2001) (approving ozone attainment demonstration for Houston/Galveston, Texas); 67 FR 5170 (Feb. 4, 2002) (approving ozone attainment demonstration for New York); 69 FR 30005 (May 26, 2004) (approving PM_{10} attainment demonstration for San Joaquin Valley); and 76 FR 69896 (Nov. 9, 2011) (approving $PM_{2.5}$ attainment demonstration for San Joaquin Valley).

analysis of these factors is conclusory and contrary to the record.

Response 3: For the reasons provided in Response 3.A through Response 3.C below, we disagree with the commenter's claim that our approval of the commitments in the Plan is unreasonable and that our analysis of the commitments under the three-factor test is unsupported.

Comment 3.A: With respect to the first factor, NPCA states that the EPA acknowledges that 13.8 percent (%) of the necessary NO_X reductions and over a quarter of the necessary $PM_{2.5}$ reductions will supposedly come from these new aggregate commitments. NPCA asserts that the level of these commitments is unprecedented and far from ''limited,'' and that the EPA offers no record of support for its conclusion, pointing instead to the difficulty in identifying additional measures and suggesting that it is reasonable for the State and District to seek additional time to adopt the last increment of emission reductions. NPCA claims that the EPA's conclusion regarding the need for more time has nothing to do with whether the commitments represent a limited portion of the needed reductions. NPCA states that these percentages far exceed guidance on the use of voluntary measures, and that the ton per day levels of aggregate tonnage are beyond the levels of commitments approved in any prior SIP.

NPCA also states that the ''expectation that even larger tonnage reductions than have previously been approved in a SIP can magically be found is inconsistent with EPA's own conclusion that additional measures are more difficult to find,'' and that the EPA's conclusion is an admission that the State and District have not identified the necessary measures. NPCA states that, unlike plans for ozone, the CAA does not allow $PM_{2.5}$ plans to include this sort of ''black box'' that permits plans to put off identification of measures, and that the EPA's approval undermines the Act's basic planning requirements by suggesting that a plan need only include ''a blanket commitment to achieve necessary reductions, even if there is no identified path to actually doing so.''

Response 3.A: The commenters correctly note that the percentages of needed emission reductions that are addressed by the aggregate tonnage commitments in the SJV $PM_{2.5}$ Plan are higher than those we have approved in any prior SIP. We disagree, however, with NPCA's claim that the EPA's approval of these commitments ''undermines the Act's basic planning requirements'' and suggests that a plan need only include ''a blanket commitment to achieve necessary reductions, even if there is no identified path to actually doing so.''

Our proposed rule stated that the emission reductions remaining as aggregate tonnage commitments in the Plan (after crediting Rule 4901 and the Valley Incentive Measure toward the attainment demonstration) would be 28 tpd of NO_X emission reductions and 1.7 tpd of direct $PM_{2.5}$ emission reductions, which equate to approximately 13.8% of the NO_X reductions and 26.6% of the direct $PM_{2.5}$ reductions needed to attain the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley by the end of 2024.[50] Because the EPA has not yet taken final action to approve the Valley Incentive Measure, however, we cannot credit this measure with emission reductions at this time and have added the NO_X and direct $PM_{2.5}$ reductions attributed to this measure back to the aggregate tonnage commitments. Thus, the emission reductions remaining as aggregate tonnage commitments are now 33.9 tpd of NO_X emission reductions and 2.0 tpd of direct $PM_{2.5}$ emission reductions, which equate to approximately 16.8% of the NO_X reductions and 31.3% of the direct $PM_{2.5}$ reductions necessary for attainment. See Table 1 in section III of this final rule.

Whether a particular aggregate tonnage commitment constitutes a ''limited'' portion of the required emission reductions is a question that the EPA must evaluate in light of the facts and circumstances of the nonattainment area at issue. Given the nature of the $PM_{2.5}$ challenge in the San Joaquin Valley, the significant reductions in NO_X and direct $PM_{2.5}$ emission levels achieved through implementation of baseline measures over the past several decades, and the difficulty of identifying additional control measures that are feasible for implementation in the area, we find it reasonable for the State and District to seek additional time to adopt the last increment of emission reductions necessary for attainment by 2024.[51] Therefore, we find that the aggregate tonnage commitments in the Plan constitute a limited portion of the required control strategy for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley and that the first factor of our three-factor test is met.

NPCA's statement that ''the Plan's aggregate commitments far exceed guidance on the use of voluntary measures'' appears to be in reference to the EPA's longstanding guidance recommending certain presumptive limits on the amounts of emission reductions from voluntary and other nontraditional (*e.g.,* incentive-based) measures that may be credited in a SIP.[52] For example, the EPA has recommended that SIPs rely on voluntary mobile source emission reduction programs for no more than three percent of the total projected future year emission reductions required to attain the relevant NAAQS, except where the state provides a ''clear and convincing justification'' for a higher limit.[53] These guidance documents and the presumptive limits discussed therein do not apply to our evaluation of the enforceable commitments in the SJV $PM_{2.5}$ Plan because the commitments are not voluntary or incentive-based measures. Although our proposed rule discusses one incentive-based measure (the Valley Incentive Measure) as a component of the attainment demonstration in the Plan,[54] we have not yet taken final action on the Valley Incentive Measure and are not considering it as part of our final action on the SJV $PM_{2.5}$ Plan. Thus, the SJV $PM_{2.5}$ Plan does not rely on any voluntary or incentive-based measure to achieve emission reductions necessary for attainment, and the EPA's guidance documents on the use of voluntary measures in SIPs therefore do not apply to this action.

To the extent NPCA intended to argue that the EPA's presumptive limits on use of voluntary measures in SIPs should apply to our evaluation because of the extent to which CARB anticipates fulfilling its tonnage commitments through adoption and implementation of incentive-based measures, we disagree. As explained in Response 1

[50] 85 FR 17382, 17415 (Table 9). As shown in row C of Table 9 of our proposal, the EPA proposed to credit the District's Rule 4901 (as amended June 20, 2019) with 0.2 tpd of direct $PM_{2.5}$ reductions in 2024 and to credit the Valley Incentive Measure with 5.9 tpd of NO_X reductions and 0.3 tpd of direct $PM_{2.5}$ reductions in 2024.

[51] 85 FR 17382, 17416.

[52] 85 FR 17382, 17412 (describing EPA guidance on SIP credit for voluntary measures).

[53] EPA, ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs),'' October 24, 1997, 5; EPA, ''Incorporating Emerging and Voluntary Measure in a State Implementation Plan (SIP),'' October 4, 2004, 9; EPA, ''Guidance on Incorporating Bundled Measures in a State Implementation Plan,'' August 16, 2005, 8, n. 6; and EPA, ''Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity: Guidance for State and Local Air and Transportation Agencies,'' March 2018, 12.

[54] 85 FR 17382, 17412–17413 (discussing justification for SJV $PM_{2.5}$ Plan's reliance on Valley Incentive Measure) and 85 FR 16588 (March 24, 2020) (proposed rule to approve Valley Incentive Measure).

and Response 2, although the Valley State SIP Strategy indicates that CARB anticipates achieving 23 tpd of the necessary NO_X emission reductions and 0.8 tpd of the necessary $PM_{2.5}$ emissions reductions through implementation of the incentive-based measures listed in Table 8 of the Valley State SIP Strategy,[55] CARB has not specifically committed to adopt any of these listed measures and may ultimately achieve the required emission reductions through adoption and implementation of other enforceable control measures. Thus, the SJV $PM_{2.5}$ Plan does not specifically rely on any voluntary or incentive-based measure to achieve emission reductions necessary for attainment. If and when CARB submits to the EPA a voluntary or incentive-based measure to achieve a portion of its aggregate tonnage commitments in the SJV $PM_{2.5}$ Plan, the EPA will evaluate the submitted measure in accordance with the applicable CAA requirements as interpreted in EPA guidance and will take action on it following notice and comment rulemaking. We encourage NPCA to participate in any such rulemaking and to submit its comments on the applicability of the EPA's presumptive limits at that time.

NPCA's claim that the CAA does not allow $PM_{2.5}$ plans to include a '' 'black box' that permits plans to put off identification of measures'' appears to be in reference to the provisions in CAA section 182(e)(5) that allow the EPA to approve, for extreme ozone nonattainment areas, plan provisions that ''anticipate development of new control techniques or improvement of existing control technologies.'' This provision, often referred to as the ''black box'' or ''new technology'' provision of the Act, applies only to ozone nonattainment areas classified as ''extreme'' nonattainment under subpart 2 of part D, title I of the Act. Although we agree with NPCA's assertion that the CAA does not contain an analogous provision for $PM_{2.5}$ nonattainment area plans, we disagree with NPCA's suggestion that the CAA prohibits states from including provisions in $PM_{2.5}$ nonattainment area plans that anticipate adoption and implementation of necessary control measures at a later date. The inclusion of the new technology provision in section 182(e)(5), applicable for different purposes in extreme ozone nonattainment areas, does not preclude the authority of the Agency to approve appropriately structured enforceable commitments for purposes of $PM_{2.5}$ nonattainment area plans. As we explained in our proposed rule, sections 110(a)(2)(A) and 172(c)(6) of the CAA allow for approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[56] Courts have confirmed that the agency has this authority.[57]

Finally, we disagree with NPCA's claim that the Plan's aggregate commitment is a ''blanket commitment to achieve necessary reductions'' with no identified path to fulfill it. As explained in Response 2, both CARB and the SJVUAPCD have submitted specific control measure commitments[58] in addition to aggregate tonnage commitments, all of which necessitate a sequence of regulatory actions ultimately leading to full adoption of measures that achieve the requisite amounts of emission reductions by January 1, 2024, following adequate public process. These procedures mandated by the State and District commitments constitute a specific enforceable strategy designed to bring the San Joaquin Valley into attainment of the $PM_{2.5}$ NAAQS by the end of 2024. See Response 2.

Comment 3.B: NPCA asserts that the EPA's analysis of the second factor regarding the State's capacity to fulfill its commitments is unreasonable. According to NPCA, the bulk of the EPA's discussion focuses on the progress to adopt the identified control measures, while the bulk of the commitment strategy relies on incentives to achieve voluntary turnover in specified categories of mobile sources. NPCA asserts that, for the EPA to conclude that the State is capable of fulfilling its commitment, the EPA must conclude that this incentive-dependent strategy is reasonable. NPCA states that for this strategy to work, CARB and the District must first be able to find the necessary funding, must then be able to use that money to achieve the level of turnover described, and finally must demonstrate that the specified level of turnover will result in the emission reductions anticipated. NPCA claims that the EPA cannot reasonably conclude that the State is capable of achieving any of this.

According to NPCA, the EPA acknowledges that the Plan identifies a total funding need of $5 billion (including $3.3 billion for heavy-duty trucks and buses and $1.4 billion for agricultural equipment) and characterizes the various funding programs as ''well-funded'' but provides no analysis of how these programs line up with the funding need, or any assessment of whether the State is capable of fulfilling the targets. NPCA claims that the 2018 CARB Staff Report shows incentive funding streams providing roughly $350 million per year over the next seven years, far below the roughly $850 million per year needed, and that the gap between what CARB and the District asked for in incentives and what they are likely to receive is on track to grow to billions of dollars short of what the Plan specifies is needed for the San Joaquin Valley to attain the NAAQS by 2024. NPCA asserts that CARB offers no strategy for making up that shortfall, and that the shortfall has only grown over time.

Moreover, NPCA claims, in light of the current COVID–19 crisis and anticipated economic fallout, the California Legislature will likely have significantly less funding available over the next five years due to funding shortfalls in CARB's greenhouse gas reduction fund (GGRF), general budget, and other sources that these incentive grant programs rely upon. NPCA argues that, because there is no reason to think that all new sources of funding would go to the San Joaquin Valley, the EPA must explain why it is reasonable to believe that CARB is capable of finding an additional $1.3 billion per year in new incentive funding—nearly three times as much as currently achieved by CARB's existing programs.

Citing the EPA's reference to a September 2019 CARB meeting at which incentive funding shortfalls were discussed, NPCA claims that the EPA ''suggests that the Board's recommendation to develop a 'Plan B' is evidence that CARB is capable of fulfilling its commitment.'' But according to NPCA, this Board meeting is ''evidence of the recognition that the

[55] Valley State SIP Strategy, 38 (Table 8) (identifying expected emission reductions from proposed State measures).

[56] 85 FR 17382, 17416 (noting that the express allowance in CAA sections 110(a)(2)(A) and 172(c)(6) for ''schedules and timetables'' demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved).

[57] The Fifth Circuit Court of Appeals upheld the EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the 1-hour ozone SIP for Houston-Galveston. *BCCA Appeal Group et al.* v. *EPA et al.,* 355 F.3d 817 (5th Cir. 2003). More recently, the Ninth Circuit Court of Appeals upheld the EPA's approval of enforceable commitments in ozone and $PM_{2.5}$ SIPs for the San Joaquin Valley, based on the same three factor test. Committee for a *Better Arvin, et al.* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015).

[58] Together, CARB's and the District's control measure commitments identify a total of 21 regulatory measures (12 for mobile sources and nine for stationary sources) and six incentive-based measures (three each for mobile and stationary sources) that the agencies must develop and propose to their respective boards on a fixed schedule. See Response 2.

strategy outlined in the Plan is already failing and will not work,'' and the EPA can point to no new plan that came out of the Board's directive to staff. NPCA also states that neither CARB nor the District have held or scheduled any workshops to ''discuss additional reduction opportunities'' despite Board direction to do so. NPCA claims that the EPA proposes to approve a Plan that has no strategy that the State is capable of fulfilling.

NPCA asserts that the scale of voluntary replacement that CARB's commitment assumes is equally absurd. For example, NPCA claims, CARB's plan is to use $3.3 billion over six years (2019–2024) to achieve 10 tpd of NO_X reductions from the accelerated turnover of trucks and buses, and the Plan suggests incentives will replace 33,000 heavy-duty vehicles with newer technologies to achieve that level of emission reductions. NPCA claims that this means over a dozen truck owners per day, every day for the next seven years, will voluntarily choose to retire their trucks and replace them with advanced technology. If thousands of pieces of agricultural and other off-road equipment are also replaced every year, NPCA claims, it is not even clear that the agencies could process this many applications. According to NPCA, over the entire life of the Proposition 1B program and the District's Truck Voucher Program, the District has replaced 4,500 trucks (roughly 300 per year, or less than one per day). NPCA asserts that the ''best year'' for South Coast's passenger vehicle scrappage program was 2,600 vehicles. NPCA states that the EPA ''should have at least compared these numbers to truck population numbers and turnover rates in the Valley to see if an additional 15,000 trucks per year is plausible,'' and that the EPA needs to provide a rational basis for concluding that CARB can fulfill its strategy for achieving this level of voluntary turnover, even if it obtained the necessary funding.

According to NPCA, the District has a demonstrated track record of failing to use funds to achieve emissions reduction commitments. Citing a 2015 Environmental Impact Report for Kern County's revised oil and gas ordinance and an accompanying agreement signed by the county and District, NPCA states that the District received almost $89 million in fee monies to be spent on pollution reduction projects intended to compensate for otherwise unregulated oil and gas emissions but that the District has struggled to spend these funds, and that its shortfalls in spending and encumbrances have left the District with ending unencumbered balances of more than $6.4 million for 2017, $13.6 million for 2018, and $48 million for 2019. NPCA asserts that these shortfalls in spending mean that air pollution from new oil and gas drilling is increasing unabated and worsening air quality.

Finally, NPCA states that CARB and the District have been using incentive money for years to replace old mobile sources, and that as turnover occurs, the remaining mobile sources are cleaner and cleaner and emission reductions achieved by additional turnovers become smaller and smaller per vehicle. NPCA claims that the EPA ''needs to provide some analysis showing that the targeted level of turnover can fulfill the aggregate emission reductions assuming lower marginal reductions and higher marginal costs.''

Response 3.B: We disagree with NPCA's claim that the EPA has no reasonable basis for finding CARB capable of fulfilling its commitments.

First, both the State and District have made substantial progress in developing and adopting the regulatory measures listed in their respective control measure commitments. The SJV $PM_{2.5}$ Plan indicates that CARB and the SJVUAPCD anticipate achieving approximately 32% of their combined aggregate tonnage commitments for NO_X reductions and 52% of their combined aggregate tonnage commitments for direct $PM_{2.5}$ reductions through adoption and implementation of regulatory control measures.[59] As we explained in the proposed rule, CARB has adopted or begun the public process on all but one of the 12 regulatory control measures listed in its control measure commitment, and the District has adopted or begun the public process on six of the nine regulatory measures listed in its control measure commitment.[60] The substantial progress that both agencies have made in the regulatory processes that they have committed to undertake, for purposes of achieving a sizable portion of the aggregate tonnage commitments in the Plan (*i.e.,* 30 and 52% of the NO_X and $PM_{2.5}$ reductions, respectively), supports our conclusion that the State and District are capable of fulfilling their respective commitments.

Second, CARB has also made significant progress in developing and implementing the Valley Incentive Measure, one of three incentive-based measures listed in its control measure commitment.[61] CARB adopted and submitted the Valley Incentive Measure to the EPA in February 2020, consistent with the 2020 ''action'' date specified in its control measure commitment, and the EPA proposed to approve this measure into the SIP on March 24, 2020.[62] CARB's SIP submission for the Valley Incentive Measure indicates that the identified incentive projects, most of which have already been funded and are currently being implemented, would achieve a total of 5.9 tpd of NO_X emission reductions and 0.3 tpd of $PM_{2.5}$ emission reductions in the San Joaquin Valley by 2024.[63] Although the EPA has not yet taken final action to approve this measure, CARB's timely adoption and submission of this measure, together with extensive documentation to address the CAA's requirements for crediting incentive-based measures in a SIP, supports our conclusion that the State is capable of adopting and implementing incentive-based measures to achieve its aggregate tonnage commitments.

Third, the Plan's identified funding need of $5 billion (including $3.3 billion for heavy-duty trucks and buses and $1.4 billion for agricultural equipment) to incentivize the necessary level of vehicle and equipment turnover represents a projection of the potential amount of incentive funds needed to achieve the aggregate tonnage commitments, and is not necessarily the amount that will ultimately be required. For example, as explained below, it is possible that the agricultural equipment replacement projects could be implemented with less funding than stated in the Plan. Based on information about the cost of agricultural equipment replacement projects provided in CARB's SIP submission for the Valley Incentive Measure, the EPA developed alternative estimates of the additional funding necessary to implement

[59] The Valley State SIP Strategy indicates that CARB anticipates achieving 9 tpd of its 32 tpd NO_X emission reduction commitment and 0.1 tpd of its 0.9 tpd $PM_{2.5}$ emission reduction commitment through adoption and implementation of regulatory control measures (Valley State SIP Strategy, 38 (Table 8), and the 2018 $PM_{2.5}$ Plan indicates that the SJVUAPCD anticipates achieving all or most of its 1.9 tpd NO_X emission reduction commitment and 0.94 tpd of its 1.1 tpd $PM_{2.5}$ emission reduction commitment through adoption and implementation of regulatory control measures (2018 $PM_{2.5}$ Plan, 4–12 (Table 4–3) and 2019 Rule 4901 Staff Report). Thus, the total NO_X tonnage attributed to regulatory measures is 10.9 tpd of the 33.9 tpd aggregate commitment (approximately 32%), and the total $PM_{2.5}$ tonnage attributed to regulatory measures is 1.04 tpd of the 2.0 tpd aggregate commitment (approximately 52%).

[60] 85 FR 17382, 17416–17417.

[61] Valley State SIP Strategy, 36, 38 (tables 7 and 8).

[62] 85 FR 16588 (March 24, 2020).

[63] EPA, ''Technical Support Document for EPA's Rulemaking for the California State Implementation Plan, California Air Resources Board Resolution 19–26, San Joaquin Valley Agricultural Equipment Incentive Measure,'' February 2020.

additional agricultural equipment replacement projects in the San Joaquin Valley. Specifically, based on the amounts of incentive funds secured or disbursed to implement the projects identified in the Valley Incentive Measure (a total of approximately $328 million) and emission reductions summed from those projects, we calculated the average cost-effectiveness values for 1) projects that have already been fully funded and 2) all projects relied upon in the Valley Incentive Measure.[64] We then used the average cost-effectiveness values to estimate a range of total incentive funds that could achieve an additional 5.1 tpd of NO_X reductions and 0.5 tpd of direct $PM_{2.5}$ reductions from agricultural equipment replacement projects (*i.e.,* the additional reductions necessary to achieve the total emission reductions attributed to CARB's proposed ''Accelerated Turnover of Agricultural Equipment'' measure).[65]

These calculations resulted in a low estimate of $480 million and a high estimate of $547 million to achieve both an additional 5.1 tpd of NO_X reductions and an additional 0.5 tpd of direct $PM_{2.5}$ reductions from CARB's proposed ''Accelerated Turnover of Agricultural Equipment'' measure,[66] both significantly less than the approximately $1 billion identified in the Plan as necessary to achieve these remaining emission reductions.[67]

Although our calculations are based on a number of assumptions that may differ from those used by CARB and the District in the SJV $PM_{2.5}$ Plan, they provide some indication that the emission reductions attributed in the Plan to agricultural equipment replacement projects may be achievable with less than $1.4 billion in incentive funds and, by extension, that the emission reductions attributed to all of the incentive-based measures in the Plan may be achievable with less than $5 billion.

CARB's Staff Report for the SJV $PM_{2.5}$ Plan indicates that, of the $5 billion estimated to be necessary from 2019 to 2024 to achieve the needed emission reductions identified in the Plan, over $2 billion is ''identified or anticipated'' ($338 million each year from 2019 to 2024), leaving a total ''incentive funding gap'' of approximately $2.6 billion over the 2019–2024 period.[68] That is, the Plan indicates that over 40% of the needed incentive funds are identified or anticipated, leaving a ''funding gap'' of less than 60% of the needed funds. If we assume a 60% funding gap would result in a failure to achieve 60% of the emission reductions that the Plan attributes to CARB's incentive-based measures (23 tpd NO_X reductions and 0.8 tpd $PM_{2.5}$ reductions),[69] the funding gap would result in emission reduction shortfalls of approximately 13.8 tpd for NO_X and 0.5 tpd for $PM_{2.5}$, which equate to approximately 7% of the total NO_X reductions and 8% of the total $PM_{2.5}$ reductions necessary for attainment.[70] We believe it is reasonable to provide the State and District additional time to identify the specific measures that will achieve these amounts of reductions.

Fifth, we disagree with NPCA's suggestion that anticipated economic constraints render the State unable to achieve its tonnage commitments and its claim that the EPA must explain ''why it is reasonable to believe that CARB is capable of finding an additional $1.3 billion per year in new incentive funding'' in order to find that CARB is capable of fulfilling its commitments. Although it is possible that CARB and the District will have significantly less funding available over the next several years to implement the incentive-based measures identified in the Plan, it is also possible that the State and District will achieve their respective aggregate tonnage commitments with less than $5 billion in incentive funds, as suggested by our alternative estimates of the cost-effectiveness and estimated funding needs for additional agricultural equipment replacement projects. Neither CARB nor the District has committed to secure $5 billion in funding for its incentive programs, nor does the Plan establish definitively that this amount is necessary to achieve the identified tonnage commitments. For example, CARB and the District may be able to fulfill a substantial portion of their aggregate tonnage commitments through other measures not identified in the SJV $PM_{2.5}$ Plan, in lieu of or in addition to the identified incentive programs. Although the Valley State SIP Strategy indicates that CARB *anticipates* achieving 23 tpd of the necessary NO_X emission reductions (68% of the total 33.9 tpd NO_X commitment from both agencies) and 0.8 tpd of the necessary $PM_{2.5}$ emissions reductions (40% of the total 2.0 tpd $PM_{2.5}$ commitment from both agencies) through implementation of the incentive-based measures listed in CARB's control measure commitment,[71] CARB has not specifically committed to adopt any of these listed measures and may ultimately satisfy its tonnage commitments through adoption and implementation of other enforceable control measures. See Response 1 and Response 2. Indeed, CARB has recently fulfilled the aggregate tonnage commitments in a previous plan to provide for attainment of the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley, in part through adoption and implementation of both regulatory and incentive-based control measures not specifically identified in the approved attainment plan.[72]

CARB has identified a number of potential additional State measures on which it intends to begin public rule development processes this year, including a Tier 5 off-road diesel engine standard, a ''state green contracting'' measure, a ''reduction in growth of single-occupancy vehicle travel'' measure, and a locomotive emission reduction measure.[73] In addition, as

[64] Memorandum dated June 22, 2020, from Rebecca Newhouse, EPA Region IX, Air and Radiation Division, Rules Office to docket number EPA–R09–OAR–2019–0318, Subject: ''Cost-effectiveness of Emission Reductions from the Valley Incentive Measure and Estimated Future Funding Needs for Additional Agricultural Equipment Replacements'' (''EPA Cost-Effectiveness Memo'').

[65] The SJV $PM_{2.5}$ Plan indicates that, in addition to the 5.9 tpd of NO_X reductions and 0.3 tpd of $PM_{2.5}$ reductions to be achieved by the Valley Incentive Measure, CARB anticipates achieving an additional 5.1 tpd of NO_X reductions and 0.5 tpd of $PM_{2.5}$ reductions from other agricultural equipment replacement measures in the San Joaquin Valley. Valley State SIP Strategy, 38 (Table 8) (identifying a total of 11 tpd NO_X reductions and 0.8 tpd $PM_{2.5}$ reductions to be achieved by ''Accelerated Turnover of Agricultural Equipment'').

[66] EPA Cost-Effectiveness Memo, 6 (Table 4). The higher funding estimates for $PM_{2.5}$ reductions would be adequate to also achieve the identified NO_X reductions, for which the EPA calculated significantly lower cost-effectiveness values and funding needs.

[67] The 2018 $PM_{2.5}$ Plan identifies a total of $1.4 billion in funding needed to implement the ''Accelerated Turnover of Agricultural Equipment'' measure. 2018 $PM_{2.5}$ Plan, App. E, Table E–4 (page E–22). Because CARB has already secured $328 million in incentive funds to implement the Valley Incentive Measure, which is expected to achieve 5.9 of the 11 tpd of NO_X reductions and 0.3 of the 0.8 tpd $PM_{2.5}$ reductions attributed to the ''Accelerated Turnover of Agricultural Equipment'' measure, the remaining amount of incentive funds that the Plan identifies as needed to fully implement this measure (*i.e.,* to achieve the remaining 5.1 tpd NO_X reductions and 0.5 tpd $PM_{2.5}$ reductions) is approximately $1.07 billion.

[68] CARB, ''Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' release date December 21, 2018 (''CARB Staff Report''), 27 (Table 9).

[69] Valley State SIP Strategy, 38 (Table 8).

[70] 2018 $PM_{2.5}$ Plan, App. H, Table H–6 (identifying totals of 202.2 tpd NO_X reductions and 6.4 tpd $PM_{2.5}$ reductions necessary for attainment of the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley by December 31,2024).

[71] Valley State SIP Strategy, 36, 38 (tables 7 and 8).

[72] 85 FR 17382, 17406–17407. See also, the EPA's General Evaluation TSD, 3–12.

[73] Email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX,

Continued

explained in our proposed rule, emission reductions from certain measures in the Plan's control strategy, such as zero emission airport shuttle buses and transportation refrigeration units used for cold storage, have yet to be quantified but are expected to further reduce NO_X and direct $PM_{2.5}$ emissions by 2024.[74] Finally, CARB implements a number of highly successful incentive programs designed to accelerate turnover to cleaner vehicles, including the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP), which accelerates the adoption of cleaner, more-efficient trucks and buses.[75] All of these potential additional control measures or incentive programs are candidate measures that CARB may adopt, implement, and submit to the EPA to achieve its aggregate tonnage commitments.

Finally, although NPCA correctly notes that the District has not fully expended the funds it received from the Kern County Oil and Gas Emission Reduction Agreement (OGERA) during the last several years,[76] the EPA does not agree that this equates to ''a demonstrated track record of failing to use funds to achieve emissions reduction commitments.'' For example, the District has fulfilled its SIP-approved aggregate tonnage commitment in the 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS, through adoption and implementation of both regulatory and incentive-based control measures.[77] Additionally, the District's latest annual financial reports indicate that both its revenues and its expenditures for incentive grant programs have significantly increased in the past several years, and that grant funds received and appropriated for a given fiscal year may be expended on incentive contracts in subsequent fiscal years.[78] Both the District's track record to date in fulfilling its SIP-approved aggregate tonnage commitments and the information concerning funds available for incentive grant programs in the District's annual financial reports support our conclusion that the District is capable of fulfilling its aggregate tonnage commitments in the SJV $PM_{2.5}$ Plan.[79] NPCA fails to substantiate its claim that the District's ''shortfalls in spending mean that air pollution from new oil and gas drilling is increasing unabated and worsening air quality.''

We therefore find that CARB and the SJVUAPCD are capable of fulfilling their respective aggregate tonnage commitments in the SJV $PM_{2.5}$ Plan and that the second factor of our three-factor test is met.

Comment 3.C: With respect to the third factor, NPCA states that the scale of the funding shortfall and the turnover required undermine the EPA's conclusion that the commitment is for a reasonable and appropriate period of time. NPCA claims that the EPA's conclusory analysis looks only at specific rule commitments with no discussion of the main part of the Plan's strategy, and that any such analysis would have shown that CARB and the District are already falling short on their funding targets and will need even more funding and even greater levels of turnover in the years that remain until 2024. NPCA asserts that there is not enough time to make up the ground that has been lost, nor is it reasonable to believe that CARB and the District can wait any longer to develop a Plan B to achieve the emission reduction commitment. According to NPCA, rulemaking must be occurring now to achieve the required emission reductions by 2024, and a disapproval of the aggregate commitments will trigger that required effort.

NPCA asserts that the EPA has provided none of the necessary analysis to reasonably conclude that the Plan provides any strategy for achieving the massive aggregate emission reduction commitments in the SIP, and that no such support exists in the record. NPCA claims that CARB has submitted an unenforceable promise with no basis for believing it can be kept. NPCA asserts that the EPA should disapprove the Plan and direct CARB and the District to submit a plan that outlines a strategy that does not rely on unrealistic voluntary incentives, and that if accelerated turnover is required, CARB and the District should ''adopt rules to mandate that turnover and use their limited funds to assist with that compliance burden rather than making people who deserve clean air and the success of the plan the ones to pay for any funding shortfall.''

Response 3.C: We disagree with NPCA's claim that ''the scale of the funding shortfall and the turnover required'' undermine the EPA's conclusion that the Plan's aggregate commitments are for a reasonable and appropriate period of time. As we explained in Response 3.B, the SJV $PM_{2.5}$ Plan identifies an ''incentive funding gap'' over the 2019–2024 period of approximately $2.6 billion, almost 60% of the funds needed to implement the incentive projects that the Plan identifies as necessary for attainment.[80] If we assume a 60% funding gap would result in a failure to achieve 60% of the emission reductions that the Plan attributes to CARB's incentive-based measures,[81] the funding gap would result in emission reduction shortfalls of approximately 13.8 tpd for NO_X and 0.5 tpd for $PM_{2.5}$, which equate to approximately 7% of the total NO_X reductions and 8% of the total $PM_{2.5}$ reductions necessary for attainment by 2024.[82] We believe it is reasonable to provide CARB and the District several years to identify the specific measures that will achieve these relatively small amounts of reductions by January 1, 2024.

Additionally, it is possible that the State and District will achieve their respective aggregate tonnage commitments with less than $5 billion in incentive funds, as suggested by our alternative estimates of the cost-

''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress'').

[74] 85 FR 17382, 17417.

[75] CARB, ''Public Health: HVIP Metrics (Draft),'' April 16. 2020, slide 3 (showing significant increases in annual HVIP vouchers for zero-emission and low-NO_X vehicles from 2017 to 2019).

[76] The SJVUAPCD's 2019 annual report on its indirect source review (ISR) program states that $48.5 million of the FY2018–2019 Voluntary Emission Reduction Agreement (VERA) program balances were not encumbered as of June 30, 2019, and that $29.7 million of this unencumbered balance was from the Kern County OGERA. SJVUAPCD, ''2019 Annual Report, Indirect Source Review Program, July 1, 2018 to June 30, 2019'' (December 19, 2019), 9. The revenues from the Kern County OGERA may be applied to incentive projects to replace residential wood burning devices, trucks, buses, and diesel-powered off-road equipment, among others. SJVUAPCD, ''Item Number 7: Approve Emission Reduction Agreement with Kern County to Fully Mitigate Construction and Operational Air Quality Impacts from Future Growth in the Oil and Gas Industry in Kern County,'' August 18, 2016.

[77] 85 FR 17382, 17406–17407. See also, the EPA's General Evaluation TSD, 3–12.

[78] The ''non-operating budget'' revenues and expenditures identified in the SJVUAPCD's annual financial reports, which represent the grant funds received and disbursed by the District to implement emission reduction incentive programs, have increased from $99.9 million (revenues) and $81.6 million (expenditures) for the fiscal year ending June 30, 2017 to $289.8 million (revenues) and $139.7 million (expenditures) for the fiscal year ending June 30, 2019. SJVUAPCD, ''Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2017,'' 16–17, ''Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2018,'' 16–17, and ''Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2019,'' 16–17, available at *https://www.valleyair.org/General_info/budget.htm.*

[79] The District's aggregate tonnage commitments do not indicate that the District anticipates achieving any portion of the required emission reductions through incentive-based control measures. See Response 2.

[80] CARB Staff Report, 27 (Table 9).

[81] Valley State SIP Strategy, 38 (Table 8) (attributing 23 tpd NO_X reductions and 0.8 tpd $PM_{2.5}$ reductions to incentive-based measures).

[82] 2018 $PM_{2.5}$ Plan, Appendix H, Table H–6 (identifying totals of 202.2 tpd NO_X reductions and 6.4 tpd $PM_{2.5}$ reductions necessary for attainment of the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley by December 31, 2024).

effectiveness of agricultural equipment replacement projects and related funding needs. See Response 3.B. Neither CARB nor the District has committed to secure $5 billion in funding for its incentive programs, nor does the Plan establish definitively that this amount is necessary to achieve the identified tonnage commitments. As CARB notes in the CARB Staff Report, ''[t]he ultimate goal of the Plan is to achieve the emissions reductions needed to reach attainment, and incentive monies raised and equipment turned over are a critical part of this effort, but not in and of themselves precise targets that must be met.'' [83] Given the uncertainties about the levels of incentive funding and the numbers of vehicle or equipment replacement projects that are necessary to achieve the aggregate tonnage commitments in the Plan, the time needed by the State and District to develop and adopt new or revised control measures (whether regulatory or incentive-based), and the January 1, 2024 deadline for implementation of all control measures needed for attainment by December 31, 2024, we find the State's and District's commitments to adopt and implement enforceable control measures that achieve the necessary emission reductions by January 1, 2024 both reasonable and appropriate.

We also disagree with the commenter's claim that we provided none of the necessary analysis to reasonably conclude that the Plan provides a strategy for achieving the aggregate emission reduction commitments in the SIP, and that CARB has submitted ''an unenforceable promise with no basis for believing it can be kept.'' As explained in the proposed rule [84] and further in Response 2, both CARB and the SJVUAPCD have submitted specific control measure commitments in addition to aggregate tonnage commitments, all of which necessitate a sequence of regulatory actions ultimately leading to full adoption of measures that achieve the requisite amounts of emission reductions by January 1, 2024, following adequate public process. These procedures mandated by the State and District commitments constitute a specific enforceable strategy designed to bring the San Joaquin Valley into attainment of the $PM_{2.5}$ NAAQS by the end of 2024. See Response 2.

As we explained in the proposed rule, both CARB and the District have made progress in developing and adopting the measures listed in their respective control measure commitments. Specifically, CARB has adopted 5 measures and begun the public process on 7 of the remaining 10 measures listed in its control measure commitment.[85] One of the adopted measures is the Valley Incentive Measure, which CARB adopted and submitted to the EPA in February 2020, consistent with the 2020 ''action'' date specified in its control measure commitment. The EPA proposed to approve this measure into the SIP on March 24, 2020.[86] The District has adopted one measure (SJVUAPCD Rule 4901) by the ''action'' date specified in its control measure commitment and begun the public process on 5 of the remaining 11 measures listed in its control measure commitment.[87] The EPA has approved Rule 4901, as amended June 20, 2019, into the SIP.[88] The State has made tangible progress to date in developing, adopting, and submitting these control measures for the EPA's approval, and we find the remaining steps of the strategy reasonable and appropriate given the January 1, 2024 deadline for implementation of the control measures needed for attainment.

We agree with NPCA's statement that the State's rulemaking process needs to occur now to achieve the required emission reductions by January 1, 2024. The control measure commitments in the Plan obligate both CARB and the District to do precisely that: all but one of the potential control measures identified in the State's and District's control measure commitments are scheduled for ''action'' by 2021.[89] In addition to the 5 listed measures that CARB has already adopted, CARB must also develop and propose to its Board 10 additional control measures (8 regulatory measures and 2 incentive-based measures) by 2021 to fully satisfy its control measure commitment.[90] Similarly, in addition to the one listed regulatory measure that the SJVUAPCD has adopted and submitted to the EPA, the District must also develop and propose to its Board 11 additional control measures (8 regulatory measures and 3 incentive-based measures) by 2022 to fully satisfy its control measure commitment.[91] Finally, both CARB and the SJVUAPCD must ultimately adopt enforceable control measures, whether listed measures or substitutes, that achieve a total of 33.9 tpd of NO_X reductions and 2.0 tpd of direct $PM_{2.5}$ reductions by January 1, 2024. Upon the EPA's approval of these commitments into the SIP, citizens or the EPA may bring enforcement actions under sections 304(a) or 113(a) of the CAA, respectively, to compel action by the State or District if either agency fails to begin a public process or to propose a specific measure to its board in accordance with the deadline in its control measure commitment, or fails to adopt enforceable control measures sufficient to fulfill its aggregate tonnage commitments. We therefore disagree with NPCA's suggestion that disapproval of the SJV $PM_{2.5}$ Plan is the only way to trigger the rulemaking effort necessary to meet the 2024 attainment deadline.

With respect to NPCA's suggestion that CARB and the District should adopt rules to mandate turnover and use their limited funds to assist with that compliance burden, we note that the Plan indicates CARB's and the District's intent to take this approach for certain key emission sources in the San Joaquin Valley. For example, for heavy-duty trucks, one of the largest sources of NO_X emissions in the San Joaquin Valley,[92] CARB's control measure commitment obligates it to develop and propose several regulatory control measures by 2020 (*e.g.,* the ''Heavy-Duty Vehicle Inspection and Maintenance (I/M) Program'' and the ''Heavy-Duty Low-NO_X Engine Standard'') followed by an incentive-based measure in 2021 (*i.e.,* the ''Accelerated Turnover of Trucks and Buses Incentive Projects'' measure) to assist with the compliance burden.[93] Similarly, for the residential wood burning and commercial cooking source categories, among the largest sources of direct $PM_{2.5}$ emissions in the San Joaquin Valley,[94] the District's control measure commitment obligates it to develop and propose regulatory control measures (*i.e.,* District Rule 4901 and District Rule 4692 (''Commercial Charbroiling'')) in 2019 and 2020, respectively, in addition to incentive-based measures (*i.e.,* the ''Residential Wood Burning Devices Incentive Projects'' measure and the ''Commercial Under-fired Charbroiling Incentive Projects'' measure) in 2020, to assist

[83] CARB Staff Report, 26.

[84] 85 FR 17382, 17418.

[85] 85 FR 17382, 17413–17414 (Table 7).

[86] 85 FR 16588 (March 24, 2020).

[87] 85 FR 17382, 17414 (Table 8).

[88] EPA, ''Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District'' (final rule to approve Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters'')), signed June 26, 2020.

[89] The only potential control measure scheduled for ''action'' by a later date is SJVUAPCD Rule 4550 (''Conservation Management Practices''), which is scheduled for action in 2022. 85 FR 17382, 17414 (Table 8).

[90] *Id.* at 17413–17414 (Table 7).

[91] *Id.* at 17414 (Table 8).

[92] 2018 $PM_{2.5}$ Plan, App. B (Table B–2).

[93] 85 FR 17382, 17413–17414 (Table 7).

[94] 2018 $PM_{2.5}$ Plan, App. B (Table B–1).

with the compliance burden.[95] We find these timetables for development of regulatory and incentive-based measures reasonable.

We therefore find that the State's and District's commitments in the SJV $PM_{2.5}$ Plan are for a reasonable and appropriate period of time and that the third factor of our three-factor test is met.

III. Final Action

For the reasons discussed in this final rule, the associated Response to Comment document, and further in our proposed rule, supplemental proposal, and related TSDs, under CAA section 110(k)(3), the EPA is approving the following portions of the SJV $PM_{2.5}$ Plan as meeting CAA requirements for implementation of the 2006 $PM_{2.5}$ NAAQS:

- The 2013 base year emission inventories (CAA section 172(c)(3));
- The demonstration that BACM, including BACT, for the control of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors will be implemented no later than 4 years after the area was reclassified (CAA section 189(b)(1)(B));
- The demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable but no later than December 31, 2024 (CAA sections 189(b)(1)(A) and 188(e));
- Plan provisions that require RFP toward attainment by the applicable date (CAA section 172(c)(2));
- Quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable attainment date (CAA section 189(c));
- Motor vehicle emissions budgets for 2020, 2023, and 2024 as shown in Table 3 of this final rule (CAA section 176(c) and 40 CFR part 93, subpart A); and
- The inter-pollutant trading mechanism provided for use in transportation conformity analyses for the 2006 $PM_{2.5}$ NAAQS, in accordance with 40 CFR 93.124(b).

With respect to the Plan's attainment demonstration and control strategy, the EPA proposed to credit the District's Rule 4901 (as amended June 20, 2019) with 0.2 tpd of direct $PM_{2.5}$ reductions in 2024 and to credit the Valley Incentive Measure with 5.9 tpd of NO_X reductions and 0.3 tpd of direct $PM_{2.5}$ reductions in 2024.[96] Because we have not yet taken final action to approve the Valley Incentive Measure, however, we cannot credit this measure with emission reductions at this time. Accordingly, the only SIP-creditable control measure beyond baseline measures in the SJV $PM_{2.5}$ Plan is the District's Rule 4901 (as amended June 20, 2019). After crediting this rule with 0.2 tpd of direct $PM_{2.5}$ reductions in 2024 (*i.e.,* subtracting 0.2 tpd from the District's $PM_{2.5}$ tonnage commitment for 2024, which is 1.3 tpd), the District's remaining tonnage commitments for 2024 are 1.88 tpd of NO_X and 1.1 tpd of direct $PM_{2.5}$. CARB's aggregate tonnage commitments for 2024 are 32 tpd of NO_X and 0.9 tpd of direct $PM_{2.5}$.

Table 1 provides a summary of the total NO_X and direct $PM_{2.5}$ emission reductions necessary for attainment in the San Joaquin Valley by December 31, 2024, the emission reductions attributed to baseline measures and new control strategy measures, and the emission reductions remaining as aggregate tonnage commitments.

TABLE 1—REDUCTIONS NEEDED FOR ATTAINMENT AND AGGREGATE TONNAGE COMMITMENTS

[Tpd, 2024]

		NO_X	Direct $PM_{2.5}$
A	Total reductions needed from baseline and control strategy measures	202.2	6.4
B	Reductions from baseline measures	168.3	4.2
C	Total reductions from approved measures	0.0	0.2
D	Total reductions remaining as commitments (A–B–C)	33.9	2.0
E	Percent (%) of total reductions needed remaining as commitments (D/A)	16.8%	31.3%

Sources: 2018 $PM_{2.5}$ Plan, Ch. 4, Tables 4–3 and 4–7, and Appendix B, Tables B–1 and B–2; and 2019 Rule 4901 Staff Report, 34.

With respect to the motor vehicle emissions budgets, we are taking final action to limit the duration of the approval of the motor vehicle emissions budgets to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. We are doing so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets prior to our taking final action on the future SIP revision that includes the updated budgets.

TABLE 2—MOTOR VEHICLE EMISSION BUDGETS FOR THE SAN JOAQUIN VALLEY FOR THE 2006 $PM_{2.5}$ STANDARD

[Winter average, tpd]

Budget year	2017		2020		2023		2024	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	0.9	29.3	0.9	25.9	0.8	15.5	0.8	15.0
Kern	0.8	28.7	0.8	23.8	0.7	13.6	0.7	13.4
Kings	0.2	5.9	0.2	4.9	0.2	2.9	0.2	2.8
Madera	0.2	5.5	0.2	4.4	0.2	2.6	0.2	2.5
Merced	0.3	11.0	0.3	9.1	0.3	5.5	0.3	5.3
San Joaquin	0.7	15.5	0.6	12.3	0.6	7.9	0.6	7.6
Stanislaus	0.4	12.3	0.4	9.8	0.4	6.2	0.4	6.0
Tulare [a]	0.4	11.2	0.4	8.7	0.4	5.3	0.4	5.1

Source: 2018 $PM_{2.5}$ Plan, Appendix D, Table 3–2. Budgets are rounded to the nearest tenth of a ton.

[a] In Table 14 of the EPA's proposed rule, we inadvertently omitted the last row of motor vehicle emission budgets, for Tulare County, although these budgets were included on page 20 of the EPA's General Evaluation TSD.

[95] 85 FR 17382, 17414 (Table 8).

[96] 85 FR 27976, Table 9, row C.

The EPA is also granting the State's request for extension of the Serious area attainment date in the San Joaquin Valley from December 31, 2019, to December 31, 2024, based on a conclusion that the State has satisfied the requirements for such extensions in section 188(e) of the Act.

Finally, the EPA is approving the $PM_{2.5}$ Prior Commitment Revision and determining that the State has met the 0.86 tpd $PM_{2.5}$ emission reduction commitment in the SIP.

IV. Statutory and Executive Order Reviews

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

For these reasons, this final action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: June 30, 2020.

John W. Busterud,

Regional Administrator, Region IX.

For the reasons started in the preamble, EPA amends Chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(478)(ii)(A)(*4*), (c)(536), (c)(537), and (c)(538) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(478) * * *

(ii) * * *

(A) * * *

(*4*) SJVUAPCD's commitments to adopt, submit, and implement substitute rules that will achieve equivalent reductions in emissions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors in the same adoption and implementation timeframes or in the timeframes needed to meet CAA milestones, as stated on p. 4 of SJVUAPCD Governing Board Resolution 2012–12–19, dated December 20, 2012 were revised by CARB Resolution 20–15, dated May 28, 2020, in paragraph (c)(539)(ii)(A)(*2*) of this section.

* * * * *

(536) The following plan was submitted on May 10, 2019 by the Governor's designee as an attachment to a letter dated May 9, 2019.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan, adopted October 25, 2018 (portions relating to the 2006 $PM_{2.5}$ NAAQS, only) (''Valley State SIP Strategy'').

(*2*) CARB Resolution No. 18–49 with Attachments A and B, October 25, 2018. Commitments to begin the public process on, and bring to the Board for consideration, the list of proposed SIP measures outlined in the Valley State SIP Strategy according to the schedule set forth therein, and commitments to achieve the aggregate emissions reductions outlined in the Valley State SIP Strategy of 32 tpd of NO_X and 0.9 tpd of $PM_{2.5}$ emissions reductions in the San Joaquin Valley by 2024.

(B) [Reserved]

(537) The following plan was submitted on May 10, 2019 by the Governor's designee as an attachment to a letter dated May 9, 2019.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) CARB Resolution No. 19–1, January 24, 2019.

(*2*) ''Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' December 21, 2018.

(*3*) ''Attachment A, Clarifying information for the San Joaquin Valley 2018 Plan regarding model sensitivity related to ammonia and ammonia controls.''

(*4*) ''Staff Report, ARB Review of San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' including Appendix B (''San Joaquin Valley 2015 $PM_{2.5}$ SIP, Additional Emission Reductions Achieved Towards Meeting Aggregate Commitment''), April 20, 2015.

(*5*) ''Technical Clarifications to the 2015 San Joaquin Valley $PM_{2.5}$ State Implementation Plan.''

(*6*) ''Appendix H, RFP, Quantitative Milestones, and Contingency, 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards, Appendix H Revised February 11, 2020,'' (portion pertaining to the 2006 $PM_{2.5}$ NAAQS, only, and excluding section H.3 (''Contingency Measures'')).

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), adopted November 15, 2018 (portions pertaining to the 2006 $PM_{2.5}$ NAAQS only), excluding Chapter 5 (''Demonstration of Federal Requirements for 1997 $PM_{2.5}$ Standards''), Chapter 7 (''Demonstration of Federal Requirements for 2012 $PM_{2.5}$ Standards''), Appendix H, section H.3 (''Contingency Measures''), and Appendix I (''New Source Review and Emission Reduction Credits'').

(*2*) SJVUAPCD Governing Board, In the Matter of: Adopting the San Joaquin Valley Unified Air Pollution Control District 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards, Resolution No. 18–11–16, November 15, 2018. Commitments to take action on the rules and measures committed to in Chapter 4 of the Plan by the dates specified therein, and to submit these rules and measures, as appropriate, to CARB within 30 days of adoption for transmittal to EPA as a revision to the State Implementation Plan. Commitments to achieve the aggregate emissions reductions of 1.88 tpd of NO_X and 1.3 tpd of $PM_{2.5}$ by 2024 and, if the total emission reductions from the adopted rules or measures are less than those committed to in Chapter 4 of the 2018 $PM_{2.5}$ Plan, to adopt, submit, and implement substitute rules and measures that achieve equivalent reductions in emissions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors in the same implementation timeframes or in the timeframes needed to meet CAA milestones.

(538) The following plan was submitted on June 19, 2020, by the Governor's designee as an attachment to a letter dated June 12, 2020.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) Revision to the California State Implementation Plan for $PM_{2.5}$ Standards in the San Joaquin Valley, adopted May 28, 2020.

(*2*) CARB Resolution 20–15, dated May 28, 2020, revising the aggregate emissions reductions commitment in 40 CFR 52.220(c)(478)(ii)(A)(*3*) to 0.86 tpd of $PM_{2.5}$.

(B) [Reserved]

■ 3. Section 52.244 is amended by adding paragraph (f) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(f) Approval of the motor vehicle emissions budgets for the following $PM_{2.5}$ reasonable further progress and attainment SIP will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) San Joaquin Valley, for the 2006 $PM_{2.5}$ NAAQS only (but excluding 2026 budgets), approved August 21, 2020.

(2) [Reserved]

[FR Doc. 2020–14471 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0693; FRL–10011–48–Region 9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''the District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), and particulate matter (PM) from wood burning devices. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective August 21, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0693. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4118 or by email at *kay.rynda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On January 9, 2020 (85 FR 1131), the EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4901	Wood Burning Fireplaces and Wood Burning Heaters	06/20/2019	07/22/2019

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received comments on the proposal from Earthjustice on behalf of Central California Asthma Collaborative and the National Parks Conservation Association (collectively ''Earthjustice''). We also received nine anonymous comments on the proposal.

The comments submitted by Earthjustice pertain to whether Rule 4901 satisfies CAA requirements for most stringent measures (MSM) and best available control measures/best available control technology (BACM/BACT). At this time, we are not finalizing determinations on whether or not Rule 4901 meets the requirements for reasonably available control measures/reasonably available control technology (RACM/RACT), BACM/BACT, and MSM. Rather, we are finalizing an approval of Rule 4901 on the grounds that it meets the requirements for enforceability in CAA section 110(a)(2)(A) and the requirements for SIP revisions in CAA sections 110(l) and 193, for the reasons described in our proposal, technical support document (TSD), and this document. To the extent that determinations regarding RACM, BACM, and MSM requirements are necessary to support action on other SIP submittals, we will make final determinations on whether Rule 4901 satisfies those requirements in one or more separate rulemakings and will respond to Earthjustice's comments in those rulemaking actions.

Summaries of the remaining comments are provided below, along with our responses to those comments.

Comment 1.a: The nine anonymous commenters generally expressed support for the proposed action. Certain comments mentioned issues outside the scope of the proposed action, such as global warming, open burning of agricultural waste, and providing inhalers for people with asthma. A few commenters raised questions related to the proposed action.

Response 1.a: We thank the commenters for their support and input. Our responses to the relevant questions follow.

Comment 1.b: One commenter asked, ''[h]ow can the EPA provide aid at an individual level to those who already have established fireplaces or chimneys?''

Response 1.b: SJVUAPCD provides funding for replacement of wood burning devices, including fireplaces, through its Burn Cleaner Program. Under the Targeted Airshed Grant program, the EPA has provided nearly $5 million to change out approximately 5,800 uncertified wood burning devices with cleaner burning devices through grants to SJVUAPCD in 2015 and 2016.

Comment 1.c: A commenter asked, ''how old wood burning devices will be regulated, and what the EPA can do to prevent individuals from using an expensive product they have already installed.''

Response 1.c.: As described in our proposal, Rule 4901 establishes requirements for the sale/transfer, operation, and installation of wood burning devices and for the advertising of wood for sale intended for burning in a wood burning fireplace, wood burning heater, or outdoor wood burning device within the San Joaquin Valley. Among other things, the rule limits the types of fuels that can be used in wood burning devices,[1] as well as the opacity of emissions from these devices.[2] In addition, the rule includes an episodic wood burning curtailment program, which restricts use of wood burning heaters (including old, uncertified heaters) and fireplaces on days where ambient particulate matter equal to less than 2.5 microns in diameter ($PM_{2.5}$) and/or particulate matter equal to or less than 10 microns in diameter (PM_{10}) concentrations are forecast to be above a specified curtailment threshold. Today's action approving revisions to Rule 4901 into the SIP will make the revised rule enforceable by the EPA.

Comment 1.d: One commenter requested that the EPA itself take more specific actions to reduce wood burning emissions in order to improve ambient air conditions.

Response 1.d: The EPA has authority to issue regulations to assist states indirectly with reduction of emissions from woodstoves. In 2015, the EPA revised the new source performance standard (NSPS) applicable to manufacturers of new wood burning devices, lowering the emissions limits for several types of devices.[3] This action will result in reductions of wood burning emissions over time as older, uncertified heaters are replaced with new heaters certified under the revised NSPS. State and local regulators, such as SJVUAPCD, are then able to construct nonattainment plan control measures that rely on replacement of older stoves with new stoves with lower emissions. The EPA also works with communities to encourage cleaner home heating through the EPA Burn Wise and Advance outreach programs.[4] These programs provide resources for state, tribal and local agencies to identify and implement cleaner home heating programs.

Comment 1.e: One commenter asked, ''[d]o these same regulations apply to large companies and corporations as well? Should there be any sort of adjustment of this rule to enforce large businesses to follow the same regulations?'' The commenter also asserted that, ''[w]hile targeting family-owned wood burning fires might help marginally, large factories such as Amazon, Pacific Coast Producers, or Prima Fruit Packing are probably contributing way more to pollution than a family just trying to cook some smores in their backyard.''

Response 1.e: Residential wood burning is a significant source of direct $PM_{2.5}$ emissions in the Valley, contributing an estimated 5.49 tons per day of winter average $PM_{2.5}$ emissions as

[1] Rule 4901, section 5.6.

[2] Rule 4901, section 5.8.

[3] 80 FR 13672 (March 16, 2015).

[4] *www.epa.gov/burnwise* and *www.epa.gov/advance.*

of 2020.[5] Rule 4901 applies to manufacturers, sellers, and installers of wood burning devices, as well as individuals who operate wood burning devices. Because residential wood burning is a significant source, SJVUAPCD must address it in the nonattainment plan for the San Joaquin Valley (SJV). The EPA agrees with the commenter that other sources also contribute to nonattainment in the SJV and that they require emission controls as well. Numerous other SJVUAPCD rules limit emissions from other large companies and corporations that operate major industrial sources including factories. The EPA notes that the controls for other source categories are not addressed in this rulemaking because it focuses only on Rule 4901.

Comment 1.f: One commenter stated that the ''rule will not apply to other counties in the San Joaquin Valley'' and questioned whether it should be extended to the other counties.

Response 1.f: As described in our proposal, Rule 4901 applies throughout the San Joaquin Valley $PM_{2.5}$ nonattainment area, including both the hot-spot counties (Madera, Fresno, and the portion of Kern County that is within the San Joaquin Valley Air Basin) and the non-hot-spot counties (San Joaquin, Stanislaus, Merced, Kings, and Tulare).

Comment 1.g: One commenter noted ''my concern is about whether or not some will follow the rule if their home's heat source depends on it or their business depends on it'' and that ''enforcement of this rule is something to take into consideration as well.''

Response 1.g: As described in our proposal, Rule 4901 section 5.7.4.2 exempts households from wood burning curtailment requirements where a wood burning fireplace or wood burning heater is the sole available source of heat. Regarding enforcement, we have evaluated Rule 4901's enforceability and found that, ''[t]he rule requirements and applicability are clear, and the monitoring, recordkeeping, reporting and other provisions sufficiently ensure that affected sources and regulators can evaluate and determine compliance with Rule 4901 consistently.''[6] The 2019 Rule 4901 Staff Report also describes the extensive enforcement efforts undertaken by the District to enforce the curtailment requirements.[7]

[5] 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards, adopted by the SJVUAPCD on November 15, 2018, C–257.

[6] 2019 Rule 4901 TSD, 5.

[7] 2019 Rule 4901 Staff Report, 32–33.

III. EPA Action

The EPA has evaluated the comments on the proposed action summarized above. Based on this evaluation, the EPA has concluded that it is appropriate to finalize the approval of SJVUAPCD Rule 4901 as meeting the requirements of CAA section 110(a)(2)(A), 110(l), and 193. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. As explained in section II, we are not finalizing determinations of whether or not Rule 4901 meets the requirements for RACM/RACT, BACM/BACT, and MSM at this time. To the extent that such determinations are necessary to support action on other SIP submittals, we will make those determinations in one or more separate rulemaking actions.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SJVUAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by September 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 26, 2020.

John Busterud,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(457)(i)(H)(*2*) and (c)(535) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(457) * * *

(i) * * *

(H) * * *

(*2*) Previously approved on October 6, 2016 in paragraph (c)(457)(i)(H)(*1*) of this section and now deleted with replacement in (c)(535)(i)(A)(*1*), Rule 4901, ‘‘Wood Burning Fireplaces and Wood Burning Heaters,’’ amended on September 18, 2014.

* * * * *

(535) A new regulation for the following APCD was submitted on July 22, 2019 by the Governor's designee as an attachment to a letter dated July 19, 2019.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4901, ‘‘Wood Burning Fireplaces and Wood Burning Heaters,’’ amended on June 20, 2019.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

[FR Doc. 2020–14298 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2018–0647; FRL–10011–41–Region 2]

Approval of Air Quality Implementation Plans; New York; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS; Interstate Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of the New York State Implementation Plan (SIP) submittal regarding infrastructure requirements for interstate transport of pollution with respect to the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) or standard.

DATES: This final rule is effective August 21, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2018–0647 at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866, at (212) 637–3702, or by email at *fradkin.kenneth@epa.gov.*

I. What is the background for this action?

Under section 110(a)(1) of the Clean Air Act (CAA), each state is required to submit a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of a revised primary or secondary National Ambient Air Quality Standards (NAAQS or standard) within three years after the EPA promulgates a new or revised NAAQS. This type of SIP submission is commonly referred to as an ‘‘infrastructure SIP.’’ CAA section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy.

On April 30, 2020 (84 FR 23938), the EPA published a Notice of Proposed Rulemaking (NPR) that proposed to approve elements of the 2012 $PM_{2.5}$ infrastructure SIP submission from the State of New York, received on November 30, 2016. Specifically, the EPA proposed to approve the portion of the submission addressing the interstate transport provisions for the 2012 $PM_{2.5}$ NAAQS under CAA section 110(a)(2)(D)(i)(I), otherwise known as the ‘‘good neighbor’’ provision.

Other detailed information relevant to this action on New York's infrastructure SIP submission, including infrastructure requirements concerning interstate transport provisions and the rationale for EPA's approval, is included in the NPR and the associated Technical Support Document (TSD), available in the docket, and is not restated here.

II. What comments were received in response to the EPA's proposed action?

The EPA did not receive any comments on the April 30, 2020 proposed approval of New York's infrastructure SIP submission, dated November 30, 2016, addressing the interstate transport provisions for the 2012 $PM_{2.5}$ NAAQS.

III. What action is EPA taking?

The EPA is approving the portions of New York's November 30, 2016 SIP submittal addressing interstate transport for the 2012 annual $PM_{2.5}$ NAAQS as meeting the requirements in section 110(a)(2)(D)(i)(I) of the CAA.

IV. Statutory and Executive Order Reviews

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

- Is not a ‘‘significant regulatory action’’ subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule, addressing New York's interstate transport requirements for the 2012 annual $PM_{2.5}$ NAAQS, is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 30, 2020.

Peter Lopez,

Regional Administrator, Region 2.

For the reasons stated in the preamble, EPA amends Part 52 chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart HH—New York

■ 2. In § 52.1670, the table in paragraph (e) is amended by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS, Interstate Transport Provisions'' at the end of the table to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS, Interstate Transport Provisions.	Statewide	11/30/2016	7/22/20, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(D)(i)(I) prongs 1 and 2.

[FR Doc. 2020–14626 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0241; FRL–10012–10–Region 7]

Air Plan Approval; Missouri; Control of Emissions From Lithographic and Letterpress Printing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri for a regulation that controls emissions from lithographic and letterpress printing operations. This final action will amend the SIP to remove the use of restrictive words; add, replace and revise terms and definitions to match SIP-approved terms and definitions in Missouri's rule Definitions and Common Reference Tables; add a new printing category to the rule that provides consistency with the St. Louis area counterpart rule; and make other changes that are administrative in nature. The EPA's approval of these rule revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on August 21, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0241. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI 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 through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Robert F. Webber, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7251; email address: *webber.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

Table of Contents

I. What is being addressed in this document?

The EPA is approving revisions to 10 Code of State Regulation (CSR) 10 CSR 10–2.340 *Control of Emissions from Lithographic Printing Facilities* in the Missouri SIP. Missouri made several revisions to the rule. These revisions are described in detail in the technical support document (TSD) included in the docket for this action. The EPA is finalizing this action because the revisions to the rule meet the requirements of the Clean Air Act.

II. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice one this SIP revision from June 25, 2018, to August 2, 2018, and received ten comments. The State revised the rule based on the comments submitted. In addition, as explained in more detail in the TSD included in the docket for this action, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened May 13, 2020, the date of its publication in the **Federal Register** and closed on June 12, 2020. During this period, EPA received no comments.

IV. What action is the EPA taking?

The EPA is taking final action to approve revisions to 10 CSR 10–2.340 *Control of Emissions from Lithographic Printing Facilities* in the Missouri SIP. Approval of these revisions will ensure consistency between State and federally approved rules. The EPA has determined that these changes will not adversely impact air quality.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive

[1] 62 FR 27968 (May 22, 1997).

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 13, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–2.340'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * *	*	*	*	*
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
* * *	*	*	*	*
10–2.340	Control of Emissions From Lithographic and Letterpress Printing Operations.	1/30/19	7/22/20, [insert **Federal Register** citation].	
* * *	*	*	*	*

* * * * *

[FR Doc. 2020–15498 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0062; FRL–10011–80–Region 3]

Air Plan Approval; Maryland; 1997 8-Hour Ozone NAAQS Limited Maintenance Plan for the Kent and Queen Anne's Counties Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Maryland Department of the Environment (MDE) on behalf of the State of Maryland. This revision pertains to Maryland's plan for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Kent and Queen Anne's Counties area. EPA is approving these revisions to the Maryland SIP in

accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on August 21, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0062. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) 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 through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: David Talley, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 6, 2020 (85 FR 26907), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of Maryland's plan for maintaining the 1997 ozone NAAQS through January 1, 2028, in accordance with CAA section 175A. The formal SIP revision (#19–03) was submitted by MDE on December 18, 2019.

II. Summary of SIP Revision and EPA Analysis

On December 22, 2006 (78 FR 76920, effective January 22, 2007), EPA approved a redesignation request (and maintenance plan) from MDE for the Kent and Queen Anne's Counties area. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the State must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.[1] MDE's December 18, 2019 submittal fulfills Maryland's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the May 6, 2020 NPRM, EPA allows the submittal of a less rigorous, limited maintenance plan (LMP) to meet the CAA section 175A requirements by demonstrating that the area's design value[2] is well below the NAAQS and that the historical stability of the area's air quality levels shows that the area is unlikely to violate the NAAQS in the future. EPA evaluated MDE's December 18, 2019 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Kent and Queen Anne's Counties area as a revision to the Maryland SIP. The effect of this action makes certain commitments related to the maintenance of the 1997 ozone NAAQS Federally enforceable as part of the Maryland SIP.

Other specific requirements of MDE's December 18, 2019 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving the 1997 8-Hour ozone NAAQS limited maintenance plan for the Kent and Queen Anne's Counties area as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small

[1] "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

[2] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's limited maintenance plan for the Kent and Queen Anne's Counties area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: July 10, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry ''1997 8-Hour Ozone NAAQS Limited Maintenance Plan for the Kent and Queen Anne's Counties Area'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
1997 8-Hour Ozone NAAQS Limited Maintenance Plan for the Kent and Queen Anne's Counties Area.	Kent and Queen Anne's Counties.	12/18/2019	7/22/2020, [insert **Federal Register** citation].	

* * * * *

[FR Doc. 2020–15647 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0069; FRL–10012–13–Region 4]

Air Plan Approval; Georgia: Air Quality Control, VOC Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division on October 18, 2019. This revision modifies the State's air quality regulations as incorporated into the SIP by changing the definition of ''volatile organic compound'' (VOC) to be consistent with federal regulations. EPA is approving this SIP revision because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective August 21, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0069. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 can either be retrieved electronically via *www.regulations.gov,* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving the change to the Georgia SIP submitted by the State of Georgia through a letter dated October 18, 2019 [1] that revises the definition of ''volatile organic compound'' at subparagraph (llll) of Rule 391–3–1–.01—''Definitions'' by adding cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) to the list of organic

[1] EPA received Georgia's SIP revision on October 24, 2019.

compounds having negligible photochemical reactivity.[2]

II. Analysis of State Submission

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NOx) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments implement rules to limit the amount of certain VOC and NOx that can be released into the atmosphere. VOC have different levels of reactivity; they do not react at the same speed or form ozone to the same extent. The CAA requires the regulation of VOC for various purposes. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of ''VOC'' under the Act and, hence, what compounds shall be treated as VOC for regulatory purposes.

EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. It is EPA's policy that compounds of carbon with negligible reactivity be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds. Georgia submitted this SIP revision in response to EPA adding *cis*-1,1,1,4,4,4-hexafluorobut-2-ene to the exclusion list at 40 CFR 51.100(s). *See* 83 FR 61127 (January 28, 2019). EPA finds that this change to the SIP will not interfere with attainment or maintenance of any national ambient air quality standard, reasonable further progress, or any other applicable requirement of the CAA, consistent with CAA section 110(l), because EPA has found this chemical to be negligibly reactive.

In a notice of proposed rulemaking (NPRM) published on May 1, 2020 (85 FR 25381), EPA proposed to approve Georgia's SIP submission provided on October 18, 2019. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before June 1, 2020. EPA received no adverse comments on the NPRM.

[2] On October 18, 2019, Georgia submitted other SIP revisions which will be addressed in separate actions.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia Rule 391–3–1–.01—''Definitions,'' Subparagraph (llll)—''Volatile organic compound,'' state-effective September 26, 2019, to revise this definition by adding cis-1,1,1,4,4,4- hexafluorobut-2-ene (HFO-1336mzz-Z) to the list of organic compounds having negligible photochemical reactivity. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

IV. Final Action

EPA is approving Georgia's October 18, 2019, SIP submission, which revises the definition of ''volatile organic compound'' at subparagraph (llll) of Rule 391–3–1–.01—''Definitions'' by adding cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) to the list of organic compounds having negligible photochemical reactivity.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

[3] *See* 62 FR 27968 (May 22, 1997).

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: July 15, 2020.

Mary Walker,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. In § 52.570, amend the table in paragraph (c) by revising the entry for ''391–3–1–.01'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	9/26/2019	7/22/2020, [Insert citation of publication].	Except the first paragraph, sections (a)–(nn), (pp)–(ccc), (eee)–(jjj), (nnn)–(bbbb), (dddd)–(kkkk), (mmmm), (rrrr)–(ssss), approved on 12/4/2018 with a State-effective date of 7/20/2017; sections (ddd) and (cccc) approved on 2/2/1996 with a State-effective date of 11/20/1994; (nnnn), approved on 1/5/2017 with a State-effective date of 8/14/2016; and sections (oooo), (pppp), (qqqq)1., and (qqqq)3. through (qqqq)8., which are not in the SIP.
*	*	*	*	*

* * * * *

[FR Doc. 2020–15701 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0074; FRL–10012–57–OAR]

RIN 2060–AT86

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: On July 7, 2020, the U.S. Environmental Protection Agency (EPA) revised the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review. A set of amendatory instructions and one reference to a standard approved for incorporation by reference were removed during the review and publication process but the related standard reference was not removed. In addition, subsequent amendatory instructions were not properly revised to reflect the edits. This document corrects the final regulations.

DATES: This final rule is effective on July 22, 2020. The incorporation by reference (IBR) of certain publications listed in the rule was approved by the Director of the Federal Register as of July 7, 2020.

FOR FURTHER INFORMATION 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*

SUPPLEMENTARY INFORMATION: In the final rule published on July 7, 2020 (85 FR 40740), the EPA removed the instructions to redesignate a series of paragraphs in 40 CFR 63.14 (the centralized IBR section) to add ASTM D6378–18a, Standard Test Method for Determination of Vapor Pressure (VPX) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method), approved December 1, 2018, but did not remove the standard from use in 40 CFR 63.2406. As a result, not only was the standard improperly added to 40 CFR 63.2046, but revisions to two existing paragraphs in 40 CFR 63.14 (to 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) and ASTM D6420–18, Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry (Approved November 1, 2018)) could not be carried out. This document corrects the centralized IBR section at 40 CFR 63.14 by restating the instruction that could not be applied to the CFR and removes ASTM D6378–18a from 40 CFR 63.2046.

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.

Karl Moor,

Deputy Assistant 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 by:

■ a. Redesignating paragraphs (h)(90) through (h)(102) as paragraphs (h)(91) through (h)(103).

■ b. Adding and reserving new paragraph (h)(90); and

■ c. Revising newly redesignated paragraphs (h)(92) and (94).

The addition and revisions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *

(90) [Reserved]

* * * * *

(92) 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.

* * * * *

(94) 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.

* * * * *

§ 63.2406 [Amended]

■ 3. In § 63.2406, amend the definition ''Annual average true vapor pressure,'' by adding ''or'' to the end of paragraph (1) and removing and reserving paragraph (2).

[FR Doc. 2020–15746 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 17–317 and 17–105, FCC 20–14]

In the Matter of Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years. the information collection requirements associated with the Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, Report and Order. This document is consistent with the Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the information collection requirements.

DATES: The amendatory instruction 2.b., 47 CFR 76.64(h)(5), published at 85 FR 22646, April 23, 2020, is effective on July 31, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on July 7, 2020, OMB approved the information collection requirements contained in the Commission's Report and Order, FCC 20–14, published at 84 FR 22646, April 23, 2020. The OMB Control Number is 3060–0844. The Commission publishes this document as an announcement of the effective date of the information collection requirements.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on July 7, 2020, for the information collection requirements contained in the Commission's rules.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers is 3060–0844.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0844.

OMB Approval Date: July 7, 2020.

OMB Expiration Date: July 31, 2023.

Title: Carriage of Transmissions of Television Broadcast Stations: Section 76.56(a), Carriage of Qualified Noncommercial Educational Stations; Section 76,57, Channel Positioning, Section 76.61(a)(1)–(2), Disputes Concerning Carriage, Section 76.64, Retransmission Consent.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,902 respondents and 7,082 responses.

Estimated Time per Response: 0.5 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this action is contained in Sections 1, 4(i) and (j), 325, 338, 614, 615, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 325, 338, 534, 535, 551, 552, and 573.

Total Annual Burden: 4,486 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Under Section 614 of the Communications Act and the implementing rules adopted by the Commission, commercial TV broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's television market. Under Section 325(b) of the Communications Act, commercial TV broadcast stations are entitled to negotiate with local cable systems for carriage of their signal pursuant to retransmission consent agreements in lieu of asserting must carry rights. This system is therefore referred to as ''Must-Carry and Retransmission Consent.'' Under Section 615 of the Communications Act, noncommercial educational (NCE) stations are also entitled to assert mandatory carriage rights on cable systems located within the station's market; however, noncommercial TV broadcast stations are not entitled to retransmission consent.

In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 34 FCC Rcd 5922(2019) (*2019 Report and Order*). That decision modernized the carriage election notice rules by moving the process online for most broadcasters and multichannel video programming distributors (MVPDs), but the Commission sought comment on how to apply these updated rules to certain small broadcast stations and MVPDs.

In 2020, the Commission adopted a Report and Order, which is the subject of this notice, that resolved the remaining issues regarding carriage election notice rules for small broadcast stations and MVPDs. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order, FCC 20–14, 85 FR 22646 (rel. Feb. 25, 2020) (2020 Report and Order). Pursuant to that decision, the obligations of certain small broadcasters and MVPDs were slightly modified.

Specifically, 47 CFR 76.64(h)(5) was amended to require low power television stations and non-commercial educational translator stations that are qualified under 47 CFR 76.55 and retransmitted by an MVPD to, beginning no later than July 31, 2020, respond as soon as is reasonably possible to messages or calls from MVPDs that are received via the email address or phone number the station provides in the Commission's Licensing and Management System (LMS) database.

In addition, the 2020 Report and Order required that a qualified Low Power Television (LPTV) station that changes its carriage election send an election change notice to each affected MVPD's carriage election-specific email address by the carriage election deadline. Such change notices must include, with respect to each station covered by the notice: The station's call sign, the station's community of license, the DMA where the station is located, the specific change being made in election status, and an email address and phone number for carriage-related questions. LPTV notices to cable operators need to identify specific cable systems for which a carriage election applies only if the broadcaster changes its election for some systems of the cable operator but not all. In addition, the broadcaster must carbon copy *ElectionNotices@FCC.gov,* the Commission's election notice verification email inbox, when sending its carriage elections to MVPDs.

The 2020 Report and Order also required all qualified LPTV stations, whether being carried pursuant to must carry or retransmission consent, to send an email notice to all MVPDs that are or will be carrying the station no later than the next carriage election deadline of October 1, 2020. Qualified LPTVs must do so even if they are not changing their carriage status from the current election cycle. These notifications must be sent to an MVPD's carriage election-specific email address, must be copied to *ElectionNotices@FCC.gov,* and must include the same information required for a change notification except that the notification may simply confirm the existing carriage status rather than a change in status.

Finally, pursuant to the 2020 Report and Order, all qualified NCE translator stations must provide email notice to all MVPDs that are or will be carrying the translator no later than the next carriage election deadline of October 1, 2020. Similar to qualified LPTVs, these notifications must be sent to an MVPD's carriage election-specific email address, must be copied to *ElectionNotices@FCC.gov,* and must include the station's call sign, the station's community of license, and the DMA where the station is located and within which it has elected to be carried.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2020–15098 Filed 7–21–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140722613–4908–02]

RTID 0648–XA294

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Commercial Closure for Atlantic Spanish Mackerel in the Northern Zone

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial Spanish mackerel in the northern zone of the Atlantic exclusive economic zone (EEZ). NMFS projects that the commercial quota for Spanish mackerel in the northern zone of the Atlantic EEZ will be reached by July 22, 2020. Therefore, NMFS closes the northern zone in the Atlantic EEZ to commercial harvest of Spanish mackerel on July 22, 2020. This closure is necessary to protect the Spanish mackerel resource in the Atlantic.

DATES: This temporary rule is effective at 12:01 a.m., eastern time, on July 22, 2020, until 12:01 a.m., eastern time, on March 1, 2021.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *karla.gore@noaa.gov.*

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

The commercial annual catch limit (equal to the commercial quota) for the Atlantic migratory group of Spanish mackerel (Atlantic Spanish mackerel) is 3.33 million lb (1.51 million kg). Atlantic Spanish mackerel are divided into northern and southern zones for management purposes. The northern zone commercial quota for Atlantic Spanish mackerel is 662,670 lb (300,582 kg) for the current fishing year, which is March 1, 2020, through February 28, 2021 (50 CFR 622.384(c)(2)(i)).

The northern zone for Atlantic Spanish mackerel extends in Federal waters from New York through North Carolina. The northern boundary of the northern zone extends from an intersection point off New York, Connecticut, and Rhode Island at 41°18′16.249″ N lat.–71°54′28.477″ W long. and proceeds southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ. The southern boundary of the northern zone extends from the North Carolina and South Carolina state border, along a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat.–78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ (50 CFR 622.369(b)(2)). See Figure 2 of appendix G to part 622—Spanish Mackerel for an illustration of the management zones.

Regulations at 50 CFR 622.388(d)(1)(i) require NMFS to close the commercial sector for Atlantic Spanish mackerel in the northern zone when the commercial quota for that zone is reached, or is projected to be reached, by filing such a notification with the Office of the Federal Register. NMFS projects that the commercial quota of 662,670 lb (300,582 kg) for Atlantic Spanish mackerel in the northern zone will be reached by July 22, 2020. Accordingly, the commercial sector for Atlantic Spanish mackerel in the northern zone is closed effective at 12:01 a.m., eastern time, on July 22, 2020, through February 28, 2021, the end of the current fishing year.

During the commercial closure, a person on a vessel that has been issued a valid Federal commercial permit to harvest Atlantic Spanish mackerel may continue to retain this species in the northern zone under the recreational bag and possession limits specified in 50 CFR 622.382(a)(1)(iii) and (a)(2), as long as the recreational harvest of Atlantic Spanish mackerel has not closed (50 CFR 622.384(e)(1)).

Also during the closure, Atlantic Spanish mackerel from the northern zone, including those harvested under the recreational bag and possession limits, may not be purchased or sold. This prohibition does not apply to Atlantic Spanish mackerel from the northern zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.8(b), 622.384(e)(2), and 622.388(d)(1)(i), which were issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements 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 procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the Atlantic Spanish mackerel stock, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

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

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

Dated: July 17, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–15895 Filed 7–17–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02; RTID 0648–XA292]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2020 Commercial Hook-and-Line Closure for South Atlantic Golden Tilefish

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for the commercial hook-and-line component of golden tilefish in the South Atlantic exclusive economic zone (EEZ). NMFS projects that commercial hook-and-line landings for golden tilefish will reach the commercial quota for the hook-and-line component by July 23, 2020. Therefore, NMFS closes the commercial hook-and-line component for golden tilefish in the South Atlantic EEZ on July 23, 2020. This closure is necessary to protect the golden tilefish resource.

DATES: This temporary rule is effective at 12:01 a.m., eastern time, on July 23, 2020, until 12:01 a.m., eastern time, on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and NMFS, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are given in gutted weight.

The commercial sector for golden tilefish has two components, each with its own quota: The hook-and-line and longline components (50 CFR 622.190(a)(2)). The golden tilefish commercial annual catch limit (ACL) is allocated 25 percent to the hook-and-line component and 75 percent to the longline component. The total commercial ACL (equivalent to the commercial quota) for golden tilefish is 331,740 lb (150,475 kg), and the hook-and-line component ACL is 82,935 lb (37,619 kg).

Under 50 CFR 622.193(a)(1)(i), NMFS is required to close the commercial hook-and-line component for golden tilefish when its commercial ACL has been reached, or is projected to be reached, by filing such a notification with the Office of the Federal Register. NMFS has determined that the commercial ACL for the golden tilefish hook-and-line component in the South Atlantic will be reached by July 23, 2020. Accordingly, the commercial hook-and-line component of South Atlantic golden tilefish is closed effective at 12:01 a.m., eastern time, on July 23, 2020.

The commercial longline component for South Atlantic golden tilefish also closed on March 23, 2020, and will remain closed for the remainder of the current fishing year, through December 31, 2020 (85 FR 14602, March 13, 2020). Therefore, because the commercial longline component is already closed, and NMFS is closing the commercial hook-and-line component through this temporary rule, all harvest of South Atlantic golden tilefish in the EEZ is limited to the recreational bag and possession limits specified in 50 CFR 622.187(b)(2)(iii) and (c)(1) as long as the recreational sector is open.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having golden tilefish on board harvested by hook-and-line must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., eastern time, on July 23, 2020. During the closure, the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of golden tilefish that were harvested by hook-and-line, landed ashore, and sold prior to 12:01 a.m., eastern time, on July 23, 2020, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for golden tilefish apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(a)(1), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial hook-and-line component for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the commercial ACL for the hook-and-line component, and there is a need to immediately implement this action to protect golden tilefish. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial ACL.

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

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

Dated: July 16, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–15823 Filed 7–17–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200707–0182]

RIN 0648–BI28

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Removal of Regulations Implementing the Closed Area I Hook Gear Haddock Special Access Program

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

ACTION: Final rule.

SUMMARY: This action removes regulations that implement the Closed Area I Hook Gear Haddock Special Access Program. The Omnibus Essential Fish Habitat Amendment 2 eliminated the year-round Closed Area I, rendering the Closed Area I Hook Gear Haddock Special Access Program unnecessary. Eliminating the Closed Area I Hook Gear Haddock Special Access Program will reduce confusion and inconsistency with other regulations.

DATES: Effective July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, phone: (978) 281–9232; email: *Spencer.Talmage@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 2004, the New England Fishery Management Council established the Closed Area I Hook Gear Haddock Special Access Program (CAI HGH SAP) to provide vessels with additional opportunities in Closed Area I to target healthy stocks, if they followed certain gear and other restrictions.

The Omnibus Essential Fish Habitat Amendment 2 (83 FR 15240, April 9, 2018) eliminated the year-round closure of Closed Area I. The area once covered by Closed Area I is now open to vessels fishing with hook gear, with the exception of the Georges Bank Dedicated Habitat Research Area and the seasonal Closed Area I North Closure (February 1–April 15). The CAI HGH SAP does not overlap with either the Georges Bank Dedicated Habitat Research Area or Closed Area I North Closure, and as such, it does not allow any activity otherwise prohibited by these areas. As a result, the CAI HGH SAP is unnecessary, redundant, and inconsistent with the changes made by the Omnibus Essential Fish Habitat Amendment 2 because the program provides special access to an area that is already open to the groundfish fleet in the time that the SAP is effective.

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is authorized to make changes to regulations that are necessary to carry out any fishery management plan or amendment. This action amends the regulations in § 648.14, § 648.81, § 648.82, and § 648.85 to remove references to the CAI HGH SAP and makes a minor correction to a cross-reference.

This action would not change the allocation to the Incidental Catch Total Allowable Catch (TAC) defined in § 648.85(b)(5)(ii). Such a change would require a substantive change to prior New England Fishery Management Council allocation decisions, and it is more appropriate for the New England Fishery Management Council to consider these changes in a separate action. Accordingly, on May 29, 2020, we published the proposed rule for Framework Adjustment 59 to the Northeast Multispecies Fishery Management Plan, which would remove the allocation to the Incidental Catch TAC for the CAI HGH SAP (85 FR 32347).

On December 17, 2019, NMFS published a final rule (84 FR 68798) prohibiting vessels from fishing with gillnet gear in the Nantucket Lightship and Closed Area I Closure Areas, in order to comply with a Federal Court order. That rulemaking did not apply to vessels fishing with hook gear, which is the only gear type permitted in the CAI HGH SAP. Therefore, this action to eliminate the CAI HGH SAP is not affected by the prohibition of gillnet fishing in Closed Area I.

Comments and Responses

We received one comment on the proposed rule. No substantive changes from the proposed rule were made as a result of this comment.

Comment 1: One member of the public supported the simplification of regulations, but made the point that in doing so, we should not pose greater harm to fish populations or impact their future health.

Response: We agree. This final rule simplifies and clarifies the regulations by removing a program that is obsolete and no longer functions as originally intended. Removing the regulations implementing the program will not change fishing behavior or distribution, and as a result will not have a negative effect on Northeast Multispecies stocks.

Classification

The National Marine Fisheries Service (NMFS) Assistant Administrator has made a determination that this rule is consistent with section 305(d) and other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period because it would be contrary to the public interest.

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is authorized to make changes to regulations that are necessary to carry out any fishery management plan or amendment. This action amends the regulations in § 648.14, § 648.81, § 648.82, and § 648.85 to remove references to the CAI HGH SAP and makes a minor correction to a cross-reference.

The CAI HGH SAP regulations are being removed because they are obsolete, redundant, and may introduce confusion to the fishery through unnecessary notification and reporting requirements. Nothing in this action requires industry to take action to comply with the amended regulations, so the 30-day delayed effectiveness period is unnecessary. Additionally, delay of this action would leave unnecessary and confusing regulations and restrictions in place for longer than necessary, which could be detrimental to the fishery.

For the reasons above, the 30-day delayed effectiveness period would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Action and which has been approved by the Office of Management and Budget under Control Number 0648–0202.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 8, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.14:

■ a. Revise paragraphs (k)(6)(ii)(B), (11)(i)(A)(*4*), (11)(vi), (12)(i)(B), and (12)(ii);

■ b. Remove paragraph (k)(12)(vi); and

■ c. Redesignate paragraph (k)(12)(vii) as (k)(12)(vi).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(6) * * *

(ii) * * *

(B) *Hook gear.* Fail to comply with the restrictions on fishing and gear specified in §§ 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c).

* * * * *

(11) * * *

(i) * * *

(A) * * *

(*4*) If fishing both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (7), under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to abide by the DAS and possession restrictions under § 648.85(b)(7)(v)(A)(*2*) through (*4*).

* * * * *

(vi) *Closure of the U.S./Canada Area for all persons.* If fishing under a NE multispecies DAS or on a sector trip, declare into, enter, or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1) if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(7).

(12) * * *

(i) * * *

(B) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(7), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(ii) *General restrictions for vessel and operator permit holders.* Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a SAP, as described in §§ 648.85(b)(3)(xi) or 648.85(b)(7)(v)(I).

* * * * *

■ 3. In § 648.81, revise paragraph (a)(5)(ii)(C) to read as follows:

§ 648.81 NE multispecies year-round and seasonal closed areas.

(a) * * *

(5) * * *

(ii) * * *

(C) Fishing in the CA II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP Program as specified in § 648.85(b)(3)(ii) or (b)(7)(ii), respectively.

* * * * *

■ 4. In § 648.82, revise paragraph (e)(3) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(e) * * *

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire

fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(6), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

* * * * *

§ 648.85 [Amended]

■ 5. In § 648.85:

■ a. Remove paragraph (b)(7); and

■ b. Redesignate paragraph (b)(8) as (7).

[FR Doc. 2020–15144 Filed 7–21–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 141

Wednesday, July 22, 2020

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket ID OCC–2020–0026]

RIN 1557–AE97

National Banks and Federal Savings Associations as Lenders

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing a regulation to determine when a national bank or Federal savings association (bank) makes a loan and is the ''true lender'' in the context of a partnership between a bank and a third party, such as a marketplace lender. Under this proposal, a bank makes a loan if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan.

DATES: Comments must be received on or before September 3, 2020.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''National Banks and Federal Savings Associations as Lenders'' 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–2020–0026'' 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–2020–0026'' 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–2020–0026'' 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, 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–2020–0026'' 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 2020–0026'' 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, 9a.m.–5p.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: Andra Shuster, Senior Counsel, Karen McSweeney, Special Counsel, Alison MacDonald, Special Counsel, or Priscilla Benner, Senior Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. economy relies on access to affordable credit to fuel economic growth and job creation. Americans rely on affordable credit to reach goals large and small, ranging from purchasing consumer goods, cars, and homes to starting or growing small businesses. While national banks and Federal savings associations (banks) play a critical role in supplying this credit, the financial system is most efficient when banks work effectively with other market participants to meet customers' credit needs. These relationships allow banks to manage their risks and leverage their balance sheets to increase the supply of available credit in ways they would not be able to if they were acting alone.

One way that banks achieve this efficiency is by selling loans to third parties and using the proceeds from these sales to make additional loans.[1] For example, credit card securitization allows a bank to originate very large loan pools for a diverse customer base at lower rates than if the bank had to fund the loans on its balance sheet.[2] By removing the assets and supporting debt from its balance sheet, the bank is able to save some of the costs of on-balance-sheet financing and manage potential asset-liability mismatches and credit concentrations.[3] Bank customers benefit from the increased availability of credit these securitization relationships provide.[4]

Lending relationships with third parties can also help banks meet customers' need for affordable credit, including the needs of unbanked or underbanked individuals.[5] For example, these relationships can enable banks to market affordable loan products to a wider range of potential customers or to develop or acquire innovative credit underwriting models that facilitate expanded access to credit. Banks can also work with third parties to develop responsible lending programs to help customers meet credit needs, including small-dollar lending programs designed to assist with cash-flow imbalances, unexpected expenses, or income shortfalls.[6]

While these lending relationships can be effective tools to facilitate affordable access to credit, there has been increasing uncertainty about the legal framework that applies to the loans made as part of these relationships. This uncertainty may discourage banks and third parties from entering into relationships, limit competition, and chill the innovation that results from these partnerships—all of which may restrict access to affordable credit.

Federal law authorizes banks to enter into contracts, to make loans, and to subsequently transfer these loans and assign loan contracts.[7] These statutes, however, do not specifically address which entity makes a loan (or, in the vernacular commonly used in case law, which entity is the ''true lender'') and, therefore, what legal framework applies, when the loan is originated as part of a lending relationship between a bank and a third party. Furthermore, the OCC has not previously taken regulatory action to resolve this ambiguity. In the absence of regulatory action, courts are left to determine when, in a lending partnership, a bank is making the loan and when its partner makes the loan.

A growing body of case law has introduced divergent standards for resolving this issue. In some cases, the court has concluded that the form of the transaction alone resolves this issue.[8] Under this analysis, the lender is the entity named in the loan agreement.

In other cases, the courts have applied fact-intensive balancing tests,[9] in which they have considered a multitude of factors, including: (1) How long the entity named as the lender holds the loan before selling it to the third party;[10] (2) whether the third party advances money that the named lender draws on to make loans;[11] (3) whether the third party guarantees minimum payments or fees to the named lender;[12] (4) whether the third party agrees to indemnify the named lender;[13] and (5) how loans are treated for financial reporting purposes.[14] However, no factor is dispositive, nor are the factors assessed based on any predictable, bright-line standard. Even when nominally engaged in the same analysis—determining which entity has the ''predominant economic interest'' in the transaction—courts do not necessarily consider all of the same factors or give each factor the same weight.[15] These fact-intensive inquiries, coupled with the lack of a uniform and predictable standard, increase the subjectivity in determining who is the true lender and undermine banks' ability to partner with third parties to lend across jurisdictions on a nationwide basis.

As a result of this legal uncertainty, stakeholders cannot reliably determine which entity makes a loan, and therefore, the applicability of key aspects of the legal framework as of the date of origination is unclear. For example, Federal law establishes the interest a bank may charge on any loan it makes and authorizes the bank to export that rate from the state in which it is located to borrowers in other states.[16] While the OCC recently clarified that interest permissible on a loan made by a bank is not affected by the subsequent sale, assignment, or other transfer of the loan,[17] uncertainty remains regarding how to determine if a loan is, in fact, made by a bank as opposed to by its relationship partner.

To address this uncertainty, the OCC is proposing a clear test to determine when a bank makes a loan. In doing so, the OCC is fulfilling its responsibility to resolve ambiguities in the Federal banking laws it is charged with administering and ensuring clarity and

[1] Conversely, banks may invest in loans made by third parties, which provides the third parties with additional capital to make new loans.

[2] Office of the Comptroller of the Currency, *Comptroller's Handbook,* ''Asset Securitization'' at 5 (Nov. 1997).

[3] *Id.* at 2.

[4] *Id.* at 4–5.

[5] Many relationships between banks and third parties address core banking functions other than lending (*i.e.,* making payments and taking deposits). *See, e.g.,* 12 CFR 5.20(e). However, relationships that do not involve making loans are beyond the scope of this rulemaking. In addition, for purposes of this rulemaking, references to partnerships are not limited to legal partnerships and include a variety of other arrangements through which banks can work with third parties. This rulemaking uses the terms partnership and relationship interchangeably.

[6] *See Interagency Lending Principles for Offering Responsible Small-Dollar Loans* (May 2020); *Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID–19* (Mar. 2020).

[7] *See* 12 U.S.C. 24(Third), 24(Seventh), 371, 1464; *see also* 12 CFR 7.4008, 34.3, 160.30.

[8] *See, e.g., Beechum* v. *Navient Solutions, Inc.,* No. EDCV 15–8239–JGB–KKx, 2016 WL 5340454, at *8 (C.D. Cal. Sept. 20, 2016) (holding that the court will look ''only to the face of the transactions at issue'').

[9] *See, e.g., CFPB* v. *CashCall, Inc.,* No. CV 15–7522–JFW, 2016 WL 4820635, at *5–*6 (C.D. Cal. Aug. 31, 2016) (examining ''which party or entity has the predominant economic interest in the transaction,'' including by evaluating which party placed its money at risk).

[10] *Id.* at *6 (concluding that the third party was the true lender, including because ''[a]lthough [the third party] waited a minimum of three days after the funding of each loan before purchasing it, it is undisputed that [the third party] purchased each and every loan *before* any payments on the loan had been made.''); *CashCall, Inc.* v. *Morrisey,* No. 12–1274, 2014 WL 2404300, at *1, *7 (W.Va. May 30, 2014) (noting that the third party purchased loans within three days of origination but not clearly indicating whether this fact was considered as part of the predominant economic interest analysis); *Sawyer* v. *Bill Me Later, Inc.,* 23 F. Supp. 3d 1359, 1369 (D. Utah 2014) (noting that the named lender was the real party in interest, including because it ''holds the credit receivables for two days'').

[11] *See, e.g., CFPB* v. *CashCall,* 2016 WL 4820635, at *6 (''It is undisputed that [the third party] deposited enough money into a reserve account to fund two days of loans, calculated on the previous month's daily average and that [the named lender] used this money to fund consumer loans.'').

[12] *See, e.g., id.* at *2 (''[The third party] guaranteed [the named lender] a minimum payment of $100,000 per month, as well as a $10,000 monthly administrative fee.'').

[13] *See, e.g., id.* at *3 (''[The third party] agreed to 'fully indemnify [the named lender] for all costs arising or resulting from any and all civil, criminal or administrative claims or actions . . . .' ''); *CashCall* v. *Morrisey,* 2014 WL 2404300, at *7 (noting that the Circuit Court found that the third party agreed to indemnify the named lender).

[14] *CashCall* v. *Morrisey,* 2014 WL 2404300, at *7 (noting that loans were treated as if they were funded by the third party for financial reporting purposes).

[15] *Compare CFPB* v. *CashCall,* 2016 WL 4820635, *with CashCall* v. *Morrisey,* 2014 WL 2404300.

[16] *See* 12 U.S.C. 85, 1463(g); 12 CFR 7.4001, 160.110.

[17] 12 CFR 7.4001(e), 160.110(d) (effective Aug. 3, 2020); *Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred,* 85 FR 33,530 (June 2, 2020) (*Madden*-fix rule).

uniformity for the banks it supervises.[18] The OCC's proposed rule would enable banks to fully exercise the lending authority granted to them under Federal law and allow stakeholders to reliably and consistently identify key aspects of the legal framework applicable to a loan. When a bank makes a loan, a robust Federal framework applies to ensure that banks are lending in a safe and sound manner and in compliance with applicable laws and regulations, and the OCC is the prudential regulator of the bank's lending activities. Additionally, if the bank makes the loan in the context of a relationship with a third party, the OCC ensures that the bank has instituted appropriate safeguards to manage the associated risks.[19] In contrast, if a third party makes a loan as part of a relationship with a bank, the OCC is not the prudential regulator of the lending activity, though it still assesses the bank's third-party risk management in connection with the relationship itself.[20]

II. Description of the Proposal

Several provisions of Federal banking law grant banks the authority to make loans. Specifically, section 5136 of the Revised Statutes (12 U.S.C. 24) provides that a national bank may engage in the business of banking, including by ''loaning money.'' Section 24 of the Federal Reserve Act (12 U.S.C. 371) states that a national bank may ''make . . . loans,'' and section 5(c) (12 U.S.C. 1464(c)) of the Home Owners' Loan Act states that a Federal savings association may ''invest in, sell, or otherwise deal in . . . loans.'' Although each statute uses slightly different language to authorize banks to extend credit, none describes how to determine when a bank has, in fact, exercised this authority, and when, by contrast, the bank's relationship partner has made the loan. In light of this statutory ambiguity, the OCC has concluded, for the reasons set forth below, that it is reasonable to interpret these statutes to provide that a bank makes a loan whenever it, as of the date of origination, (1) is named as the lender in the loan agreement or (2) funds the loan.[21]

If a bank is named in the loan agreement as the lender as of the date of origination, the OCC views this imprimatur as conclusive evidence that the bank is exercising its authority to make loans pursuant to the statutes cited above and has elected to subject itself to the panoply of applicable Federal laws and regulations (including but not limited to consumer protection laws) governing lending by banks.[22]

There are also circumstances in which a bank is not named as the lender in the loan agreement but is still, in the OCC's view, making the loan.[23] To ensure that the OCC's rule would capture these circumstances, the agency is proposing a second standard based on which party funded the loan. Under this standard, if a bank funds a loan as of the date of origination, the OCC concludes that it has a predominant economic interest in the loan and, therefore, has made the loan—regardless of whether it is the named lender in the loan agreement as of the date of origination.[24] Under the OCC's proposal, the determination of which entity made the loan under the above standards would be complete as of the date the loan is originated and would not change, even if the bank were to subsequently transfer the loan.[25]

Therefore, the OCC proposes that, for purposes of sections 5136 and 5197 of the Revised Statutes (12 U.S.C. 24 and 12 U.S.C. 85), section 24 of the Federal Reserve Act (12 U.S.C. 371), and sections 4(g) and 5(c) the Home Owners' Loan Act (12 U.S.C. 1463(g) and 12 U.S.C. 1464(c)), a bank makes a loan when, as of the date of origination, it (1) is named as lender in the loan agreement or (2) funds the loan.

The OCC invites comments on all aspects of this proposal, including whether there are additional lending arrangements that should be captured by the OCC's standards for determining when a bank makes a loan and whether the proposed standards would capture lending arrangements that should be excluded.[26]

III. Consequences of the Bank as Lender

A key objective of this proposal is to provide regulatory clarity and certainty that would enable banks and their partners to lend in a manner consistent with their business objectives and risk appetite and in compliance with applicable laws and regulations. As noted previously, identifying the lender would pinpoint key elements of the statutory, regulatory, and supervisory framework applicable to the loan in question. Specifically, when a bank makes a loan, it is responsible for ensuring that the loan is made both in a safe and sound manner and in accordance with applicable laws and regulations, even if the loan is made in the context of a third-party partnership and even if the bank's partner is the customer-facing entity.[27] As the bank's prudential regulator, the OCC directly supervises these lending activities.[28] The OCC also ensures that the bank has instituted appropriate safeguards to manage the risks associated with the partnership.

While the OCC's prudential oversight of bank lending is multifaceted, it includes ensuring that the bank has prudent underwriting standards and loan documentation policies and procedures. In this regard, the OCC expects all banks to establish and maintain prudent credit underwriting practices that: (1) Are commensurate with the types of loans the bank will make and consider the terms and conditions under which they will be made; (2) consider the nature of the markets in which the loans will be made; (3) provide for consideration, prior to credit commitment, of the

[18] *See Chevron U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 843 (1984) (''[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.''); *see also* 12 U.S.C. 93a (OCC authority to prescribe rules and regulations).

[19] *See, e.g.,* OCC Bulletin 2013–29, ''Third-Party Relationships: Risk Management Guidance'' (Oct. 30, 2013); OCC Bulletin 2020–10, ''Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29'' (Mar. 5, 2020).

[20] *See supra* note 19.

[21] This proposal also interprets 12 U.S.C. 85 and 1463(g), which govern the interest permitted on bank loans. This proposal would not, however, affect the application of Federal consumer financial laws. For example, this proposal would not affect the meaning of the term ''creditor'' as used in the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 1026, or the term ''lender'' as defined in Regulation X, 12 CFR part 1024.

[22] *See Beechum,* 2016 WL 5340454; *Lender, Black's Law Dictionary* (11th ed. 2019) (''A person or entity from which something (esp. money) is borrowed.'').

[23] *See, e.g.,* OCC Interpretive Letter 1002 (May 13, 2004) (discussing ''table funding'' arrangements).

[24] As discussed previously, while courts have relied on a multitude of factors to evaluate which party has the predominant economic interest in a loan, the OCC believes that such a fact-specific analysis is unnecessarily complex and unpredictable.

[25] *See, e.g., supra* note 17 and accompanying text.

[26] The OCC is also considering how the two standards interact and may revise its test if this interaction creates challenges in determining which party makes a loan.

[27] As the OCC has previously stated, ''[a] bank's use of third parties does not diminish the responsibility of its board of directors and senior management to ensure that the activity is performed in a safe and sound manner and in compliance with applicable laws.'' OCC Bulletin 2013–29. *But see supra* note 21.

[28] Depending on the structure of the bank and the activities it conducts, other regulators may have oversight roles as well. For example, the Consumer Financial Protection Bureau has exclusive supervisory authority and primary enforcement authority for Federal consumer financial laws for banks that are insured depository institutions and have assets greater than $10 billion. *See* 12 U.S.C. 5515. The OCC generally has exclusive supervisory and enforcement authority for banks with assets of $10 billion or less. *See* 12 U.S.C. 5516, 5581(c)(1)(B).

borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed; (4) establish a system of independent, ongoing credit review and appropriate communication to management and to the board of directors; (5) take adequate account of concentration of credit risk; and (6) are appropriate to the size of the institution and the nature and scope of its activities.[29] Moreover, banks are also expected to have loan documentation practices that: (1) Enable the institution to make an informed lending decision and assess risk, as necessary, on an ongoing basis; (2) identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; (3) ensure that any claim against a borrower is legally enforceable; (4) demonstrate appropriate administration and monitoring of a loan; and (5) take account of the size and complexity of a loan.[30] A bank should also have appropriate internal controls and information systems to assess and manage the risks associated with its lending activities, including monitoring adherence to established policies, as well as internal audit systems.[31]

In addition, a bank's lending must be done in compliance with other applicable laws and regulations, including Federal consumer protection laws. For example, section 5 of the Federal Trade Commission Act (FTC Act) provides that ''unfair or deceptive acts or practices in or affecting commerce'' are unlawful.[32] The Dodd-Frank Wall Street Reform and Consumer Protection Act also prohibits unfair, deceptive, or ''abusive'' acts or practices.[33] The OCC recently issued a new booklet of the *Comptroller's Handbook* to provide guidance to examiners about the risks of banks and third parties engaging in lending, marketing, or other practices that may constitute unfair or deceptive acts or practices or unfair, deceptive, or abusive acts or practices.[34] The OCC has taken a number of public enforcement actions against banks for violating section 5 of the FTC Act, including for failure to: (1) Provide sufficient information to allow consumers to understand the terms of the product or service being offered; (2) adequately disclose when significant fees or similar material prerequisites are imposed in order to obtain the particular product or service being offered; and (3) adequately disclose material limitations affecting the product or service being offered.[35] The agency will continue to exercise its enforcement authority to address unlawful actions.

Banks also are subject to Federal fair lending laws and may not engage in unlawful discrimination, such as ''steering'' a borrower to a higher cost loan on the basis of the borrower's race, national origin, age, or gender. If a bank engages in any unlawful discriminatory practices, the OCC will take appropriate action under the Federal fair lending laws.[36] Further, under the Community Reinvestment Act (CRA) regulations, evidence of discriminatory or other illegal credit practices adversely affect a bank's CRA performance rating.[37]

The OCC has also taken significant steps to eliminate predatory, unfair, or deceptive practices in the Federal banking system, recognizing that ''[s]uch practices are inconsistent with important national objectives, including the goals of fair access to credit, community development, and stable homeownership by the broadest spectrum of America.'' [38] To address these concerns, the OCC requires banks engaged in lending to take into account the borrower's ability to repay the loan according to its terms.[39] In the OCC's experience, ''a departure from fundamental principles of loan underwriting generally forms the basis of abusive lending: lending without a determination that a borrower can reasonably be expected to repay the loan from resources other than the collateral securing the loan, and relying instead on the foreclosure value of the borrower's collateral to recover principal, interest, and fees.'' [40]

Additionally, the OCC has cautioned banks about lending activities that may be considered predatory, unfair, or deceptive, noting that many such lending practices are unlawful under existing Federal laws and regulations or otherwise present significant safety, soundness, or other risks. These practices include those that target prospective borrowers who cannot afford credit on the terms being offered, provide inadequate disclosures of the true costs and risks of transactions, involve loans with high fees and frequent renewals, or constitute loan ''flipping'' (frequent re-financings that result in little or no economic benefit to the borrower that are undertaken with the primary or sole objective of generating additional fees).[41] Policies and procedures should also be designed to ensure clear and transparent disclosure of the terms of the loan, including relative costs, risks, and benefits of their loan transaction, which helps to mitigate the risk that a transaction could be unfair or deceptive.

The OCC believes that the applicable statutes and regulations, enforceable guidelines, and other issuances include appropriate safeguards with respect to a bank's use of its lending power and are also appropriate to consider in the context of a lending partnership. While partnerships provide benefits, including expanding access to affordable credit, they may also pose legitimate safety and soundness concerns and raise questions regarding banks' involvement in activities that may not be consistent with applicable laws and regulations, if they are not appropriately managed. In this regard, the OCC believes it is appropriate to re-emphasize that ''any lending practices that take unfair advantage of borrowers, or that have a detrimental impact on communities . . . conflict with the high standards

[29] 12 CFR part 30, appendix A, § II.D; *see* 12 CFR part 34, appendix A to subpart D.

[30] 12 CFR part 30, appendix A, § II.C.

[31] *Id.* at §§ II.A and II.B.

[32] 15 U.S.C. 45(a)(1), 45(n). OCC regulations regarding non-real estate and real estate lending, as well as the OCC's enforceable ''Guidelines Establishing Standards for Residential Mortgage Lending Practices,'' expressly reference the FTC Act standards. *See* 12 CFR 7.4008(c), 34.3(c), part 30, appendix C. Further, OCC guidance directly addresses unfair or deceptive acts or practices with respect to banks. *See* OCC Advisory Letter 2002–3, ''Guidance on Unfair or Deceptive Acts or Practices'' (Mar. 22, 2002); OCC Advisory Letter 2003–2, ''Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices'' (Feb. 21, 2003); OCC Advisory Letter 2003–3, ''Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans'' (Feb. 21, 2003); and OCC Bulletin 2014–37, ''Risk Management Guidance: Consumer Debt Sales'' (Aug. 4, 2014).

[33] Public Law 111–203, tit. X, sections 1031 and 1036, 124 Stat. 2005, 2010 (*codified at* 12 U.S.C. 5531 and 5536).

[34] Office of the Comptroller of the Currency, *Comptroller's Handbook,* ''Consumer Compliance, Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices'' (June 2020).

[35] Recent OCC enforcement actions can be found on the OCC's website at *https://www.occ.gov/topics/laws-and-regulations/enforcement-actions/index-enforcement-actions.html.*

[36] *See* 15 U.S.C. 1691; 42 U.S.C. 3601 *et seq.* As noted above, *supra* note 28, other regulators may have oversight roles as well and can take appropriate enforcement action to address unlawful action within their jurisdiction.

[37] *See* 12 CFR 25.28(c); 12 CFR 25.17 (effective Oct. 1, 2020).

[38] OCC Advisory Letter 2003–2.

[39] *See* 12 CFR 7.4008(b), 34.3(b), part 30, appendix A, §§ II.C.2 and II.D.3.

[40] OCC Advisory Letter 2003–2.

[41] *See* OCC Advisory Letter 2000–7, ''Abusive Lending Practices'' (July 25, 2000); OCC Advisory Letter 2000–10, ''Payday Lending'' (Nov. 27, 2000); OCC Advisory Letter 2003–2; OCC Advisory Letter 2003–3; and OCC Bulletin 2014–37.

expected of [banks].'' [42] To ensure that banks operate consistent with these principles, the OCC evaluates the following as part of its routine supervision of a bank's lending relationships with third parties:

- Does the bank appropriately manage the risks associated with its third-party relationships, including through policies and procedures that ensure adherence to the bank's risk appetite and tolerances and by appropriate ongoing monitoring of the third party's relevant activities? [43]
- Are the underwriting criteria for loans made by the bank as part of third-party relationships consistent with criteria the bank would use for loans made without a third party? [44]
  - If the underwriting criteria differs, are these underwriting criteria consistent with applicable law, including 12 CFR part 30, Appendix A, and with safety and soundness?
- Are the terms and structures of the bank's loan appropriate for the borrower? Are the lending practices appropriate? [45]
  - Are there characteristics, structures, or practices that make it difficult or impossible for a borrower to reduce or repay its indebtedness (*e.g.,* repeated capitalization of interest; extended negative amortization; or a single payment or balloon payment)?
  - Are borrowers forced into costly rollovers, renewals, or refinancing transactions that are likely to result in debt traps or ongoing cycles of debt?
- Are the bank's overall returns on the loans reasonably related to the bank's risks and costs of the loans (*e.g.,* the total credit costs on short term loans, such as 12- to 36- month loans, are not substantial in relation to, or do not exceed, the principal amount of the loan)? [46]
- Do disclosures provide sufficient information to draw the borrower's attention to key terms and to enable the borrower to determine whether the loan meets their particular financial circumstances and needs? For example, would a borrower who is not financially sophisticated or who is otherwise vulnerable to abusive practices understand the terms of the loan, including the loan's relative costs, risks, and benefits? [47]

In addition to the consequences described above, the proposal would operate together with the OCC's recently finalized *Madden*-fix rule to provide greater clarity to banks regarding their lending activities.[48] Once it is determined that a loan has, in fact, been made by a bank under the clear standards set out in this proposal, the applicable Federal legal framework (1) determines the interest permitted on the loan, pursuant to 12 U.S.C. 85 and 1463(g), and (2) permits the loan to be subsequently sold, assigned, or otherwise transferred without affecting the interest term, pursuant to the *Madden*-fix rule. This clarity would enable banks to more effectively and efficiently work with other market participants to manage their risks and leverage their balance sheets to meet customers' needs for affordable credit.

IV. Regulatory Analyses

Paperwork Reduction Act. In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed the notice of proposed rulemaking and determined that it would not introduce any new or revise any existing collection of information pursuant to the PRA. Therefore, no submission will be made to OMB for review.

Regulatory Flexibility Act. 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 (SBA) 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) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 745 small entities. The OCC expects that all of these small entities would be impacted by the rule.

While this proposal could affect how banks structure their current or future third-party relationships, the OCC does not expect that these adjustments would involve an extraordinary demand on a bank's human resources. Banks already have systems, policies, and procedures in place for issuing loans when third parties are involved, and it takes significantly less time to amend existing policies than to create them. In addition, any costs would likely be absorbed as ongoing administrative expenses. Based on this, the OCC believes the costs associated with any administrative changes in bank lending policies and procedures would be *de minimis.* Furthermore, legal certainty about whether a loan is made by a bank may encourage some banks to engage in new lending relationships or to expand their existing lending relationships. However, as noted, we do not expect the accompanying costs to be substantial. Therefore, the OCC anticipates that costs, if any, will be *de minimis* and certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act. Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, the OCC considers 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 adjusted for inflation (currently $157 million) in any one year. The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $157 million or more annually by state, local, and tribal governments, or by the private sector.

Riegle Community Development and Regulatory Improvement Act. Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or

[42] OCC Advisory Letter 2003–2.

[43] *See, e.g.,* OCC Bulletin 2013–29; OCC Bulletin 2020–10.

[44] *See, e.g.,* 12 CFR part 30, appendix A, § II; OCC Bulletin 2013–29; OCC Bulletin 2020–10.

[45] *See, e.g.,* OCC Advisory Letter 2000–7; OCC Advisory Letter 2000–10; OCC Advisory Letter 2003–2; OCC Advisory Letter 2003–3.

[46] *See, e.g., Interagency Lending Principles for Offering Responsible Small-Dollar Loans* (May 2020); OCC Advisory Letter 2000–7.

[47] *See, e.g.,* OCC Advisory Letter 2003–2; OCC Advisory Letter 2000–10.

[48] *See supra* note 17.

other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. Although the proposed rule does not impose additional reporting, disclosures, or other new requirements on insured depository institutions, the OCC invites comments that will inform its consideration of the administrative burdens and the benefits of its proposal, as well as the effective date of the final rule.

List of Subjects in 12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds.

Office of the Comptroller of the Currency

For the reasons set out in the preamble, the OCC proposes to amend 12 CFR part 7 as follows.

PART 7—ACTIVITIES AND OPERATIONS

■ 1. The authority citation for part 7 continues 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) and 5412(b)(2)(B).

■ 2. Add § 7.1031 to read as follows:

§ 7.1031 National banks and Federal savings associations as lenders.

For purposes of sections 5136 and 5197 of the Revised Statutes (12 U.S.C. 24 and 12 U.S.C. 85), section 24 of the Federal Reserve Act (12 U.S.C. 371), and sections 4(g) and 5(c) of the Home Owners' Loan Act (12 U.S.C. 1463(g) and 12 U.S.C. 1464(c)), a national bank or Federal savings association makes a loan when the national bank or Federal savings association, as of the date of origination:

(a) Is named as the lender in the loan agreement; or

(b) Funds the loan.

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–15997 Filed 7–21–20; 8:45 am]

BILLING CODE 4810–33–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0023]

RIN 3170–AA83

Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation Z, which implements the Truth in Lending Act, as mandated by section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The amendments would exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain higher-priced mortgage loans.

DATES: Comments on the proposed rule must be received on or before September 21, 2020.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2020–0023 or RIN 3170–AA83, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-NPRM-EscrowExemption@cfpb.gov.* Include Docket No. CFPB–2020–0023 or RIN 3170–AA83 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Higher-Priced Mortgage Loan Escrow Exemption, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joseph Devlin, Senior Counsel, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Regulation Z, 12 CFR part 1026, implements the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* and includes a requirement that creditors establish an escrow account for certain higher-priced mortgage loans (HPMLs),[1] along with certain exemptions from this requirement.[2] In the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[3] Congress required the Bureau to issue regulations to add a new exemption from TILA's escrow requirement that exempts transactions by certain insured depository institutions and insured credit unions. The proposed rule would implement the EGRRCPA section 108 statutory directive, and would also remove certain obsolete text from the

[1] 12 CFR 1026.35(a) and (b). An HPML is defined in 12 CFR 1026.35(a)(1) and generally means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by (1) 1.5 percentage points or more for a first-lien transaction at or below the Freddie Mac conforming loan limit; (2) 2.5 percentage points or more for a first-lien transaction above the Freddie Mac conforming loan limit; or (3) 3.5 percentage points or more for a subordinate-lien transaction. The escrow requirement only applies to first-lien HPMLs.

[2] 12 CFR 1026.35(b)(2)(i) and (iii).

[3] Public Law 115–174, 132 Stat. 1296 (2018).

Official Interpretations to Regulation Z (commentary).[4]

New § 1026.35(b)(2)(vi) would exempt from the Regulation Z HPML escrow requirement any loan made by an insured depository institution or insured credit union and secured by a first lien on the principal dwelling of a consumer if (1) the institution has assets of $10 billion or less; (2) the institution and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) certain of the existing HPML escrow exemption criteria are met, as described below.[5]

II. Background

A. Federal Reserve Board Escrow Rule and the Dodd-Frank Act

Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[6] the Board of Governors of the Federal Reserve System (Board) issued a rule[7] requiring, among other things, the establishment of escrow accounts for payment of property taxes and insurance for certain ''higher-priced mortgage loans,'' a category which the Board defined to capture what it deemed to be subprime loans.[8] The Board explained that this rule was intended to reduce consumer and systemic risks by requiring the subprime market to structure and price loans similarly to the prime market.[9]

In 2010, Congress enacted the Dodd-Frank Act, which amended TILA and transferred TILA rulemaking authority and other functions from the Board to the Bureau.[10] The Dodd-Frank Act added TILA section 129D(a), which adopted the Board's rule requiring that creditors establish an escrow account for higher-priced mortgage loans.[11] The Dodd-Frank Act also excluded certain loans, such as reverse mortgages, from this escrow requirement. The Dodd-Frank Act further granted the Bureau authority to structure an exemption based on asset size and mortgage lending activity for creditors operating predominantly in rural or underserved areas.[12] In 2013, the Bureau exercised this authority to exempt from the escrow requirement creditors with under $2 billion in assets and meeting other criteria.[13] In 2015, in the Helping Expand Lending Practices in Rural Communities Act, Congress amended TILA section 129D again by striking the term ''predominantly'' for creditors operating in rural or underserved areas.[14]

B. Economic Growth, Regulatory Relief, and Consumer Protection Act

Congress enacted EGRRCPA in 2018. In section 108 of the EGRRCPA,[15] Congress directed the Bureau to conduct a rulemaking to create a new exemption, this one to exempt from TILA's escrow requirement loans made by certain creditors with assets of $10 billion or less and meeting other criteria. Specifically, section 108 of the EGRRCPA amended TILA section 129D(c) to require the Bureau to exempt certain loans made by certain insured depository institutions and insured credit unions from the TILA section 129D(a) HPML escrow requirement.

TILA section 129D(c)(2), as amended by EGGRCPA, requires the Bureau to issue regulations to exempt from the HPML escrow requirement any loan made by an insured depository institution or insured credit union secured by a first lien on the principal dwelling of a consumer if: (1) The institution has assets of $10 billion or less; (2) the institution and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) certain of the existing Regulation Z HPML escrow exemption criteria, or those of any successor regulation, are met. The Regulation Z provisions that the statute includes in the new exemption are: (1) the requirement that the creditor extend credit in a rural or underserved area (§ 1026.35(b)(2)(iii)(A)); (2) the exclusion from exemption eligibility of transactions involving forward purchase commitments (§ 1026.35(b)(2)(v)); and (3) the prerequisite that the institution and its affiliates not maintain an escrow account other than those established for HPMLs at a time when the creditor may have been required by the regulation to do so or those established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure (§ 1026.35(b)(2)(iii)(D)).

III. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under the Dodd-Frank Act and TILA.

A. Dodd-Frank Act Section 1022(b)

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.''[16] Among other statutes, TILA and title X of the Dodd-Frank Act are Federal consumer financial laws.[17] Accordingly, in setting forth this proposal, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X of the Dodd-Frank Act and prevent evasion of those laws.

B. TILA

A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.''[18] This stated purpose is tied to Congress's finding that ''economic stabilization would be

[4] As discussed in more detail below, this obsolete text includes, among other text, language related to a recently issued interpretive rule. On June 23, 2020, the Bureau issued an interpretive rule that describes the Home Mortgage Disclosure Act of 1975 (HMDA), Public Law 94–200, 89 Stat. 1125 (1975), data to be used in determining that an area is ''underserved.'' As the Bureau explained in the interpretive rule, certain parts of the methodology described in comment 35(b)(2)(iv)–1.ii were obsolete because they referred to HMDA data points replaced or otherwise modified by a 2015 Bureau final rule (2015 HMDA Final Rule). 80 FR 66128, 66256–58 (Oct. 28, 2015). The Bureau stated that it was issuing the interpretive rule to supersede the outdated portions of the commentary and to identify current HMDA data points it will use to determine whether a county is underserved. In this proposed rule we identify proposed changes to the comment to remove the obsolete text.

[5] When amending commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions and related text. The sections of regulatory and commentary text included in this document show the language of those sections if the Bureau adopts its changes as proposed. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is proposing to make to the regulatory and commentary text of Regulation Z. This redline is posted on the Bureau's website with this proposed rule. If any conflicts exist between the redline and the text of Regulation Z or this proposal, the documents published in the **Federal Register** and the *Code of Federal Regulations* are the controlling documents.

[6] Public Law 111–203, 124 Stat. 1376 (2010).

[7] 73 FR 44522 (July 30, 2008).

[8] *Id.* at 44532.

[9] *Id.* at 44557–61.

[10] Dodd Frank Act sections 1022, 1061, 1100A and 1100B, 124 Stat. 1980, 2035–39, 2107–10.

[11] Dodd-Frank Act section 1461(a); 15 U.S.C. 1639d.

[12] *Id.*

[13] 78 FR 4726 (Jan. 22, 2013).

[14] Public Law 114–94, div. G, tit. LXXXIX, section 89003, 129 Stat. 1799, 1800 (2015).

[15] EGRRCPA section 108, 132 Stat. 1304–05; 15 U.S.C. 1639d(c)(2).

[16] 12 U.S.C. 5512(b)(1).

[17] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA).

[18] 15 U.S.C. 1601(a).

enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.'' [19] Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Congress in 2018 enacted EGRRCPA, and section 108 of EGRRCPA amended section 129D of TILA.[20] The exemption proposed in this rulemaking would implement that amendment. In addition, in previous rulemakings the Bureau issued two of the regulatory provisions this proposed rule proposes to amend. In issuing these provisions, the Bureau relied on one or more of the authorities discussed below, as well as other authority.[21] The Bureau is proposing amendments to these provisions in reliance on the same authority, as discussed in detail in the Legal Authority or Section-by-Section Analysis parts of the Bureau's final rules titled ''Escrow Requirements Under the Truth in Lending Act'' and ''Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z).'' [22]

As amended by the Dodd-Frank Act, TILA section 105(a) directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[23]

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The Dodd-Frank Act amendment clarified that the Bureau has the authority to use TILA section 105(a) to prescribe requirements beyond those specifically listed in TILA that meet the standards outlined in section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb).[24]

The Bureau's authority under TILA section 105(a) to make exceptions, adjustments, and additional provisions that the Bureau finds are necessary or proper to effectuate the purposes of TILA applies with respect to the purpose of TILA section 129D. That purpose is to ensure that consumers understand and appreciate the full cost of home ownership. The purpose of TILA section 129D is also informed by the findings articulated in section 129B(a) that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible and affordable mortgage credit remains available to consumers.[25]

For the reasons discussed in this document, the Bureau is proposing amendments to Regulation Z to implement the EGRRCPA section 108 to carry out the purposes of TILA and is proposing such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of the proposed rule pursuant to its authority under TILA section 105(a), the Bureau has considered: (1) The purposes of TILA, including the purpose of TILA section 129D; (2) the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization; and (3) the specific findings of TILA section 129B(a)(1) that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

In addition, as noted elsewhere in this document, three of the regulatory provisions this proposed rule proposes to amend were adopted by the Bureau in previous rulemakings. In adopting those provisions, the Bureau relied on one or more of the authorities discussed above, as well as other authority.[26] The Bureau is proposing amendments to these existing provisions as applied to entities subject to the original exemption in reliance on the same authorities.

IV. Section-by-Section Analysis

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(a) Definitions

35(a)(3) and (4)

The escrow requirement exemption in EGRRCPA section 108 is available to ''insured credit unions'' and ''insured depository institutions.'' Section 108 amends TILA to provide definitions for these two terms, at TILA section 129D(i)(3) and (4). ''Insured credit union'' has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and ''insured depository institution'' has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

The Bureau proposes to include these definitions along with the existing definitions regarding HPMLs, in § 1026.35(a).

35(b) Escrow accounts

35(b)(2) Exemptions

35(b)(2)(iii)

EGRRCPA section 108 amends TILA section 129D to provide that one of the requirements for the new escrow exemption is that an exempted transaction satisfy the criterion previously established by the Bureau and codified at Regulation Z § 1026.35(b)(2)(iii)(D) to qualify for the existing escrow exemption.[27] Section 1026.35(b)(2)(iii)(D) establishes as a prerequisite to the exemption that a creditor or its affiliate is not already maintaining an escrow account for any

[19] *Id.*

[20] EGRRCPA section 108, 132 Stat. 1304.

[21] Specifically, TILA section 129D(c) authorizes the Bureau to exempt, by regulation, a creditor from the requirement (in section 129D(a)) that escrow accounts be established for higher-priced mortgage loans if the creditor operates in rural or underserved areas, retains its mortgage loans in portfolio, does not exceed (together with all affiliates) a total annual mortgage loan origination limit set by the Bureau, and meets any asset-size threshold, and any other criteria the Bureau may establish. *See* 80 FR 59944, 59945–46 (Oct. 2, 2015).

[22] *See* 78 FR 4726 and 80 FR 59944.

[23] 15 U.S.C. 1604(a).

[24] 15 U.S.C. 1602(bb).

[25] *See* 15 U.S.C. 1639b(a).

[26] Specifically, TILA section 129D(c) authorizes the Bureau to exempt a creditor that, among other factors, ''meets any other criteria the Bureau may establish consistent with the purposes of'' Part B (Credit Transactions) of TILA. *See* 78 FR 4726 and 80 FR 59944.

[27] The term ''existing'' or ''original'' HPML escrow exemption refers throughout this document to the regulatory exemption at § 1026.35(b)(2)(iii). It does not refer to the exemptions or exclusions listed at § 1026.35(b)(2)(i).

extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services.[28] The purpose of this prerequisite is to limit the exemption to institutions that do not already provide escrow accounts. Instead, institutions that already provide escrow accounts would bear the entire burden, with the burden for them being lower because they are continuing to provide them rather than commencing to provide them. This prerequisite, however, is subject to two exceptions.

First, under § 1026.35(b)(2)(iii)(D)(*2*) a creditor would not lose the exemption for providing escrow accounts as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure. The Bureau is not proposing to amend this exception.

Second, under § 1026.35(b)(2)(iii)(D)(*1*), the Bureau initially granted an exception from the escrow requirement to creditors who established escrow accounts for first-lien HPMLs on or after April 1, 2010 (the effective date of the Board's original HPML escrow rule), and before June 1, 2013 (the effective date of the Bureau's first HPML escrow rule that included the Dodd-Frank exemption for certain creditors (original escrow exemption)). The purpose of this exception was to avoid penalizing creditors that had not previously provided escrow accounts but established them specifically to comply with the regulation requiring escrows.[29] Over time, as the Bureau amended the HPML escrow exemption criteria and made more creditors eligible, the Bureau also extended the end date for the exception to the prerequisite against maintaining escrow accounts in § 1026.35(b)(2)(iii)(D), so that creditors that had established escrow accounts in order to comply with the Bureau's regulations could still benefit from the relief provided by the Bureau's amendments to the exemption criteria.[30] The Bureau most recently extended the date to May 1, 2016, consistent with the effective date of the Bureau's latest amendment to the HPML exemption criteria.[31]

The Bureau proposes to amend this exception. The dates in current § 1026.35(b)(2)(iii)(D)(*1*) between which creditors are allowed to maintain escrow accounts for first-lien HPMLs without losing eligibility for the exemption (April 1, 2010, until May 1, 2016) were necessary to allow creditors to benefit fully from the existing HPML escrow exemption. However, those same dates, if applied to EGRRCPA's new exemption criteria would cause most insured depositories and insured credit unions who would otherwise qualify under EGRRCPA's new exemption criteria to be ineligible. The reason they would be ineligible is that those depositories and credit unions presumably have established escrows for HPMLs after May 1, 2016, in compliance with the existing escrow rule's requirements.

The Bureau believes that very few insured depository institutions and insured credit unions that do not meet the existing exemption criteria would benefit from the section 108 exemption if implemented without modification to the end date in existing § 1026.35(b)(2)(iii)(D)(*1*). These would only be institutions that (1) together with their affiliates, have more than approximately \$2 billion[32] in assets and, without affiliates, less than \$10 billion in assets; (2) have not extended any HPMLs since May 1, 2016; and (3) do not offer mortgage escrows in the normal course of business. Because this approach would restrict access to the new HPML escrow exemption to institutions that do not currently originate HPMLs, its usefulness would be extremely limited. The Bureau believes it is unlikely that Congress intended to provide an exemption for institutions that do not engage in the business activity to which the exemption applies. Consequently, to better implement what the Bureau believes is Congress's intent, the Bureau proposes to replace the May 1, 2016, end date for the prerequisite against establishing escrows with a new end date that is approximately 90 days after the effective date of the forthcoming section 108 escrow exemption final rule. The Bureau believes that the extra 90 days would help otherwise exempt institutions avoid inadvertently making themselves ineligible by establishing escrow accounts before they have heard about the rule and adjusted their compliance. In addition, the Bureau proposes to amend comment 35(b)(2)(iii)–1.iv to conform to this change.

The Bureau also proposes to amend comment 35(b)(2)(iii)(D)(*1*)–1 to address the date change. Comment 35(b)(2)(iii)(D)(*1*)–1 and comment 35(b)(2)(iii)(D)(*2*)–1 were inadvertently deleted from the *Code of Federal Regulations* in 2019 during an annual inflation adjustment, and no change in interpretation of the associated regulatory provisions was intended. The Bureau is correcting this deletion by proposing to reinsert the two comments back into Supplement I, with comment 35(b)(2)(iii)(D)(*1*)–1 amended from its former language to reflect the date change described above and with no changes being made to comment 35(b)(2)(iii)(D)(*2*)–1. In addition, a sentence describing the definition of ''affiliate'' in comment 35(b)(2)(iii)–1.ii.C was also inadvertently deleted from the *Code of Federal Regulations* in 2019, and no change in interpretation was intended. The Bureau now proposes to add the deleted sentence back into this comment.

Although the Bureau is proposing this date change in § 1026.35(b)(2)(iii)(D)(*1*) and the related comment to implement the new exemption specified by Congress, it is possible that creditors outside of the scope of the proposed new exemption may now be eligible for the existing exemption, in spite of having established escrow accounts after May 1, 2016. Despite this potential change, the Bureau believes that few creditors would newly qualify for, and few, if any, would take advantage of the existing exemption as a result of the date change. Newly eligible creditors would likely have been eligible during date extensions in the past, and chose to forgo the exemption at those times. The Bureau does not consider it likely that more than a very few institutions would choose to change their business processes this time.

The Bureau initially adopted the criterion in § 1026.35(b)(2)(iii)(D) under its broad discretionary authority, set forth in 15 U.S.C. 1639d(c)(4), to establish ''criteria [for the escrow exemption] consistent with the purposes'' of the escrow provisions. In establishing the new exemption in section 108, Congress incorporated as a prerequisite the criterion in § 1026.35(b)(2)(iii)(D) or ''any successor regulation.'' The Bureau interprets the reference to ''any successor regulation'' to authorize the Bureau to make amendments to existing § 1026.35(b)(2)(iii)(D) consistent with the purposes of the escrow provisions, the same standard under which the provision was initially authorized. The Bureau believes the proposed amendment to the end date in § 1026.35(b)(2)(iii)(D)(*1*) is consistent with the purposes of the escrow provisions to avoid disqualifying the vast majority of institutions that otherwise would qualify for the new exemption. The Bureau believes

[28] 78 FR 4726, 4738–39.

[29] *Id.*

[30] *See, e.g.,* 80 FR 59944, 59968 (adjusting end date to January 1, 2016).

[31] *See* Operations in Rural Areas Under the Truth in Lending Act (Regulation Z); Interim Final Rule, 81 FR 16074 (Mar. 25, 2016).

[32] After inflation adjustments, this figure is now \$2.167 billion.

Congress did not intend the new exemption to apply so narrowly.

In addition, the Bureau's proposed exemption is authorized under the Bureau's TILA section 105(a) authority to make adjustments to facilitate compliance with TILA and effectuate its purposes.[33] Modifying the date would facilitate compliance with TILA for the institutions that would qualify for the exemption but would not be eligible without the modification, and the failure to adjust the date would limit the exemption to an extremely small number of institutions. The Bureau proposes to set the end date 90 days after the final rule is published in the **Federal Register** because the Bureau proposes that the rule become effective upon publication, as explained below. The small to mid-size institutions affected by the rule may not be immediately aware of the change and might make themselves ineligible for the exemption by establishing escrow accounts. Such institutions would have 90 days to learn of the amendment and avoid that problem.

The Bureau solicits comment on the Bureau's proposed amendments to § 1026.35(b)(2)(iii)(D)(*1*) and comments 35(b)(2)(iii)–1.iv and 35(b)(2)(iii)(D)(*1*)–1, and specifically the exclusion of escrow accounts established on or after April 1, 2010, and before [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] from the limitation in § 1026.35(b)(2)(iii)(D)(*1*). In particular, the Bureau seeks comment on the need for the proposed changes and the impact on consumers of extending the exemption to the escrow requirements in § 1026.35(b)(1).

35(b)(2)(iv)

35(b)(2)(iv)(A)

Section 1026.35(b)(2)(iv)(A)(*3*) provides that a county or census block could be designated as rural using an application process pursuant to section 89002 of the Helping Expand Lending Practices in Rural Communities Act, Public Law 114–94, title LXXXIX (2015). Because the provision ceased to have any force or effect on December 4, 2017, the Bureau proposes to remove this provision and make conforming changes to § 1026.35(b)(2)(iv)(A). The Bureau also proposes to remove references to the obsolete provision in comments 35(b)(2)(iv)(A)–1.i and –2.i, as well as comment 43(f)(1)(vi)–1.

On June 23, 2020, the Bureau issued an interpretive rule that describes the HMDA data to be used in determining whether an area is ''underserved.''[34] As the interpretive rule explained, certain parts of the methodology described in comment 35(b)(2)(iv)–1.ii became obsolete because they referred to HMDA data points replaced or otherwise modified by the 2015 HMDA Final Rule. The Bureau proposes to remove the last two sentences from comment 35(b)(2)(iv)–1.ii. In addition to removing the obsolete language referring to HMDA data, the Bureau would also remove references to publishing the annual rural and underserved lists in the **Federal Register**. The Bureau does not believe that such publication would increase the ability of financial institutions to access the information, and that posting the lists on the Bureau's public website is sufficient.

35(b)(2)(v)

EGRRCPA section 108 further amends TILA section 129D to provide that one of the requirements for the new escrow exemption is that an exempted transaction satisfy the criterion in Regulation Z § 1026.35(b)(2)(v), a prerequisite to the existing HPML escrow exemption. Section 1026.35(b)(2)(v) currently states that, unless otherwise exempted by § 1026.35(b)(2), the exemption to the escrow requirement will not be available for any first-lien HPML that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions for an exemption in § 1026.35(b)(2)(iii) (*i.e.,* no forward commitment). In adopting the original escrow exemption, the Bureau stated that the prerequisite of no forward commitments would appropriately implement the requirement in TILA section 129D(c)(1)(C)[35] that the exemption apply to portfolio lenders.[36] The Bureau also reasoned that conditioning the exemption on a lack of forward commitments, rather than requiring that all loans be held in portfolio, would avoid consumers having to make unexpected lump sum payments to fund an escrow account.[37] To implement section 108, the Bureau now proposes to add references in § 1026.35(b)(2)(v) to the new exemption to make clear that the new exemption would also not be available for transactions subject to forward commitments of the type described. The Bureau also proposes to add similar references to the new exemption in comment 35(b)(2)(v)–1 discussing ''forward commitments.''

35(b)(2)(vi)

As explained above, section 108 of EGRRCPA amends TILA section 129D to provide a new exemption from the HPML escrow requirement.[38] The new exemption is narrower than the existing TILA section 129D exemption in several ways, including the following. First, the section 108 exemption is limited to insured depositories and insured credit unions that meet the statutory criteria, whereas the existing exemption applies to any creditor (including a non-insured creditor) that meets its criteria. Second, the originations limit in the section 108 exemption is specified to be 1,000 loans secured by a first lien on a principal dwelling originated by an insured depository institution or insured credit union and its affiliates during the preceding calendar year. In contrast, TILA section 129D(c)(1) (as redesignated) gave the Bureau discretion to choose the originations limit for the original exemption, which the Bureau set at 2,000 originations (other than portfolio loans).[39] Third, TILA section 129D(c)(1) also gave the Bureau discretion to determine any asset size threshold and any other criteria the Bureau may establish, consistent with the purposes of TILA. Section 108, on the other hand, specifies an asset size threshold of $10 billion and does not expressly state that the Bureau can establish other criteria.[40]

The Bureau believes that EGRRCPA section 108 is meant to carve out a carefully circumscribed exemption available to insured depository institutions and insured credit unions that do not pursue mortgage lending as a major business line. Congress provided an asset size limit of $10 billion, approximately eight billion above the existing exemption, but reduced the originations limit to 1,000 loans. This suggests that the institutions Congress intended to exempt do not need to be as small as those benefiting from the original exemption, but their mortgage lending business should be small enough that they do not benefit

[33] 15 U.S.C. 1604(a).

[34] *https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-underserved-areas-home-mortgage-disclosure-act-data/.*

[35] EGRRCPA section 108 redesignated this paragraph. It was previously TILA section 129D(c)(3).

[36] 78 FR 4726, 4741.

[37] *Id.* at 4741–42.

[38] EGRRCPA section 108 designates the new exemption as section 129D(c)(2) and redesignates the paragraph that includes the existing exemption, adopted pursuant to section 1461(a) of the Dodd-Frank Act, as section 129D(c)(1).

[39] 12 CFR 1026.35(b)(2)(iii)(B).

[40] However, as discussed above, EGRRCPA section 108 does appear to allow for a more circumscribed ability to alter certain parameters of the new exemption by referencing the existing regulation ''or any successor regulation.'' TILA section 129D(c)(2)(C).

from economies of scale in providing escrow accounts.

The Bureau now proposes to implement the section 108 exemption consistent with this understanding of its limited scope. Proposed new § 1026.35(b)(2)(vi) would codify the section 108 exemption by imposing as a precondition a bar on its use with transactions involving forward commitments, as explained above in the discussion of the forward commitments provision, § 1026.35(b)(2)(v), and limiting its use to insured depository institutions and insured credit unions. The other requirements for the exemption would be implemented in proposed subparagraphs (A), (B) and (C), discussed below.

In addition, the Bureau proposes to provide three-month grace periods [41] for the annually applied requirements for the section 108 escrow exemption, in § 1026.35(b)(2)(vi)(A), (B) and (C). The grace periods would allow exempt creditors to continue using the exemption for three months after they exceed a threshold in the previous year, to allow a transition period to facilitate compliance.[42] The new proposed exemption would use the same type of grace periods as in the existing escrow exemption at § 1026.35(b)(2)(iii).

In addition to the three-month grace periods, the new proposed exemption has other important provisions in common with the existing exemption, including the rural or underserved test, the definition of affiliates, and the application of the non-escrowing time period requirement. Thus, the Bureau proposes to add new comment 35(b)(2)(vi)–1, which cross-references the commentary to § 1026.35(b)(2)(iii). Specifically, proposed comment 35(b)(2)(vi)–1 would explain that for guidance on applying the grace periods for determining asset size or transaction thresholds under § 1026.35(b)(2)(vi)(A) or (B), the rural or underserved requirement, or other aspects of the exemption in § 1026.35(b)(2)(vi) not specifically discussed in the commentary to § 1026.35(b)(2)(vi), an insured depository institution or insured credit union may, where appropriate, refer to the commentary to § 1026.35(b)(2)(iii).

35(b)(2)(vi)(A)

EGRRCPA section 108(1)(D) amends TILA section 129D(c)(2)(A) to provide that the new escrow exemption is available only for transactions by an insured depository or credit union that ''has assets of $10,000,000,000 or less.'' The Bureau proposes to implement this provision in new § 1026.35(b)(2)(vi)(A) by: (1) Using an institution's assets during the previous calendar year to qualify for the exemption, but allowing for a three-month grace period at the beginning of a new year if the institution loses the exemption it previously qualified for; and (2) adjusting the $10 billion threshold annually for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars.

The existing escrow exemption at § 1026.35(b)(2)(iii) includes three-month grace periods for determination of asset size, loan volume, and rural or underserved status. As explained above, the grace periods allow exempt creditors to continue using the exemption for three months after they exceed a threshold in the previous year, so that there will be a transition period to facilitate compliance when they no longer qualify for the exemption.[43] The use of grace periods therefore addresses potential concerns regarding the impact of asset size and origination volume fluctuations from year to year.[44] The grace periods in the existing exemption, and the new proposed grace period in § 1026.35(b)(2)(vi)(A), cover applications received before April 1 of the year following the year that the asset threshold is exceeded, and allow institutions to continue to use their asset size from the year before the previous year.

The Bureau believes that, although new TILA section 129D(c)(2)(A) does not expressly provide for a grace period, proposing the same type of grace period provided for in the existing regulatory exemption is justified. EGRRCPA section 108 specifically cites to and relies on aspects of the existing regulatory exemption, which uses grace periods for certain factors. In fact, section 108 incorporates one requirement from the existing exemption, the rural or underserved requirement at § 1026.35(b)(2)(iii)(A), that uses a grace period. The Bureau believes that a grace period is authorized under its TILA 105(a) authority [45] to effectuate the purposes of TILA and to facilitate compliance. The Bureau believes that the proposed grace periods for the asset threshold, and the loan origination limit discussed below,[46] would facilitate compliance with TILA for institutions that formerly qualified for the exemption but then exceeded the threshold in the previous year. Those institutions would have three months to adjust their compliance management systems to provide the required escrow accounts. The grace periods would reduce uncertainties caused by yearly fluctuations in assets or originations, and they would make the timing of the new and existing exemptions consistent.

The new section 108 exemption is restricted to insured depositories and credit unions with assets of $10 billion or less. Although section 108 does not expressly state that this figure should be adjusted for inflation, the Bureau proposes this adjustment to effectuate the purposes of TILA and facilitate compliance. EGRRCPA section 108 specifically cites to and relies on criteria in the existing exemption, whose asset threshold is adjusted for inflation. In fact, monetary threshold amounts are adjusted for inflation in numerous places in Regulation Z.[47] In addition, because inflation adjustment keeps the threshold value at the same level in real terms as when adopted, adjusting for inflation avoids undermining the objective that Congress intended to achieve with the threshold value. To effectuate the purposes of TILA and facilitate compliance, the Bureau is proposing to use its TILA section 105(a) authority to adjust the threshold value to account for inflation. The Bureau is proposing this adjustment to facilitate compliance with TILA and effectuate its purposes.[48] The Bureau believes that failure to adjust for inflation would interfere with the purpose of TILA by reducing the availability of the exemption over time to fewer institutions than the provision was meant to cover.

In order to facilitate compliance with § 1026.35(b)(2)(vi)(A), the Bureau proposes to add comment 35(b)(2)(vi)(A)–1. Comment 35(b)(2)(vi)(A)–1 would explain the method by which the asset threshold will be adjusted for inflation, that the

[41] See the discussion of § 1026.35(b)(2)(vi)(A) below for further explanation of the Bureau's proposed adoption of grace periods in the proposed exemption.

[42] *See* 80 FR 59944, 59948–49, 59951, 59954.

[43] 80 FR 59944, 59948–49, 59951, 59954.

[44] *See* 80 FR 7770, 7781 (Feb. 11, 2015).

[45] 15 U.S.C. 1604(a).

[46] The Bureau also believes that the use of a grace period with the rural or underserved requirement is appropriate and the Bureau is proposing to include one by citing to existing § 1026.35(b)(2)(iii)(A). However, because the regulation already provides for that grace period, the discussion of the use of exception and adjustment authority does not list it.

[47] *See, e.g.,* § 1026.3(b)(1)(ii) (Regulation Z exemption for credit over applicable threshold), § 1026.35(c)(2)(ii) (appraisal exemption threshold), § 1026.6(b)(2)(iii) (CARD Act minimum interest charge threshold), § 1026.43(e)(3)(ii)(points and fees thresholds for qualified mortgage status).

[48] 15 U.S.C. 1604(a).

assets of affiliates are not considered in calculating compliance with the threshold (consistent with EGRRCPA section 108), and that the Bureau will publish notice of the adjusted asset threshold each year.

35(b)(2)(vi)(B)

EGRRCPA section 108 limits use of its escrow exemption to insured depositories and insured credit unions that, with their affiliates, ''during the preceding calendar year . . . originated 1,000 or fewer loans secured by a first lien on a principal dwelling.'' This threshold is half the limit in the existing regulatory exemption and does not exclude portfolio loans from the total. As discussed above, the Bureau believes that Congress intended the provision to limit the new exemption to depositories of less than $10 billion that do not pursue mortgage lending as a significant line of business.

The Bureau proposes to implement the 1,000 loan threshold in new § 1026.35(b)(2)(vi)(B), with a three-month grace period similar to the one provided in proposed § 1026.35(b)(2)(vi)(A) and the ''rural or underserved'' requirement in proposed § 1026.35(b)(2)(vi)(C) (discussed in more detail below). For the Bureau's reasoning regarding the adoption of grace periods with the new exemption, see the discussion of § 1026.35(b)(2)(vi)(A) above.

There are important differences between the 2,000-loan transaction threshold in § 1026.35(b)(2)(iii)(B) of the existing exemption and the 1,000-loan transaction threshold in proposed § 1026.35(b)(2)(vi)(B) of the new exemption that would go beyond the number of loans. Proposed comment 35(b)(2)(vi)(B)–1 would aid compliance by explaining the differences between the transactions to be counted toward the two thresholds for their respective exemptions.

35(b)(2)(vi)(C)

EGRRCPA section 108 requires that, in order to be eligible for the new exemption, an insured depository or insured credit union must satisfy the criteria in § 1026.35(b)(2)(iii)(A) and § 1026.35(b)(2)(iii)(D), or any successor regulation. The Bureau proposes to implement these requirements in new § 1026.35(b)(2)(vi)(C).

Section 1026.35(b)(2)(iii)(A) requires that during the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, a creditor has extended a covered transaction, as defined by § 1026.43(b)(1), secured by a first lien on a property that is located in an area that is either ''rural'' or ''underserved,'' as set forth in § 1026.35(b)(2)(iv). As discussed above, the current regulation includes a three-month grace period at the beginning of a calendar year to allow a transition period for institutions that lose the existing exemption, and EGRRCPA section 108 incorporates that provision, including the grace period, into the new exemption. By following EGRRCPA and citing to the current regulation, the Bureau proposes to include the criteria for extending credit in a rural or underserved area, including the grace period, in the new exemption.

Section 1026.35(b)(2)(iii)(D) of the existing escrow exemption generally provides that a creditor may not use the exemption if it or its affiliate maintains an escrow account for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services. However, escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure are excluded from this prohibition. In addition, escrow accounts established between certain dates during which the creditor would have been required to provide escrows to comply with the regulation are also excluded. As explained in the section-by-section discussion of § 1026.35(b)(2)(iii)(D) above, the Bureau proposes to change the end date of this exclusion to accommodate the new section 108 exemption. Because the Bureau is proposing to make the final rule effective upon publication in the **Federal Register** (see part V below), the Bureau proposes to extend the end date in § 1026.35(b)(2)(iii)(D)(*1*) to 90 days after such publication. The Bureau believes that the extra 90 days will help potentially exempt institutions avoid inadvertently making themselves ineligible.

Section 1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(f) Balloon-Payment Qualified Mortgages Made by Certain Creditors

43(f)(1) Exemption

43(f)(1)(vi)

As explained above, the Bureau proposes to remove an obsolete provision in § 1026.35(b)(2)(iv)(A) and remove references to that provision in comments 35(b)(2)(iv)–1.i and –2.i, as well as comment 43(f)(1)(vi)–1.

V. Proposed Effective Date for Final Rule

The Bureau proposes that the amendments included in this proposal take effect for mortgage applications received by an exempt institution on the date of the final rule's publication in the **Federal Register**. Under section 553(d) of the Administrative Procedure Act (APA), the required publication or service of a substantive rule must be made not less than 30 days before its effective date except for certain instances, including when a substantive rule grants or recognizes an exemption or relieves a restriction.[49] This proposed rule would grant an exemption from a requirement to provide escrow accounts for certain HPMLs and would relieve a restriction against providing certain HPMLs without such accounts. The proposed rule therefore would lead to a final rule that would be a substantive rule that would grant an exemption and relieve requirements and restrictions. Thus, the Bureau proposes to make the final rule effective on the same day as publication. The Bureau seeks comment on whether the proposed effective date is appropriate, or whether the Bureau should adopt an alternative effective date.

VI. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered the proposed rule's potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[50] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. In developing the proposed rule, the Bureau has consulted, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

The Bureau is proposing this rule to implement EGRRCPA section 108. See

[49] 5 U.S.C. 553(d).

[50] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of proposed rules on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

the Section-by-Section discussion above for a full description of the proposed rule.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. These sources form the basis for the Bureau's consideration of the likely impacts of the proposed rule. The Bureau provides the best estimates possible of the potential benefits and costs to consumers and covered persons of this proposal given available data. However, as discussed further below, the data with which to quantify the potential costs, benefits, and impacts of the proposed rule are generally limited.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. General economic principles and the Bureau's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed rule.

C. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the proposal, the Bureau takes as a baseline the existing regulations requiring the establishment of escrow accounts for HPMLs and the existing exemption from these regulations. If finalized, the proposed rule would create a new exemption so that some entities that are currently subject to the regulations requiring the establishing of escrow accounts for HPMLs would no longer be subject to those regulations. Therefore, the baseline for the analysis of the proposed rule is those entities remaining subject to those requirements.

If finalized as proposed, the rule should affect the market as described below as long as it is in effect. However, the costs, benefits, and impacts of any rule are difficult to predict far into the future. Therefore, the analysis below of the benefits, costs, and impacts of the proposed rule is most likely to be accurate for the first several years following implementation of the proposed rule.

D. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau has relied on a variety of data sources to analyze the potential benefits, costs, and impacts of the proposed rule. To estimate the number of mortgage lenders that may be impacted by the rule and the number of HPMLs originated by those lenders, the Bureau has analyzed the 2018 HMDA data.[51] While the HMDA data have some shortcomings that are discussed in more detail below, they are the best source available to the Bureau to quantify the impact of the proposed rule. For some portions of the analysis, the requisite data are not available or are quite limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the proposed rule.

Of entities that currently exist, the proposed rule would have a direct effect mainly on those entities that are not currently exempt and would become exempt under the proposal. The Bureau estimates that in the 2018 HMDA data there are 147 insured depositories or insured credit unions with assets between $2 billion and $10 billion that originated at least one mortgage in a rural or underserved area and originated fewer than 1000 mortgages secured by a first lien on a primary dwelling, and so are likely to be impacted by the proposed rule. Together, these depositories reported originating 69,519 mortgages in 2018. The Bureau estimates that less than 3,000 of these were HPMLs.[52]

Because of the amendment to the end date in proposed 1026.35(b)(2)(iii)(D)(*1*), it is possible that the proposed rule could also affect entities that established escrow accounts after May 1, 2016, but would otherwise already be exempt under existing regulations. These could be entities that voluntarily established escrow accounts after May 1, 2016, even though they were not required to, or entities that, together with certain affiliates, had more than $2 billion in total assets, adjusted for inflation, before 2016 but less than $2 billion, adjusted for inflation, afterwards. The Bureau does not possess the data to evaluate the number of such creditors but believes there to be very few of them.

The proposed rule, if finalized, could encourage entry into the HPML market, expanding the number of entities exempted. However, the limited number of existing insured depository institutions and insured credit unions who would be exempt under the proposed rule may be an indication that the total potential market for such institutions of this size engaging in mortgage lending of less than 1,000 loans per year is small. This could indicate that few such institutions would enter the market due to the proposed rule. Moreover, the volume of lending they could engage in while maintaining the exemption is limited. The impact of this proposed rule on such institutions that are not exempt and would remain not exempt, or that are already exempt, would likely be very small. The impact of this proposed rule on consumers with HPMLs from institutions that are not exempt and will remain not exempt, or that are already exempt, would also likely be very small. Therefore, the analysis below focuses on entities that would be affected by the proposed rule and consumers at those entities. Because few entities are likely to be affected by the proposed rule, and these entities originate a relatively small number of mortgages, the Bureau notes that the benefits, costs, and impacts of the proposed rule are likely to be small. However, in localized areas some newly exempt community banks and small credit unions may increase mortgage lending to consumers who may be underserved at present.

1. Potential Benefits and Costs to Consumers

For consumers with HPMLs originated by affected insured depository institutions and insured credit unions, the main effect of the proposed rule would be that those institutions would no longer be required to provide escrow accounts for HPMLs. As described above, the Bureau estimates that fewer than 3,000 HPMLs were originated in 2018 by institutions likely to be impacted by the rule. Institutions that would be affected by the proposed rule could choose to provide or not provide escrow accounts. If affected institutions decide not to provide escrow accounts, then consumers who would have escrow accounts under the baseline would instead not have escrow accounts. Affected consumers would experience

[51] *See* Feng Liu *et al., Introducing New and Revised Data Points in HMDA* (Aug. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf.*

[52] Some of the 147 entities described above were exempt under EGRRCPA from reporting many variables for their loans. Non-exempt entities originated 2,644 first-lien closed-end mortgages with APOR spreads above 150 basis points. Such mortgages below the conforming loan limit were HPMLs. Such mortgages above the conforming limit loan limit may not have been HPMLs if their APOR spreads were less than 250 basis points. To derive an upper limit on the number of HPMLs originated, all such mortgages are included in the calculations. The Bureau does not have data on the number of potential HPMLs originated by entities exempt under EGRRCPA from reporting rate spread data. Assuming the ratio of HPMLs to first-lien mortgages is the same for these entities as it was for non-exempt entities yields an estimate of 330 HPMLs originated by exempt entities, for a total conservative estimate of 2,974 HPMLs in the sample.

both benefits and costs as a result of the proposed rule. These benefits and costs would vary across consumers.

Affected consumers would have mortgage escrow accounts under the baseline, but not under the proposed rule. The benefits to consumers of not having mortgage escrow accounts include: (1) More budgetary flexibility, (2) interest earnings,[53] (3) potentially decreased prices, and (4) greater access to credit resulting from lower mortgage servicing costs.

Escrow accounts generally require consumers to save for infrequent liabilities, such as property tax and insurance, by making equal monthly payments. Standard economic theory predicts that many consumers may value the budgetary flexibility to manage tax and insurance payments in other ways. Even without an escrow account, those consumers who prefer to make equal monthly payments towards escrow liabilities may still do so, by, for example, creating a savings account for the purpose. Other consumers who do not like this payment structure can come up with their own preferred payment plans. For example, a consumer with $100 a month in mortgage escrow payments and $100 a month in discretionary income might have to resort to taking on high-interest debt to cover an emergency $200 expense. If the same consumer were not required to make escrow payments, she could pay for the emergency expense this month without taking on high-interest debt and still afford her property tax and insurance payments by increasing her savings for that purpose by an additional $100 next month.

Another benefit for consumers may be the ability to invest their money and earn a return on amounts that might, depending on State regulations, be forgone under an escrow. The Bureau does not have the data to estimate the interest consumers forgo because of escrow accounts, but numerical examples may be illustrative. Assuming a two percent annual interest rate on savings, a consumer with property tax and insurance payments of $500 every six months foregoes about $5 a year in interest because of escrow. Assuming a five percent annual interest rate on savings, a consumer with property tax and insurance payments of $2,500 every six months foregoes about $65 a year in interest because of escrow.

Finally, consumers may benefit from the proposed rule from the pass-through of lower costs incurred by servicers under the proposed rule compared to under the baseline. The benefit to consumers would depend on whether fixed or marginal costs, or both, fall because of the proposed rule. Typical economic theory predicts that existing firms should pass through only decreases in marginal rather than fixed costs. The costs to servicers of providing escrow accounts for consumers are likely to be predominantly fixed rather than marginal, which may limit the pass-through of lower costs on to consumers in the form of lower prices or greater access to credit. Research also suggests that the mortgage market may not be perfectly competitive and therefore that creditors may not fully pass through reductions even in marginal costs.[54] Therefore, the benefit to consumers from receiving decreased costs at origination because decreased servicing costs are passed through is likely to be small. Lower servicing costs could also benefit consumers by encouraging new originators to enter the market. New exempt originators may be better able to compete with incumbent originators and potentially provide mortgages to underserved consumers because they will not have to incur the costs of establishing and maintaining escrow accounts. They in turn could provide more credit at lower costs to consumers. However, recent research suggests that the size of this benefit may be small.[55]

The costs to consumers of not having access to an escrow account include: (1) The difficulty of paying several bills instead of one, (2) a loss of a commitment and budgeting device, and (3) reduced transparency of mortgage costs potentially leading some consumers to spend more on house payments than they want, need, or can afford.

Consumers may find it less convenient to separately pay a mortgage bill, an insurance bill, and potentially several tax bills, instead of one bill from the mortgage servicer with all requirement payments included. Servicers who maintain escrow accounts effectively assume the burden of tracking whom to pay, how much, and when, across multiple payees. Consumers without escrow accounts assume this burden themselves. This cost varies across consumers, and there is no current research to estimate it. An approximation may be found, however, in an estimate of around $20 per month per consumer, depending on the household's income, coming from the value of paying the same bill for phone, cable television, and internet.[56]

The loss of escrow accounts may hurt consumers who value the budgetary predictability and commitment that escrow accounts provide. Recent research finds that many homeowners do not pay full attention to property taxes,[57] and are more likely to pay property tax bills on time if sent reminders to plan for these payments.[58] Other research suggests that many consumers, in order to limit their spending, prefer to pay more for taxes than necessary through payroll deductions and receive a tax refund check from the IRS in the spring, even though consumers who do this forgo interest they could have earned on the overpaid taxes.[59] This could suggest that some consumers may value mortgage escrow accounts because they provide a form of savings commitment. The Bureau recognizes that the budgeting and commitment benefits of mortgage escrow accounts vary across consumers. These benefits will be particularly large for consumers who would otherwise miss payments or even experience foreclosure. Research suggests that a nontrivial fraction of consumers may be in this group.[60] Conversely, as discussed previously, some consumers may assign no benefit to or consider the budgeting and commitment aspects of escrow accounts to be a cost to them.

Finally, escrow accounts may make it easier for consumers to shop for mortgages by reducing the number of payments consumers have to compare. Consumers considering mortgages

[53] Some states require the paying of interest on escrow account balances. But even in those states the consumer might be able to arrange a better return than the escrow account provides.

[54] Jason Allen *et al., The Effect of Mergers in Search Markets: Evidence from the Canadian Mortgage Industry,* Am. Econ. Rev. 2013, 104(10), at 3365–96.

[55] Alexei Alexandrov and Xiaoling An, *Regulations, Community Bank and Credit Union Exits, and Access to Mortgage Credit, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2462128.*

[56] H. Liu *et al., Complementarities and the Demand for Home Broadband internet Services,* Marketing Science, 29(4), 701–20 (2010).

[57] Francis Wong, *The Financial Burden of Property Taxes, https://www.dropbox.com/sh/55dcwuztmo8bwuv/AADfEOFVXZ8zVGzj0-Od5GCKa?dl=0.*

[58] Stephanie Moulton *et al., Reminders to Pay Property Tax Payments: A Field Experiment of Older Adults with Reverse Mortgages, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3445419.*

[59] Michael A. Barr and Jane B. Dokko, *Paying to Save: Tax Withholding and Asset Allocation Among Low- and Moderate-Income Taxpayers,* Finance and Economics Discussion Series, Federal Reserve Board (2008), *http://www.federalreserve.gov/pubs/feds/2008/200811/200811pap.pdf.*

[60] Moulton *et al., supra* note 58. *See also* Nathan B. Anderson and Jane B. Dokko, *Liquidity Problems and Early Payment Default Among Subprime Mortgages,* Finance and Economics Discussion Series, Federal Reserve Board (2011), *http://www.federalreserve.gov/pubs/feds/2011/201109/201109pap.pdf* (Anderson and Dokko).

without escrow accounts may not be fully aware of the costs they would be assuming and so may end up paying more on mortgage and housing costs than they want, need, or can afford. Research suggests that some consumers make suboptimal decisions when obtaining a mortgage, in part because of the difficulty of comparing different mortgage options across a large number of dimensions, and that consumers presented with simpler mortgage choices make better decisions.[61] For example, if a consumer compares a monthly mortgage payment that includes an escrow payment, as most consumer mortgages do, with a payment that does not include an escrow payment, the consumer may mistakenly believe the non-escrow loan is less expensive, even though the non-escrow loan may in fact be more expensive. In practice, the magnitude and frequency of these mistakes likely depend in part on the effectiveness of cost disclosures consumers receive while shopping for mortgages.

2. Potential Costs and Benefits to Affected Creditors

For affected creditors, the main effect of the proposed rule is that they would no longer be required to establish and maintain escrow accounts for HPMLs. As described above, the Bureau estimates that fewer than 3,000 HPMLs were originated in 2018 by institutions likely to be impacted by the rule. Of the 147 institutions that are likely to be impacted by the proposed rule as described above, 101 were not exempt under EGRRCPA from reporting APOR rate spreads. Of these 101, no more than 80 originated at least one HPML in 2018.

The main benefit of the rule on affected entities would be cost savings. There are startup and operational costs of providing escrow accounts.

Operational costs of maintaining escrow accounts for a given time period (such as a year) can be divided into costs associated with maintaining any escrow account for that time period and marginal costs associated with maintaining each escrow account for that time period. The cost of maintaining software to analyze escrow accounts for under- or overpayments is an example of the former. Because the entities affected by the rule are small and do not originate large numbers of mortgages, this kind of cost will not be spread among many loans. The per-letter cost of mailing consumers escrow statements is an example of the latter. The Bureau does not have data to estimate these costs.

The startup costs associated with creating the infrastructure to establish and maintain escrow accounts may be substantial. However, many creditors who would not be required to establish and maintain escrow accounts under the proposed rule are currently required to do so under the existing regulation. These creditors have already paid these startup costs and would therefore not benefit from lower startup costs under the proposed rule. The proposed rule would lower startup costs for new firms that enter the market. The proposed rule would also lower startup costs for insured depositories and insured credit unions that are sufficiently small that they are currently exempt from mortgage escrow requirements under the existing regulation, but that would grow in size such that they would no longer be exempt under the existing regulation, but still be exempt under the proposed rule.

Affected creditors could still provide escrow accounts for consumers if they choose to do so. Therefore, the proposed rule would not impose any cost on creditors. However, the benefits to firms of the proposed rule would be partially offset by forgoing the benefits of providing escrow accounts. The two main benefits to creditors of providing escrow accounts to consumers are (1) decreased default risk for consumers, and (2) the loss of interest income from escrow accounts.

As noted previously, research suggests that escrow accounts reduce mortgage default rates.[62] Eliminating escrow accounts may therefore increase default rates, offsetting some of the benefits to creditors of lower servicing costs.[63] In the event of major damage to the property, the creditor might end up with little or nothing if the homeowner had not been paying home insurance premiums. If the homeowner had not been paying taxes, there might be a claim or lien on the property interfering with the creditor's ability to access the full collateral. Therefore, the costs to creditors of foreclosures may be especially severe in the case of homeowners without mortgage escrow accounts.

The other cost to creditors of eliminating escrow accounts is the interest that they otherwise would have earned on escrow account balances. Depending on the State, creditors might not be required to pay interest on the money in the escrow account or might be required to pay a fixed interest rate that is less than the market rate.[64] The Bureau does not have the data to determine the interest that creditors earn on escrow account balances, but numerical examples may be illustrative. Assuming a two percent annual interest rate and a mortgage account with property tax and insurance payments of $500 every six months, the servicer earns about $5 a year in interest because of escrow. Assuming a five percent annual interest rate and a mortgage account with property tax and insurance payments of $2,500 every six months, the servicer earns about $65 a year in interest because of escrow.

The Bureau does not have the data to estimate the benefits of lower default rates or escrow account interest for creditors. However, the Bureau believes that for most lenders the marginal benefits of maintaining escrow accounts outweigh the marginal costs, on average, because in the current market lenders and servicers often do not relieve consumers of the obligation to have escrow accounts unless those consumers meet requirements related to credit scores, home equity, and other measures of default risk. In addition, creditors often charge consumers a fee for eliminating escrow accounts, in order to compensate the creditors for the increase in default risk associated with the removal of escrow accounts. However, for small lenders that do not engage in a high volume of mortgage lending and could benefit from the proposed rule, the analysis may be different.

E. Potential Specific Impacts of the Proposed Rule

Insured Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026

The proposed rule would apply to insured depository instructions and credit unions with $10 billion or less in assets. Therefore, the consideration of the benefits, costs, and impacts of the proposed rule on covered persons presented above represents in full the Bureau's analysis of the benefits, costs,

[61] Susan E. Woodward and Robert E. Hall, *Consumer Confusion in the Mortgage Market: Evidence of Less than a Perfectly Transparent and Competitive Market,* Am. Econ. Rev.: Papers & Proceedings, 100(2), 511–15.

[62] *See* Moulton *et al., supra* note 58; *see also* Anderson and Dokko, *supra* note 60.

[63] Because of this potential, many creditors currently verify whether or not the consumer made the requisite insurance premiums and tax payments every year even where the consumer did not set up an escrow account. The proposed rule would allow creditors to forego this verification process as the funds would be escrowed.

[64] Some states may require interest rates that are higher than market rates, imposing a cost on creditors who provide escrow accounts.

and impacts of the proposed rule on insured depository institutions and credit unions with $10 billion or less in assets.

Impact of the Proposed Provisions on Consumer Access to Credit and on Consumers in Rural Areas

The proposed rule would affect insured depositories and insured credit unions that operate at least in part in rural or underserved areas. As discussed above, the Bureau does not expect the costs, benefits, or impacts of the rule to be large in aggregate, but because affected entities must operate in rural or underserved areas, the costs, benefits, and impacts of the rule may be expected to be larger in rural areas. Entities likely to be affected by the proposed rule originated roughly 0.9 percent of all mortgages reported to HMDA in 2018. Such entities originated roughly 1.6 percent of all mortgages in rural areas reported to HMDA in 2018. Therefore, entities likely to be affected by the proposed rule have a small share of the overall market, and a small but somewhat larger share of the rural market. This suggests the costs, benefits, and impacts of the rule will be disproportionately large in rural areas.

As discussed above, the proposed rule may increase consumer access to credit. It may also present other costs, benefits, and impacts for affected consumers. Because creditors likely to be affected by this rule have a disproportionately large market share in rural areas, the Bureau expects that the costs, benefits, and impacts of the proposed rule on rural consumers would be proportionally larger than the costs, benefits, and impacts of the proposed rule on other consumers.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[65] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[66]

A depository institution is considered ''small'' if it has $600 million or less in assets.[67] Under existing regulations, most depository institutions with less than $2 billion in assets are already exempt from the mortgage escrow requirement, and there would be no difference if they chose to use the new exemption. The proposed rule would affect only insured depository institutions and insured credit unions, and it would affect only certain of such institutions with over approximately $2 billion in assets. Since depository institutions with over $2 billion in assets are not small under the SBA definition, the proposed rule would not affect any small entities.

Furthermore, affected institutions could still provide escrow accounts for their consumers if they chose to. Therefore, the proposed rule would not impose any substantial burden on any entities, including small entities.

Accordingly, the Director hereby certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comment on the analysis above and requests any relevant data.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[68] Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation. The collections of information related to Regulation Z have been previously reviewed and approved by OMB and assigned OMB Control number 3170–0015. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would not impose any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

IX. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National Banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Amend § 1026.35 by:
■ a. Adding paragraphs (a)(3) and (4);
■ b. Revising paragraphs (b)(2)(iii)(D)(*1*), (b)(2)(iv)(A), and (b)(2)(v); and
■ c. Adding paragraph (b)(2)(vi).

The additions and revisions read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

(a) * * *

(3) ''Insured credit union'' has the meaning given in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(4) ''Insured depository institution'' has the meaning given in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) * * *

(2) * * *

(iii) * * *

(D) * * *

(*1*) Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]; or

* * * * *

(iv) * * *

(A) An area is ''rural'' during a calendar year if it is:

(*1*) A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget

[65] 5 U.S.C. 601 *et seq.*

[66] 5 U.S.C. 609.

[67] The current SBA size standards can be found on SBA's website at *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

[68] 44 U.S.C. 3501 *et seq.*

and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS); or

(*2*) A census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States.

* * * * *

(v) Notwithstanding paragraphs (b)(2)(iii) and (vi) of this section, an escrow account must be established pursuant to paragraph (b)(1) of this section for any first-lien higher-priced mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions in paragraph (b)(2)(iii) or (vi) of this section, unless otherwise exempted by this paragraph (b)(2).

(vi) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction made by a creditor that is an insured depository institution or insured credit union if, at the time of consummation:

(A) As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the insured depository institution or insured credit union had assets of $10,000,000,000 or less, adjusted annually for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November (see comment 35(b)(2)(vi)(A)–1 for the applicable threshold);

(B) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates, as defined in § 1026.32(b)(5), together extended no more than 1,000 covered transactions secured by a first lien on a principal dwelling; and

(C) The transaction satisfies the criteria in paragraphs (b)(2)(iii)(A) and (D) of this section.

* * * * *

■ 3. Amend supplement I to part 1026 by:

■ a. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans:*

■ i. Revising *Paragraph 35(b)(2)(iii);*

■ ii. Adding *Paragraph 35(b)(2)(iii)(D)(*1*)* and *Paragraph 35(b)(2)(iii)(D)(*2*);*

■ iv. Revising *Paragraph 35(b)(2)(iv);*

■ v. Revising *Paragraph 35(b)(2)(v);* and

■ vi. Adding *Paragraph 35(b)(2)(vi)* and *Paragraph 35(b)(2)(vi)(A).*

■ b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling,* revising *Paragraph 43(f)(1)(vi).*

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b) Escrow Accounts

* * * * *

35(b)(2) Exemptions

* * * * *

Paragraph 35(b)(2)(iii)

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), secured by a property located in an area that is either ''rural'' or ''underserved,'' as set forth in § 1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in § 1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a calendar year if it extended a first-lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:

1. Assume that a creditor extended during 2016 a first-lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first-lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area.

ii. The creditor and its affiliates together extended no more than 2,000 covered transactions, as defined in § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, during the preceding calendar year or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year. For purposes of § 1026.35(b)(2)(iii)(B), a transfer of a first-lien covered transaction to ''another person'' includes a transfer by a creditor to its affiliate.

A. In general, whether this condition is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.

B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

C. For purposes of § 1026.35(b)(2)(iii)(B), extensions of first-lien covered transactions, during the applicable time period, by all of a creditor's affiliates, as ''affiliate'' is defined in § 1026.32(b)(5), are counted toward the threshold in this section. ''Affiliate'' is defined in § 1026.32(b)(5) as ''any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).'' Under the Bank Holding Company Act, a company has control over a bank or another company if it directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; it controls in any manner the election of a majority of the directors or trustees of the bank or company; or the Federal Reserve Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. 12 U.S.C. 1841(a)(2).

iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.

A. For purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's ''affiliate'' (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of definition of ''affiliate.''

B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of ''regularly extended'' is based on the number of times a person extends consumer credit for purposes of the definition of ''creditor'' in § 1026.2(a)(17). Because covered transactions are ''transactions secured by a dwelling,'' consistent with § 1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

C. If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an ''affiliate,'' as defined in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, ''as set forth in the Bank Holding Company Act.'' If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of the definition of ''affiliate.''

D. A creditor satisfies the criterion in § 1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015 satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016 and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.

E. Under § 1026.35(b)(2)(iii)(C), the $2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2020, the asset threshold is $2,202,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 has total assets of less than $2,202,000,000 on December 31, 2019, satisfies this criterion for purposes of any loan consummated in 2020 and for purposes of any loan consummated in 2021 for which the application was received before April 1, 2021. For historical purposes:

1. For calendar year 2013, the asset threshold was $2,000,000,000. Creditors that had total assets of less than $2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

2. For calendar year 2014, the asset threshold was $2,028,000,000. Creditors that had total assets of less than $2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

3. For calendar year 2015, the asset threshold was $2,060,000,000. Creditors that had total assets of less than $2,060,000,000 on December 31, 2014, satisfied this criterion for purposes of any loan consummated in 2015 and, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2014 were less than that amount, for purposes of any loan consummated in 2016 for which the application was received before April 1, 2016.

4. For calendar year 2016, the asset threshold was $2,052,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2015 had total assets of less than $2,052,000,000 on December 31, 2015, satisfied this criterion for purposes of any loan consummated in 2016 and for purposes of any loan consummated in 2017 for which the application was received before April 1, 2017.

5. For calendar year 2017, the asset threshold was $2,069,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 had total assets of less than $2,069,000,000 on December 31, 2016, satisfied this criterion for purposes of any loan consummated in 2017 and for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018.

6. For calendar year 2018, the asset threshold was $2,112,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2017 had total assets of less than $2,112,000,000 on December 31, 2017, satisfied this criterion for purposes of any loan consummated in 2018 and for purposes of any loan consummated in 2019 for which the application was received before April 1, 2019.

7. For calendar year 2019, the asset threshold was $2,167,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2018 had total assets of less than $2,167,000,000 on December 31, 2018, satisfied this criterion for purposes of any loan consummated in 2019 and for purposes of any loan consummated in 2020 for which the application was received before April 1, 2020.

iv. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Thus, the exemption applies, provided the other conditions of § 1026.35(b)(2)(iii) (or, if applicable, the conditions for the exemption in § 1026.35(b)(2)(vi)) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), however, the creditor and its affiliate become ineligible for the exemptions in § 1026.35(b)(2)(iii) and (vi) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of § 1026.35(b)(2)(iii) and (vi), a creditor or its affiliate ''maintains'' an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

Paragraph 35(b)(2)(iii)(D)(*1*)

1. *Exception for certain accounts.* Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], are not counted for purposes of § 1026.35(b)(2)(iii)(D). For applications received on and after [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], creditors, together with their affiliates, that establish new escrow accounts, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), do not qualify for the exemptions provided under § 1026.35(b)(2)(iii) and (vi). Creditors, together with their affiliates, that continue to maintain escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], still qualify for the exemptions provided under § 1026.35(b)(2)(iii) and (vi) so long as they do not establish new escrow accounts for transactions for which they received applications on or after [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], other than those described in § 1026.35(b)(2)(iii)(D)(*2*), and they otherwise qualify under § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi).

Paragraph 35(b)(2)(iii)(D)(*2*)

1. *Exception for post-consummation escrow accounts for distressed consumers.* An escrow account established after consummation for a distressed consumer does not count for purposes of § 1026.35(b)(2)(iii)(D). Distressed consumers are consumers who are working with the creditor or servicer to attempt to bring the loan into a current status through a modification, deferral, or other accommodation to the consumer. A creditor, together with its affiliates, that establishes escrow accounts after consummation as a regular business practice, regardless of whether consumers are in distress, does not qualify for the exception described in § 1026.35(b)(2)(iii)(D)(*2*).

Paragraph 35(b)(2)(iv)

1. *Requirements for ''rural'' or ''underserved'' status.* An area is considered to be ''rural'' or ''underserved'' during a calendar year for purposes of § 1026.35(b)(2)(iii)(A) if it satisfies either the definition for ''rural'' or the definition for ''underserved'' in § 1026.35(b)(2)(iv). A creditor's extensions of covered transactions, as defined by § 1026.43(b)(1), secured by first liens on properties located in such areas are considered in determining whether the creditor satisfies the condition in § 1026.35(b)(2)(iii)(A). *See* comment 35(b)(2)(iii)–1.

i. Under § 1026.35(b)(2)(iv)(A), an area is rural during a calendar year if it is: A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. Metropolitan statistical areas and micropolitan statistical areas are defined by the Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). For purposes of § 1026.35(b)(2)(iv)(A)(*1*), ''adjacent'' has the meaning applied by the USDA–ERS in determining a county's UIC; as so applied, ''adjacent'' entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns. A county is a ''rural'' area under § 1026.35(b)(2)(iv)(A)(*1*) if the USDA–ERS categorizes the county under UIC 4, 6, 7, 8, 9, 10, 11, or 12. Descriptions of UICs are available on the USDA–ERS website at *http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx.* A county for which there is no currently applicable UIC (because the county has been created since the USDA–ERS last categorized counties) is a rural area only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

ii. Under § 1026.35(b)(2)(iv)(B), an area is underserved during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by first liens, five or more times on properties in the county. Specifically, a county is an ''underserved'' area if, in the applicable calendar year's public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions, with HMDA geocoding that places the properties in that county.

iii. A. Each calendar year, the Bureau applies the ''underserved'' area test and the ''rural'' area test to each county in the United States. If a county satisfies either test, the Bureau will include the county on a list of counties that are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(*1*) or § 1026.35(b)(2)(iv)(B) for a particular calendar year, even if the county contains census blocks that are designated by the Census Bureau as urban. To facilitate compliance with appraisal requirements in § 1026.35(c), the Bureau also creates a list of those counties that are rural under the Bureau's definition without regard to whether the counties are underserved. To the extent that U.S. territories are treated by the Census Bureau as counties and are neither metropolitan statistical areas nor micropolitan statistical areas adjacent to metropolitan statistical areas, such territories will be included on these lists as rural areas in their entireties. The Bureau will post on its public website the applicable lists for each calendar year by the end of that year to assist creditors in ascertaining the availability to them of the exemption during the following year. Any county that the Bureau includes on these lists of counties that are rural or underserved under the Bureau's definitions for a particular year is deemed to qualify as a rural or underserved area for that calendar year for purposes of § 1026.35(b)(2)(iv), even if the county contains census blocks that are designated by the Census Bureau as urban. A property located in such a listed county is deemed to be located in a rural or underserved area, even if the census block in which the property is located is designated as urban.

B. A property is deemed to be in a rural or underserved area according to the definitions in § 1026.35(b)(2)(iv) during a particular calendar year if it is identified as such by an automated tool provided on the Bureau's public website. A printout or electronic copy from the automated tool provided on the Bureau's public website designating a particular property as being in a rural or underserved area may be used as ''evidence of compliance'' that a property is in a rural or underserved area, as defined in § 1026.35(b)(2)(iv)(A) and (B), for purposes of the record retention requirements in § 1026.25.

C. The U.S. Census Bureau may provide on its public website an automated address search tool that specifically indicates if a property is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that began after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is deemed to be in a rural area if the search results provided for the property by any such automated address search tool available on the Census Bureau's public website do not designate the property as being in an urban area. A printout or electronic copy from such an automated address search tool available on the Census Bureau's public website designating a particular property as not being in an urban area may be used as ''evidence of compliance'' that the property is in a rural area, as defined in § 1026.35(b)(2)(iv)(A), for purposes of the record retention requirements in § 1026.25.

D. For a given calendar year, a property qualifies for a safe harbor if any of the enumerated safe harbors affirms that the property is in a rural or underserved area or not in an urban area. For example, the Census Bureau's automated address search tool may indicate a property is in an urban area, but the Bureau's rural or underserved counties list indicates the property is in a rural or underserved county. The property in this example is in a rural or underserved area because it qualifies under the safe harbor for the rural or underserved counties list. The lists of counties posted on the Bureau's public website, the automated tool on its public website, and the automated address search tool available on the Census Bureau's public website, are not the exclusive means by which a creditor can demonstrate that a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B). However, creditors are required to retain ''evidence of compliance'' in accordance with § 1026.25, including determinations of whether a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B).

2. *Examples.* i. An area is considered ''rural'' for a given calendar year based on the most recent available UIC designations by the USDA–ERS and the most recent available delineations of urban areas by the U.S. Census Bureau that are available at the beginning of the calendar year. These designations and delineations are updated by the USDA–ERS and the U.S. Census Bureau respectively once every ten years. As an example, assume a creditor makes first-lien covered transactions in Census Block X that is located in County Y during calendar year 2017. As of January 1, 2017, the most recent UIC designations were published in the second quarter of 2013, and the most recent delineation of urban areas was announced in the **Federal Register** in 2012, *see* U.S. Census Bureau, *Qualifying Urban Areas for the 2010 Census,* 77 FR 18652 (Mar. 27, 2012). To determine whether County Y is rural under the Bureau's definition during calendar year 2017, the creditor can use USDA–ERS's 2013 UIC designations. If County Y is not rural, the creditor can use the U.S. Census Bureau's 2012 delineation of urban areas to determine whether Census Block X is rural and is therefore a ''rural'' area for purposes of § 1026.35(b)(2)(iv)(A).

ii. A county is considered an ''underserved'' area for a given calendar year based on the most recent available HMDA data. For example, assume a creditor makes first-lien covered transactions in County Y during calendar year 2016, and the most recent HMDA data are for calendar year 2015, published in the third quarter of 2016.

The creditor will use the 2015 HMDA data to determine ''underserved'' area status for County Y in calendar year 2016 for the purposes of qualifying for the ''rural or underserved'' exemption for any higher-priced mortgage loans consummated in calendar year 2017 or for any higher-priced mortgage loan consummated during 2018 for which the application was received before April 1, 2018.

Paragraph 35(b)(2)(v)

1. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the loan is consummated. Such an agreement is sometimes known as a ''forward commitment.'' Even if a creditor is otherwise eligible for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi), a first-lien higher-priced mortgage loan that will be acquired by a purchaser pursuant to a forward commitment is subject to the requirement to establish an escrow account under § 1026.35(b)(1) unless the purchaser is also eligible for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi), or the transaction is otherwise exempt under § 1026.35(b)(2). The escrow requirement applies to any such transaction, whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of mortgage obligations with certain prescribed criteria that the transaction meets. For example, assume a creditor that qualifies for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi) makes a higher-priced mortgage loan that meets the purchase criteria of an investor with which the creditor has an agreement to sell such mortgage obligations after consummation. If the investor is ineligible for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi), an escrow account must be established for the transaction before consummation in accordance with § 1026.35(b)(1) unless the transaction is otherwise exempt (such as a reverse mortgage or home equity line of credit).

Paragraph 35(b)(2)(vi)

1. For guidance on applying the grace periods for determining asset size or transaction thresholds under § 1026.35(b)(2)(vi)(A), (B) and (C), the rural or underserved requirement, or other aspects of the exemption in § 1026.35(b)(2)(vi) not specifically discussed in the commentary to § 1026.35(b)(2)(vi), an insured depository institution or insured credit union may refer to the commentary to § 1026.35(b)(2)(iii), while allowing for differences between the features of the two exemptions.

Paragraph 35(b)(2)(vi)(A)

1. The asset threshold in § 1026.35(b)(2)(vi)(A) will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. Unlike the asset threshold in § 1026.35(b)(2)(iii) and the other thresholds in § 1026.35(b)(2)(vi), affiliates are not considered in calculating compliance with this threshold. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2020, the asset threshold is $10,000,000,000. A creditor that during calendar year 2019 had assets of $10,000,000,000 or less on December 31, 2019, satisfies this criterion for purposes of any loan consummated in 2020 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2021 for which the application was received before April 1, 2021.

35(b)(2)(vi)(B)

1. The transaction threshold in § 1026.35(b)(2)(vi)(B) differs from the transaction threshold in § 1026.35(b)(2)(iii)(B) in two ways. First, the threshold in § 1026.35(b)(2)(vi)(B) is 1,000 loans secured by first liens on a principal dwelling, while the threshold in § 1026.35(b)(2)(iii)(B) is 2,000 loans secured by first liens on a dwelling. Second, all loans made by the creditor and its affiliates secured by a first lien on a principal dwelling count toward the 1,000 loan threshold in § 1026.35(b)(2)(vi)(B), whether or not such loans are held in portfolio. By contrast, under § 1026.35(b)(2)(iii)(B), only loans secured by first liens on a dwelling that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, are counted toward the 2,000 loan threshold.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(f) Balloon-Payment Qualified Mortgages Made by Certain Creditors

* * * * *

43(f)(1) Exemption

* * * * *

Paragraph 43(f)(1)(vi)

1. *Creditor qualifications.* Under § 1026.43(f)(1)(vi), to make a qualified mortgage that provides for a balloon payment, the creditor must satisfy three criteria that are also required under § 1026.35(b)(2)(iii)(A), (B) and (C), which require:

i. During the preceding calendar year or during either of the two preceding calendar years if the application for the transaction was received before April 1 of the current calendar year, the creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), on a property that is located in an area that is designated either ''rural'' or ''underserved,'' as defined in § 1026.35(b)(2)(iv), to satisfy the requirement of § 1026.35(b)(2)(iii)(A) (the rural-or-underserved test). Pursuant to § 1026.35(b)(2)(iv), an area is considered to be rural if it is: A county that is neither in a metropolitan statistical area, nor a micropolitan statistical area adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. An area is considered to be underserved during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times.

A. The Bureau determines annually which counties in the United States are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(*1*) or § 1026.35(b)(2)(iv)(B) and publishes on its public website lists of those counties to assist creditors in determining whether they meet the criterion at § 1026.35(b)(2)(iii)(A). Creditors may also use an automated tool provided on the Bureau's public website to determine whether specific properties are located in areas that qualify as ''rural'' or ''underserved'' according to the definitions in § 1026.35(b)(2)(iv) for a particular calendar year. In addition, the U.S. Census Bureau may also provide on its public website an automated address search tool that specifically indicates if a property address is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that begins after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is located in an area that qualifies as ''rural'' according to the definitions in § 1026.35(b)(2)(iv) if the search results provided for the property by any such automated address search tool available on the Census Bureau's public website do not identify the property as being in an urban area.

B. For example, if a creditor extended during 2017 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv), the creditor meets this element of the exception for any transaction consummated during 2018.

C. Alternatively, if the creditor did not extend in 2017 a transaction that meets the definition of rural or underserved test under § 1026.35(b)(2)(iv), the creditor satisfies this criterion for any transaction consummated during 2018 for which it received the application before April 1, 2018, if it extended during 2016 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv).

ii. During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor together with its affiliates extended no more than 2,000 covered transactions, as defined by § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, to satisfy the requirement of § 1026.35(b)(2)(iii)(B).

iii. As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that do not exceed the applicable asset threshold established by the Bureau, to satisfy the requirement of § 1026.35(b)(2)(iii)(C). The Bureau publishes notice of the asset threshold each year by amending comment 35(b)(2)(iii)–1.iii.

Dated: June 29, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–14692 Filed 7–21–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–1102; Notice No. 25–20–03–SC]

Special Conditions: Qantas Airways Limited, Boeing Model 737–800 Airplane; Personal Electronic-Device Straps Installed on Seat Backs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Special conditions; withdrawal.

SUMMARY: The FAA is withdrawing the Notice of Proposed Special Conditions, which published in the **Federal Register** on March 31, 2020. The FAA is withdrawing the notice because the special conditions are not necessary.

DATES: The special conditions published on March 31, 2020, at 85 FR 17786, are withdrawn as of July 22, 2020.

FOR FURTHER INFORMATION CONTACT: John Shelden, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3214; email *john.shelden@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2020, the FAA published in the **Federal Register** Notice of Proposed Special Conditions No. 25–20–03–SC, Docket No. FAA–2019–1102 (85 FR 17786). The published special conditions pertain to the Qantas Airways Limited installation of personal electronic-device (PED) retention straps on passenger seat backs, on Boeing Model 737–800 airplanes.

Reason for Withdrawal

Upon further review, the FAA has determined that the current airworthiness standards are sufficient, and special conditions are not necessary to address PED retention straps installed on the backs of passenger seats in Boeing Model 737–800 airplanes, as modified by Qantas Airways Limited. The applicable title 14, Code of Federal Regulations (14 CFR) airworthiness standards include:

14 CFR 25.562(c)(5) and (c)(8)—Emergency Landing Dynamic Conditions
14 CFR 25.601—Hazardous Features
14 CFR 25.785(b), (d), and (k)—Occupant Injury and Projecting Objects
14 CFR 25.787(a) and (b)—Stowage Compartments
14 CFR 25.813(c)—Emergency Exit Access
14 CFR 25.1301(a)—Function and Installation
14 CFR 25.1541—Markings and Placards

In addition, the FAA has approved several other PED-retention designs using the

Conclusion

The Notice of Proposed Special Conditions No. 25–20–03–SC, Docket No. FAA–2019–1102, published at 85 FR 17786, is therefore withdrawn.

James E Wilborn,

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

[FR Doc. 2020–15034 Filed 7–21–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–1055; Notice No. 25–20–05–SC]

Special Conditions: Boeing Commercial Airplanes Model 777–9 Airplanes; Structure-Mounted Airbags

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Commercial Airplanes (Boeing) Model 777–9 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is structure-mounted airbags designed to limit occupant forward excursion in the event of an emergency landing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before September 8, 2020.

ADDRESSES: Send comments identified by Docket No. FAA–2019–1055 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of

Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On December 6, 2013, Boeing applied for a change to Type Certificate No. T00001SE for structure-mounted airbags installed in the Boeing Model 777–9 airplane. The application date was extended to March 30, 2016 based on Boeing's request. The Boeing Model 777–9 airplane, which is a derivative of the Boeing Model 777 airplane currently approved under Type Certificate No. T00001SE, is a twin-engine, transport-category airplane with seating for 495 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–9 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–9 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–9 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

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

Airbags mounted to structure to prevent head injury.

Discussion

Boeing proposes to install structure-mounted airbags instead of inflatable lap belts as a means to protect each occupant from serious injury in the event of an emergency landing, as required by § 25.562(c)(5), on 777–9 airplanes.

Such use of airbags to provide injury protection for the occupant is a novel or unusual feature for this airplane model, and the applicable airworthiness regulations do not contain adequate or appropriate airworthiness standards for these design features. Therefore, special conditions are needed to address requirements particular to installation of airbags in this manner.

Special conditions exist for airbags installed on seat belts, known as inflatable lap belts, which have been installed on Boeing passenger seats. Structure-mounted airbags, although a novel design, were first introduced on Jetstream Aircraft Limited Model 4100 series airplanes, which resulted in issuance of Special Conditions 25–ANM–127 on May 14, 1997. These special conditions supplemented 14 CFR part 25 and, more specifically, §§ 25.562 and 25.785.

The structure-mounted airbag, similar to the inflatable lap belt, is designed to limit occupant forward excursion in the event of an emergency landing. These airbags will reduce the potential for serious injury, including reducing the head-injury criterion measurement defined in part 25. However, structure-mounted airbags function similarly as automotive airbags, where the airbag deploys from furniture located in front of the passenger, relative to the airplane's direction of flight, forming a barrier between the structure and occupant. Also, unlike the inflatable lap belt, the structure-mounted airbag does not move with the occupant. To account for out-of-position and brace-position occupants, the airbag is designed to conform to the curvature of the exposed structure in the head-strike zone.

Because the airbag system is essentially a single-use device, it could deploy under crash conditions that are not sufficiently so severe as to require the injury protection the airbag system provides. Because an actual crash is frequently composed of a series of impacts before the airplane comes to rest, a larger impact following the initial impact could render the airbag system unavailable. This potential situation does not exist with standard upper-torso restraints, which tend to provide continuous protection regardless of impact severity, or number of impacts, in a crash event. Therefore, the airbag-system installation should be such that it provides protection, when it is required, by not expending its protection when it is not required. If the airbag deployment threshold is unnecessarily low, the airbag would need to continue to provide protection when an impact requiring protection occurs.

These proposed special conditions are based upon special conditions 25–605–SC for the Boeing Model 787–9 airplanes equipped with B/E Aerospace Super-Diamond model business-class passenger seats and associated furniture. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–9 airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

■ Accordingly, the FAA proposes the following special conditions as part of the type certification basis for Boeing Model 777–9 airplanes.

1. The applicant must demonstrate by test that the structure-mounted airbag will deploy and provide protection under crash conditions where it is necessary to prevent serious injury to a 50th percentile occupant, as specified in § 25.562. The means of protection must provide a consistent approach to energy absorption for a range of occupants, from a two-year-old child to a 95th percentile male.

2. The structure-mounted airbag must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly.

3. The structure-mounted airbag system must not be susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) likely to be experienced in service.

4. Deployment of the structure-mounted airbag must not introduce hazards or injury mechanisms to the seated occupant, including occupants in the brace position. Deployment of the structure-mounted airbag must also not result in injuries that could impede rapid exit from the airplane.

5. The applicant must demonstrate that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. Inadvertent deployment must not cause injury to anyone who may be positioned close to the structure-mounted airbag (*e.g.,* seated in an adjacent seat, or standing adjacent to the airbag installation or the subject seat). Cases where a structure-mounted airbag is inadvertently deployed near a seated occupant or an empty seat must be considered.

6. Effects of the deflection and deformation of the structure to which the airbag is attached must be taken into account when evaluating deployment and location of the inflated airbag. The effect of loads imposed by airbag deployment, or stowed components where applicable, must also be taken into account.

7. Inadvertent deployment of the structure-mounted airbag during the most critical part of flight will either not cause a hazard to the airplane or is extremely improbable.

8. The applicant must demonstrate that the structure-mounted airbag, when deployed, does not impair access to the seatbelt- or harness-release means, and must not hinder evacuation. This will include consideration of adjacent seat places and the aisle.

9. The airbag, once deployed, must not adversely affect the emergency-lighting system, and must not block escape-path lighting to the extent that the light(s) no longer meet their intended function.

10. The structure-mounted airbag must not impede occupants' rapid exit from the airplane 10 seconds after its deployment.

11. Where structure-mounted airbag systems are installed in or close to passenger evacuation routes (other than for the passenger seat for which the airbag is installed), possibility of impact on emergency evacuation (*e.g.,* hanging in the aisle, potential trip hazard, etc.) must be evaluated.

12. The airbag electronic system must be designed to be protected from lightning per § 25.1316(b), and high-intensity radiated fields per § 25.1317(c).

13. The structure-mounted airbag system must not contain or release hazardous quantities of gas or particulate matter into the cabin.

14. The structure-mounted airbag installation must be protected from the effects of fire such that no hazard to occupants will result.

15. The inflatable bag material must meet the 2.5-inches-per-minute horizontal flammability test defined in 14 CFR part 25, appendix F, part I, paragraph (a)(1)(iv).

16. The design of the structure-mounted airbag system must protect the mechanisms and controls from external contamination associated with that which could occur on or around passenger seating.

17. The structure-mounted airbag system must have a means to verify the integrity of the structure-mounted airbag activation system.

18. The applicant must provide installation limitations to ensure installation compatibility between the seat design and opposing monument or structure.

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

James E. Wilborn,

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

[FR Doc. 2020–15506 Filed 7–21–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112339–19]

RIN 1545–BP42

Credit for Carbon Oxide Sequestration; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations regarding the credit for carbon oxide sequestration under section 45Q of the Internal Revenue Code (Code).

DATES: The public hearing is being held on Wednesday, August 26, 2020, at 10 a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Friday, August 14, 2020. If no outlines are received by

August 14, 2020, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held by teleconference. Individuals who want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–112339–19] and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–112339–19. The email should also include a copy of the speaker's public comments and outline of topics. The email must be received by August 14, 2020.

Send outline submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–112339–19).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Maggie Stehn of the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853; concerning submissions of comments, the hearing, and the access code to attend the hearing by teleconferencing, Regina Johnson at (202) 317–5177 (not toll-free numbers) or *publichearings@irs.gov.* If emailing please put Attend, Testify, or Agenda Request and [REG–112339–19] in the email subject line.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking REG–112339–19 that was published in the **Federal Register** on Tuesday, June 2, 2020, 85 FR 34050.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that submitted written comments by August 3, 2020, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by August 14, 2020.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, on *Regulations.gov,* search IRS and REG–112339–19, or by emailing your request to *publichearings@irs.gov.* Please put ''REG–112339–19 Agenda Request'' in the subject line of the email.

Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–112339–19] and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–112339–19. The email requesting to attend the public hearing must be received by 5:00 p.m. two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Martin V. Franks,

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

[FR Doc. 2020–15237 Filed 7–21–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2016–0897]

RIN 1625–AA01

Anchorage Grounds; Atlantic Ocean, Jacksonville, FL; Correction

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking; correction.

SUMMARY: This document corrects a docket number listed in a supplemental notice of proposed rulemaking that was published July 6, 2020. That supplemental notice of proposed rulemaking would establish a dedicated offshore anchorage approximately 7 nautical miles northeast of the St. Johns River inlet, Florida.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Emily Sysko, Sector Jacksonville Waterways Management Division Chief, U.S. Coast Guard; telephone 904–714–7616, email *Emily.T.Sysko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background

This document corrects a docket number listed in the **ADDRESSES** section of a supplemental notice of proposed rulemaking (SNPRM) published July 6, 2020 (85 FR 40153). That SNPRM would establish a dedicated offshore anchorage approximately 7 nautical miles northeast of the St. Johns River inlet, Florida.

Need for Correction

As published, the SNPRM contained an error in the docket number listed in the **ADDRESSES** section which is misleading and is in need of correction. This action is needed to avoid confusion as to the correct docket number for that rulemaking, USCG–2016–0897. The Coast Guard will review and consider comments submitted on or before September 4, 2020 to the incorrect docket, but this document establishes what is the correct docket number for this rulemaking.

Correction of Publication

Accordingly, the FR Doc. 2020–13827, supplemental notice of proposed rulemaking published July 6, 2020 (85 FR 40153) is corrected as follows: The Coast Guard docket number on page 40153, starting in line two of the **ADDRESSES** section, is corrected to read ''USCG–2016–0897''.

Dated: July 9, 2020.

J.E. McLeod,

Acting Chief, Office of Regulations and Administrative Law.

[FR Doc. 2020–15223 Filed 7–21–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2020–OSERS–0063]

Priority and Requirements—Activities for Traditionally Underserved Populations Catalog of Federal Domestic Assistance (CFDA) Number: 84.315C

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

ACTION: Proposed priority and requirements.

SUMMARY: The U.S. Department of Education (Department) proposes a priority under the Rehabilitation Act of 1973, as amended (Rehabilitation Act) for Activities for Traditionally Underserved Populations, Catalog of Federal Domestic Assistance (CFDA) number 84.315C. The purpose of this

activity for traditionally underserved populations is to make awards to minority entities and Indian Tribes to conduct research, training and technical assistance, and related activities to improve services under the Rehabilitation Act, especially services provided to individuals from minority backgrounds. As defined in the Rehabilitation Act, a minority entity means an entity that is a historically Black college or university, a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institute of higher education whose minority student enrollment is at least 50 percent.

DATES: We must receive your comments on or before August 21, 2020.

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use Regulations.gov'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5094, Potomac Center Plaza, Washington, DC 20202–2800.

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

FOR FURTHER INFORMATION CONTACT: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5094, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6103. Email: *Kristen.Rhinehart@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the notice of final priority and requirements, we urge you to identify clearly the proposed priority or requirement that each comment addresses. In addition to your general comments and recommended clarifications, we seek input on the proposed design of the training. We are particularly interested in your feedback on the following questions:

1. Applicants must select two focus areas from a list described in the proposed priority to implement cultural competency practices in State vocational rehabilitation (VR) agencies. Is there a greater need for, or should we prioritize, certain focus areas on this list? If so, please explain. Are there activities listed that may or may not be an especially good fit for this program? If so, please specify and explain why.
2. Considering cost and level of effort, are there any activities under Project Activities paragraphs (h)(1) and (2) that may require substantially more time and/or cost than the others? If so, please explain.
3. Under Project Activities, paragraph (c), are there additional content areas that should be included in the training? Please specify and explain why.
4. Additionally, we do not specify competencies that VR counselors and paraprofessionals, and human resource and professional development specialists should be able to demonstrate upon completion of cultural competency training. Are there certain qualities, behaviors, or specific competencies that should be specified as requirements or otherwise incorporated? Please describe and explain why.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from the proposed priority and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov*. Due to the current COVID–19 pandemic, the Department buildings are currently not open. However, upon reopening, you may also inspect the comments in person in Room 5059, 550 12th Street SW, Washington, DC, between the hours of 9:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

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

Purpose of Program: Activities for Traditionally Underserved Populations are designed to improve the quality, access, delivery of services, and outcomes under the Rehabilitation Act, especially services provided to individuals with disabilities from minority backgrounds and also to increase the capacity of minority institutions and Indian tribes to participate in activities funded under the Act.

Program Authority: 29 U.S.C. 718(b)(2)(B).

Proposed Priority:

Proposed Priority—Improving the Delivery of Vocational Rehabilitation Services to, and the Employment Outcomes of, Individuals With Disabilities From Minority Backgrounds

Background

The Department has long been committed to improving the delivery of VR services to and the employment outcomes of individuals with disabilities from minority backgrounds. Specifically, the Department's Rehabilitation Services Administration (RSA) has previously focused Federal financial assistance on building the capacity of its American Indian Vocational Rehabilitation Services (AIVRS) programs. Additionally, in 2014, the 38th Institute on Rehabilitation Issues, funded by RSA, developed ''Assume Nothing! A Monograph To Address Underserved Populations, Including Individuals Who are Deaf-Blind'' (Assume Nothing!). The monograph was designed to offer professionals at all levels within the VR system practical ideas and recommendations for how to begin to change the status quo for traditionally underserved individuals with disabilities, including individuals who are Deaf-Blind.

In support of the need for activities for traditionally underserved populations, Congress found that ''patterns of inequitable treatment of minorities have been documented in all major junctures of the vocational rehabilitation process. As compared to white Americans, a larger percentage of African-American applicants to the VR system is denied acceptance. Of applicants accepted for VR services, a larger percentage of African Americans cases is closed without being rehabilitated. Minorities are provided less training than their white counterparts. Consistently, less money is spent on minorities than on their white counterparts'' (Section 21(a)(3) of the Rehabilitation Act of 1973, as amended).

According to Assume Nothing!, ''[t]he 2010 U.S. Census (2011) reported that Whites continue to be the largest group (223.6 million), accounting for 72% of all people living in the United States. During the same time, the Black or African American population totaled 38.9 million and accounted for 13% of the total population. Approximately, 14.7 million people (about 5% of all respondents) identified their race as Asian, and 2.9 million respondents indicated they were American Indian or Alaskan Native (0.9%). Between 2000 and 2010, the Hispanic population grew by 43%, rising from 35.3 million in 2000 to 50.5 million in 2010.'' This shift was also reflected in the 2013 U.S. Population Census data as described in the ''Vocational Rehabilitation Counseling Competency with African Americans: A Professional Development Workshop'' (Garcia, 2015), which reflected a decrease in the white population from 75.1 percent in 2000 to 62.6 percent in 2013 and an increase in the African-American population from 12.9 percent in 2000 to 13.2 percent in 2013. According to ''Dual Pathways to a Better America, Preventing Discrimination and Promoting Diversity, Final Report'' (American Psychological Association, 2012), by 2050, whites are estimated to no longer be the majority racial and ethnic group in the United States.

As the United States becomes more multiethnic, multilingual, and multicultural, the need for multicultural training for VR counselors will increase (Balcazar, Suarez-Balcazar, Keys, & Taylor-Ritzler, 2010). According to recent employment data gathered from the U.S. Bureau of Labor Statistics Current Population Survey (2019), 19.3 percent of individuals with disabilities were employed. In contrast, 66.3 percent of individuals without a disability were employed. The survey data also reflects low employment ratios for individuals with disabilities representing Black (15.6 percent) and Asian (18.9 percent) ethnicities compared to over 60 percent employment for individuals without disabilities within those ethnicity groups.

As evidenced by the comprehensive data described above, we know that our country continues to become more diverse. Therefore, it is critical for VR counselors and paraprofessionals and State VR agencies to be adequately prepared to effectively meet the needs of individuals with disabilities, especially those from minority backgrounds.

Providing staff with cultural competency training can bolster inclusivity and improve outcomes for individuals with disabilities from minority backgrounds. For the purposes of this priority, the term ''cultural competency'' is used to describe a ''set of skills, values and principles that acknowledge, respect, and work toward optimal interactions between the individual and the various cultural and ethnic groups that an individual might come in contact with'' (Human Services Edu: Educating To Better The Lives of Others). A culturally competent vocational rehabilitation program will contribute to the elimination of racial and ethnic disparities in the number of employment outcomes by improving outreach, intake, and VR services, including employment opportunities, for individuals with disabilities from minority backgrounds. Cultural competency can be achieved by providing relevant training on the skills, values, and principles that acknowledge, respect, and work toward optimal interactions with VR participants from the various cultural and ethnic groups that a VR counselor, professional, paraprofessional, or others at State VR agencies might encounter and increasing the involvement and inclusion of individuals from minority backgrounds in the VR process. The goal of cultural competency training is to provide the highest quality of service to every individual, regardless of race, ethnicity, or cultural background (Georgetown University: Cultural Competence in Healthcare).

Cultural competency can be achieved by training VR counselors, paraprofessionals, and State VR agencies to provide services in a culturally competent way. According to Georgetown University: Cultural Competence in Healthcare, ''training approaches that teach facts about specific groups are best combined with cross-cultural skills-based approaches that can be universally applied.'' Training techniques that focus on curiosity, empathy, respect, and humility of individuals with disabilities from minority backgrounds can assist in the process of becoming culturally competent. According to Cultural Competence: Development of a Conceptual Framework (Balcazar, Suarez-Balcazar & Taylor-Ritzler, 2009), ''the process of becoming culturally competent can happen through repetitive engagements with diverse groups, by increasing one's critical awareness and knowledge, and/or by having opportunities for reflection and analysis about one's professional performance.'' Cultural competency can improve the relations between various cultures and ethnic groups and increase opportunity for individuals with disabilities from minority backgrounds. Finally, inclusion is an integral aspect of cultural competency and was achieved in a cultural diversity initiative of the Statewide Supported Employment System's Change Project in Massachusetts, funded by RSA. As described in ''Person-Centered Planning: A gateway to improving vocational rehabilitation services for culturally diverse individuals with disabilities,'' the goal of the project was to implement culturally sensitive and non-traditional service strategies and to ensure that at least 20 percent of participants served by the project were members of culturally, ethnically, and linguistically diverse backgrounds. By the end of the project, this goal was achieved, with an inclusion of 23 percent of participants from culturally, ethnically, and linguistically diverse backgrounds (Hasnain, R., Sotnik, P., & Ghiloni, C., 2003).

For these reasons, the Department proposes a priority that would focus on changing the status quo for individuals with disabilities from minority backgrounds through cultural competency training and application, data collection and analysis, evaluation, and dissemination of evidence-based practices. The priority also would be aligned with paragraph (b) of Priority 2—Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Improving Student Outcomes, and Providing Increased Value to Students and Taxpayers from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096). Nothing in the proposed priority and requirements would alter an applicant's or grantee's obligations to comply with nondiscrimination requirements in the U.S. Constitution and Federal civil rights laws, including nondiscrimination on the basis of race or ethnicity, among other bases.

References

American Psychological Association. (2012). Dual pathways to a better America: Preventing discrimination and promoting diversity. *https://www.apa.org/pubs/info/reports/dual-pathways-report.pdf.*

Assume Nothing! A Monograph from the 38th Institute on Rehabilitation Issues to Address Underserved Populations, Including Individuals Who Are Deaf-Blind (2014). *https://ncrtm.ed.gov/Download.aspx?type=doc&id=4645.*

Balcazar, F., Suarez-Balcazar, T., & Taylor-Ritzler, T. (2009). Cultural competence: Development of a conceptual framework. Disability and Rehabilitation.

Balcazar, F., Suarez-Balcazar, Y., Keys, C., Taylor-Ritzler, T. (2010). Race, Culture and Disability: Rehabilitation Science and Practice. Jones & Bartlett Publishers, Inc.

Garcia, Brittany. (2015). Vocational Rehabilitation Counseling Competency with African Americans: A Professional Development Workshop. A project presented to the faculty of Graduate and Professional Studies in Education California State University, Sacramento. Submitted in partial satisfaction of the requirements for the degree of Master of Science in Counseling (Vocational Rehabilitation). *https://pdfs.semanticscholar.org/8a15/72bca5b0db05417cf6dff4583dcede23368d.pdf.*

Georgetown University: Health Policy Institute. Cultural Competency in Health Care: Is It Important for People with Chronic Conditions? *https://hpi.georgetown.edu/cultural/#.*

Hasnain, R., Sotnik, P., & Ghiloni, C. (2003). Person-Centered Planning: A gateway to improving vocational rehabilitation services for culturally diverse individuals with disabilities. Journal of Vocational Rehabilitation.

Human Services Edu: Educating to Better the Lives of Others. Understanding Cultural Competency. *www.humanservicesedu.org/cultural-competency.html.*

Rehabilitation Act of 1973, as amended, Section 21(a)(3). U.S. Bureau of Labor Statistics Current Population Survey (2019) *https://www.bls.gov/cps/tables.htm.*

Proposed Priority:

Project Activities

To be considered for funding under this priority, applicants must, at a minimum, propose a project that will conduct the following activities in a culturally appropriate manner:

(a) Collect and analyze data, including from RSA–911 data [1] and other relevant sources, about the minority populations and subpopulations identified in the application. Data may include, but is not limited to, employment outcomes, earnings, retention, length of time in VR, challenges or barriers to employment and retention, education, and other relevant data, as available;

(b) Share the data about the identified minority populations and subpopulations with RSA, State VR agencies, RSA VR technical assistance centers, and other relevant partners and stakeholders;

(c) Develop new or modify existing cultural competency training curricula for VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies and related agencies. To satisfy this requirement, the curricula must—

(1) Contain knowledge, critical awareness, and skills development that confront structural and systemic inequalities;

(2) Address:

(i) Actions that lead to change, such as full inclusion and participation in the mainstream of society, an individual's right to pursue a meaningful career, respect for self-determination and informed choice, and competitive employment;

(ii) Exploration of unconscious and conscious biases, privilege, stereotypes, and prejudicial attitudes; and

(iii) An examination of service culture, policies and practices; and lack of trust in the State VR agency;

(3) Incorporate principles of person-centered planning;

(4) Incorporate culturally appropriate and culturally sensitive training methods;

(5) Include evidence-based [2] content, to the extent possible; and

(6) Include other critical content, as determined by the project;

(d) Gather input and feedback from a diverse group of stakeholders and subject matter experts to inform the curricula, training and application, and evaluation, including RSA, State VR agencies, and other relevant partners;

(e) Require, as part of the training, that participants develop action plans to continue applying the knowledge, practices, and awareness gained from the training in their respective work settings;

(f) Create two cohorts to pilot the cultural competency training by the end of the first year and evaluate the results. The cohorts must be comprised of VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies and related agencies. For the first cohort, the grantee must collect pre- and post-assessments and feedback from participants. After the first cohort, the grantee must make revisions and improvements to the training curricula, as necessary. The grantee must then test the training in a second cohort to determine if the revisions and improvements worked.

(g) Deliver cultural competency training to VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies and related agencies in years two, three, four, and five. To meet this requirement, the grantee will—

(1) Conduct outreach to VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies and related agencies so that they are aware of, and can participate in cultural competency training;

(2) Offer training using a variety of methods such as a traditional classroom setting, through distance learning facilitated by qualified instructors, through regional trainings and through other delivery methods, as appropriate, to meet the needs of the targeted audience;

(3) Use an online learning platform that is user friendly, compatible with most mobile devices and State VR agency platforms, and meets government and industry-recognized standards for accessibility and cybersecurity;

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[1] The RSA–911 collects a variety of participant characteristics (sex, age, race, disability, health insurance, education level, etc.), barriers to employment (ex-offender, homeless, single parent, etc.), services provided (career, training, and other services), duration of VR case, employment status at the time of exit from the program, and employment status post-exit.

[2] For the purpose of this priority, "evidence-based" means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model (as defined in 34 CFR 77.1) is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes (as defined in 34 CFR 77.1).

(4) Use grant funds to offset costs associated with travel for participants, as needed;

(5) Conduct an assessment before and after providing training for each participant in order to establish baseline knowledge, and assess strengths and specific areas for improvement, attainment and application of skills, and any issues or challenges to be addressed post-training to ensure improved delivery of VR services to the minority populations and subpopulations identified in the application;

(6) Assess participant progress towards completing their action plans and provide coaching to address issues or challenges, as needed; and

(7) Offer continuing education units (CEUs), Commission on Rehabilitation Counseling Credit (CRCC), Certified Rehabilitation Counselor (CRC) credit, a certificate of completion, or another form of documentation or verification, as appropriate, to participants that successfully complete the training and fulfill their action plans.

(h) Enable State VR agencies to apply cultural competency practices to various activities of State VR agencies. In Assume Nothing! A Monograph from the 38th Institute on Rehabilitation Issues to Address Underserved Populations, Including Individuals Who Are Deaf-Blind (2014), several recommendations were offered to help State VR agencies remove attributes of service design and delivery that may result in inequality. In line with those recommendations, to meet this requirement, applicants must—

(1) Examine reasons for successful and unsuccessful closures among minority VR program participants and identify disparities between minority and non-minority participants; and collaborate and share data on the disparities between minority and non-minority participants with State VR agencies and the VR–TA Center-Quality Management (VRTAC–QM) and VR TA Center-Quality Employment (VRTAC–QE) to inform their work with State VR agency personnel to ensure that management decisions are established that support sustainable changes in the way outreach, intake, and VR services are provided based on the cultural competency training VR personnel receive;

(2) Select two of the following focus areas—

(i) Update or revise existing policies and procedures or develop new action plans to strengthen and improve delivery of services in a culturally appropriate and culturally sensitive manner;

(ii) Establish new partnerships and strengthen existing partnerships with community rehabilitation providers, workforce programs, and other relevant local community agencies and organizations (*i.e.,* agencies and organizations that provide services related to behavior and mental health, substance dependence, and intellectual developmental disabilities) to better meet the needs of individuals with disabilities from minority backgrounds;

(iii) Develop business engagement activities for individuals with disabilities from minority backgrounds;

(iv) Create opportunities to involve participants from minority populations, or subpopulations, as appropriate, in the establishment of policies and procedures that encourage collaboration between State VR agencies and other State agencies;

(v) Develop opportunities for staff development and retention designed to provide new and existing VR counselors and paraprofessionals, and administrators from minority populations and subpopulations with peer-to-peer mentorship, as well as guidance and support they may need to be successful; and

(vi) Any other activity that improves delivery of services to and outcomes for individuals with disabilities from minority backgrounds;

(3) Develop products, offer communities of learning, conduct webinars, and offer other training and technical assistance delivery methods, as appropriate, related to (1) and (2) described above; and

(4) Provide follow-up to State VR agencies to support the sustainability of cultural competency practices;

(i) Gather input and feedback from a diverse group of stakeholders and subject matter experts to inform the training curricula, application of cultural competency practices in each selected area of focus, evaluation, and product developed, and work collaboratively with RSA, State VR agencies, and other relevant partners;

(j) Evaluate the project. To satisfy this requirement, the grantee must—

(1) Assess whether-cultural competency training provided to VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies and related agencies contributed to improvements in the delivery of services to and employment outcomes for individuals with disabilities from minority backgrounds;

(2) Assess whether the application of cultural competency practices led to improvements in policies, approaches, and behaviors in State VR agencies;

(3) Through voluntary focus groups, use of a unique identifier, or another approach that adheres to participant confidentiality requirements in 34 CFR 361.38, gather input and feedback from VR program participants who identify as members of the minority populations or subpopulations described in the application about their experiences to assess whether the cultural competency training and application of cultural competency practices contributed to improvements in the delivery of service; and

(4) Develop a plan for an evaluation that includes, but is not limited to, approaches and methodologies, timelines, instruments, or tools that will be used, a timeline for the evaluation and measurement benchmarks, and a process for gathering feedback from VR counselors and paraprofessionals, and human resource and professional development specialists, and State VR agencies for continuous improvement throughout years two, three, four, and five of the project;

(k) Develop and maintain a state-of-the-art archiving and dissemination platform, or modify an existing platform, that is open and available to all VR counselors, paraprofessionals, and human resource and professional development specialists, and State VR agencies. To meet this requirement, the grantee must—

(1) Ensure the archiving and dissemination platform provides a central location for all material related to the project, such as data collection, reports, training curricula, audiovisual materials, webinars, communities of learning, examples of evidenced-based and promising practices related to the selected areas of focus, and other relevant material;

(2) Ensure that all material produced by the project meet government and industry-recognized standards for accessibility and cybersecurity;

(3) Disseminate information about the project, including products such as outreach, training curricula, presentations, reports, outcomes, and other relevant information through RSA's National Clearinghouse of Rehabilitation Training Materials (NCRTM) (*https://ncrtm.ed.gov/*); and

(4) In the final year budget period, ensure the archiving and dissemination platform can be sustained or coordinate with RSA to transition the platform to the NCRTM so that it may be archived and accessible to all after the grant ends;

(5) Disseminate, to all State VR agencies, RSA-funded Rehabilitation Long-Term Training projects and TA Centers, Department-funded programs, and Federal partners, as applicable, the

training material for incorporation into existing curricula, as well as products, analysis of data collected, evidence-based and promising practices, and lessons learned. To satisfy this requirement, the grantee must—

(i) Develop participant guides, implementation materials, toolkits, manuals, and other relevant material for instructors, facilitators, State VR agency directors, and human resource and professional development specialists to effectively deliver cultural competency training, in their respective organizations; and

(ii) Provide outreach to and support State VR agencies, RSA-funded Rehabilitation Long-Term Training projects and TA Centers, Department-funded programs, and Federal partners, as applicable, in incorporating or expanding cultural competency training and in applying cultural competency practices across selected focus areas.

Proposed Application Requirements

The Assistant Secretary proposes the following requirements for this activity. We may apply one or more of these requirements in any year in which this activity is in effect. RSA encourages innovative approaches to meet these requirements:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Proposed Project,'' the minority populations and subpopulations that will be addressed by this project. To meet this requirement, applicants must—

(1) Describe the disparities that exist with respect to VR services and employment outcomes for individuals with disabilities from minority backgrounds, identify education and training needs and any challenges to obtaining education and employment, and present any relevant data;

(2) Describe how the project proposes to improve VR services for, and employment outcomes of, individuals with disabilities from the identified minority backgrounds and subpopulations;

(3) Describe how data about the identified minority populations and subpopulations will be collected and analyzed to inform the field and the training curricula;

(4) Demonstrate how the proposed project will increase the number of VR counselors and paraprofessionals, and human resource and professional development specialists trained in providing culturally competent VR services. To meet this requirement, applicants must—

(i) Describe the cultural competencies that VR counselors and paraprofessionals must demonstrate to provide high-quality services to individuals with disabilities from minority backgrounds; and

(ii) Present information about potential challenges or difficulties to effectively provide cultural competency training and to apply cultural competency practices and any evidence-based practices or strategies that may be used to address these challenges;

(b) Demonstrate, in the narrative section of the application under ''Quality of Project Design,'' how the proposed project will meet the requirements and intended outcomes of this priority. To meet this requirement, applicants must—

(1) Describe the plan for implementing the project, including key activities, timelines, milestones, and measurable intended project outcomes. The plan should contain adequate time to develop and pilot the training curricula, as well as develop content to support the selected areas of focus. The plan should also build in alternative ways to deliver training and conduct participant follow-up, in the event that convening face-to-face is not possible due to health and safety concerns;

(2) Describe how the proposed project will gather input and feedback from a diverse group of stakeholders and subject matter experts to inform the curricula, training and application, and evaluation, including communication and coordination with RSA, State VR agencies, and other relevant partners. The plan must include alternative forms of communication if in-person meetings are not permitted due to health safety and concerns;

(3) Describe how the proposed project will provide outreach to VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies and related agencies so that they are aware of, and can participate in cultural competency training;

(4) Describe how cultural competency training will be provided to VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies and related agencies, which must include—

(i) Proposed methods, frequency, and duration of the training;

(ii) A proposed methodology for determining training topics;

(iii) A description of how the training needs of recipients, including their ability to respond effectively to the training will be assessed;

(iv) Proposed coaching techniques that may be provided to VR counselors and paraprofessionals, and human resource and professional development specialists working in State VR agencies or related agencies to address issues or challenges, as needed;

(v) A proposed training module or an outline of a training module to demonstrate how VR counselors and paraprofessionals, and human resource and professional development specialists would be trained. The module or outline is a required attachment in the application and must include, at a minimum—

(A) The goals and objectives of the training module;

(B) A description of what participants should know and be able to do as a result of successfully completing the module or presentation;

(C) Up-to-date resources, publications, and other materials that may be used to develop the training module or outline;

(D) Exercises that will provide an opportunity for application of the subject matter;

(E) A description of how participant knowledge, skills, and abilities will be measured; and

(F) A description of how the outcomes and impact of the cultural competency training will be measured;

(5) Describe how the project will incorporate current research and evidenced-based and promising practices, including research about adult learning principles and implementation science, in the development of culturally competent training curricula and enable State VR agencies to apply cultural competency practices to various activities of State VR agencies;

(6) Describe how the project will examine reasons for successful and unsuccessful closures among minority VR program participants, identify disparities between minority and non-minority participants, and describe how this information will be shared with State VR agencies and the VRTAC–QM and VRTAC–QE in ways that will inform their work with State VR agency personnel to ensure that management decisions are established that support sustainable changes in the way outreach, intake, and VR services are provided based on the cultural competency training VR personnel receive;

(7) Select two focus areas from the list described in the priority and develop products, offer communities of learning, conduct webinars, and offer other training and technical assistance delivery methods that are of high quality and of sufficient intensity and duration to achieve the intended outcomes of the proposed project. To

meet this requirement, applicants must describe—

(i) Knowledge, skills, and experience in each of the selected areas of focus;

(ii) Methods, frequency, and duration of the activities;

(iii) Proposed methodology for determining selected areas of focus; and

(iv) How follow-up will be provided to State VR agencies to support the sustainability of cultural competency practices within the selected areas of focus; and

(8) Describe how the proposed project will use accessible technology to achieve the intended project outcomes.

(c) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how the proposed costs are reasonable in relation to the anticipated results and benefits. In order to meet this requirement, applicants must—

(1) Describe any proposed consultants or contractors named in the application, their areas of expertise, and provide rationale to demonstrate the need;

(2) Describe costs associated with technology, including, but not limited to, maintaining an online learning platform, state-of-the-art archiving and dissemination platform, and communication tools (*i.e.,* Microsoft Teams, Zoom, Google, Amazon Chime, Skype, etc.) ensuring all products and services meet government-recognized industry standards for accessibility, including costs associated with captioning and transcription services, and cybersecurity;

(3) Designate funds to travel to Washington, DC, or for virtual conferences and meetings when the in-person meetings are not possible due to health and safety concerns, in the beginning of the second year of the project for a one and one half day meeting to present an analysis of the pilots, training curricula, delivering additional activities in the selected focus areas, and plans for outreach, dissemination, and evaluation of the project; and

(4) Designate funds to travel to Washington, DC, or virtual conferences and meetings when in-person meetings are not possible due to health and safety concerns, in the final year of the project for a one and one half day meeting to present an analysis of data collected, outcomes, results of the evaluation, evidence-based and promising practices, and lessons learned;

(d) Demonstrate, in the narrative section of the application under ''Quality of Project Personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) Projects will be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws;

(3) The proposed key project personnel will demonstrate the qualifications and experience to provide the training required under this proposed priority and to achieve the project's intended outcomes, including how the proposed project personnel have a degree of knowledge and understanding of cultural factors sufficient to ensure the delivery of training in a culturally appropriate manner; and

(4) The proposed project personnel will demonstrate knowledge and experience working with the VR profession, especially in the provision of services to individuals from minority backgrounds and in working with VR counselors, paraprofessionals, human resource and professional development specialists, and State VR agencies;

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how the applicant will ensure that—

(1) The project's intended outcomes, including the evaluation, will be achieved on time and within budget, through—

(i) Clearly defined responsibilities of key project personnel, consultants, and contractors, as applicable;

(ii) Procedures to track and ensure completion of the action steps, timelines, and milestones established for key project activities, requirements, and deliverables;

(iii) Internal monitoring processes to ensure that the project is being implemented in accordance with the established application, cooperative agreement, once developed, and project plan; and

(iv) Internal financial management controls to ensure accurate and timely obligations, drawdowns, and reporting of grant funds, as well as monitoring contracts, in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 and the terms and conditions of the Federal award;

(2) The allocation of key project personnel, consultants, and contractors, as applicable, including levels of effort of key personnel that are appropriate and adequate to achieve the project's intended outcomes, including an assurance that key personnel will have enough availability to ensure timely communications with stakeholders and RSA;

(3) The products and services are of high quality, relevance, and usefulness, in both content and delivery; and

(4) The proposed project will benefit from a diversity of perspectives, including those of State and local personnel, individuals with disabilities from minority backgrounds, providers, researchers, and policy makers, among others, in its development and operation.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and requirements would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are proposing the priority and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those we have determined as necessary for administering the Department's programs and activities. The costs would include the time and effort in responding to the priority and requirements for entities that choose to respond. In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make this proposed priority and requirements easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interfere with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are public or private nonprofit agencies and organizations, including Indian Tribes and IHEs that may apply. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority and requirements would outweigh any costs incurred by the applicant. There are very few entities that could provide the type of technical assistance required under the proposed priority and requirements. For these reasons, the proposed priority and requirements would not impose a burden on a significant number of small entities.

Paperwork Reduction Act of 1995: The proposed priority and application requirements contains information collection requirements that are approved by OMB under OMB control number 1820–0018.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

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

[FR Doc. 2020–14535 Filed 7–21–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0302, EPA–R05–OAR–2019–0676; FRL–10011–35–Region 5]

Air Plan Approval; Ohio; Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve an April 5, 2019, State Implementation Plan (SIP) submittal from the Ohio Environmental Protection Agency (OEPA). This SIP submittal, supplemented on November 21, 2019, consists of amendments and additions to the volatile organic compound (VOC) rules in Chapter 3745–21 of the Ohio Administrative Code (OAC). These changes provide clarity to facilities that are subject to multiple VOC requirements in the SIP, or whose applicable requirements have been moved to other sections within OAC Chapter 3745–21 as a result of a previous revision. The changes also correct errors and provide general administrative cleanup. The SIP submittal adds a mechanism for Ohio to approve alternate limitations for site-specific miscellaneous industrial adhesive and sealant facilities and includes alternate site-specific limitations for certain process lines at Accel Group, Incorporated (Accel) in Wadsworth, Ohio. In addition, an alternative monitoring, recordkeeping, and reporting program was added to the requirements for the BP-Husky Refining LLC, Toledo Refinery.

DATES: Comments must be received on or before August 21, 2020.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2019–0302 (pertaining to amendments to OAC Chapter 3745–21) or EPA–R05–OAR–2019–0676 (pertaining to site-specific alternate VOC SIP limits for Accel) at *http://www.regulations.gov,* or via email to *compher.michael@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

Ohio's April 5, 2019, submittal requested that EPA approve amendments and additions to OAC Chapter 3745–21, specifically to Rules 3745–21–09, 3745–21–10, 3745–21–25, 3745–21–26, 3745–21–28, and 3745–21–29. On November 21, 2019, Ohio supplemented its submittal with an additional request to incorporate site-specific VOC limits for Accel. EPA has reviewed the amendments contained in both submittals, as discussed in detail in the following sections, and is proposing to approve the amended portions of OAC Chapter 3745–21 as well as the site-specific VOC limits for Accel into the Ohio SIP.

II. What is EPA's analysis of the amendments to OAC Chapter 3745–21?

The amendments to OAC Chapter 3745–21 are as follows:

Rule 3745–21–09 "Control of Emissions of Volatile Organic Compounds From Stationary Sources and Perchloroethylene From Dry Cleaning Facilities"

OEPA made several amendments to this rule. A correction was made to a variable definition in the equation in paragraph (C)(1)(a)(11), and the entire equation graphic was replaced with a text version of the equation. This administrative amendment is approvable because it supports Ohio's initiative to reduce the amount of graphics in its regulations in favor of a more accessible format for the visually impaired.

Paragraphs (A), (U), and (HH) were amended to consolidate the VOC regulation requirements for facilities in the Cleveland area into a new rule within OAC Chapter 3745–21, namely, Rule 3745–21–26. In a prior action (82 FR 42451), EPA approved the addition of Rule 3745–21–26 into the Ohio SIP. Rule 3745–21–26 replaced the requirements of Rule 3745–21–09 paragraphs (U) and (HH) for facilities in the Cleveland area (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit counties). As a result, all references to Cleveland-area facilities in paragraph (U) were removed from the applicability criteria in Rule 3745–21–09 paragraphs (A)(1) and (A)(3)(b).

Rule 3745–21–09 paragraph (A)(6) was also amended to remove references to paragraph (HH) and to clarify the relocation of Cleveland-area facilities' requirements to Rule 3745–21–26. These amendments are approvable because they help clarify the requirements which need to be met for Cleveland-area facilities and remove any confusion for facilities in the rest of the state that need to follow the requirements of Rule 3745–21–09.

Several changes to paragraph (U) of Rule 3745–21–09 are a result of the additions to Rule 3745–21–26. The introductory paragraph to (U) was removed and references to Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit counties were removed from paragraph (U)(2)(e)(ii). Paragraphs (U)(2)(k) and (U)(2)(l) were removed because the specific exemptions for Cleveland-area facilities that are also subject to aerospace and shipbuilding/ship repair coating VOC regulations were moved to Rule 3745–21–26 for Cleveland-area facilities (to 3745–21–26(A)(3)(a)(i)(a) and 3745–21–26(A)(3)(a)(i)(b), respectively).

In paragraph (C), which contains requirements for surface coating of automobiles and light duty trucks, an exemption was added for aerosol coatings, because the requirements for these coatings are addressed by the national VOC rule for aerosol coatings (40 CFR part 59 subpart E), as required by section 183(e) of the CAA. An exemption was added to paragraph (C) for coatings supplied in containers with a net volume of 16 ounces or less, or a net weight of one pound or less. This exemption is consistent with the 2008 control techniques guidelines (CTG) document (EPA–453/R–08–006) for automobile and light-duty truck assembly coatings, and therefore EPA finds the amendment approvable into the Ohio SIP.

An alternate monitoring, recordkeeping, and reporting program for Process Drains at BP-Husky Refining LLC, Toledo Refinery, Facility ID 04–48–02–0007 and dated November 23, 2015, has been added to paragraph (T)(4) of this rule. The alternate monitoring, recordkeeping, and reporting program was approved by Ohio. EPA finds that Ohio's program provides a suitable alternative means of assuring compliance at this facility because it is consistent with EPA's New Source Performance Standards requirements for performance tests at bulk terminals at 40 CFR part 60, subpart QQQ.

Lastly, paragraph (DDD)(4)(g)(i)(b)(iii) of this rule was amended to correct an incorrect paragraph reference. EPA finds that this and the aforementioned amendments to OAC Chapter 3745–21 approvable into the Ohio SIP, as the changes either make the requirements clearer, correct errors within the requirements, or provide facilities with alternate programs to maintain adherence to the CAA.

Rule 3745–21–10 ''Compliance Test Methods and Procedures''

A test method for reactive adhesives located at 40 CFR part 63, subpart PPPP, appendix A, has been added to paragraph (B)(4) of this rule. EPA finds that this Federal test method is approvable into the Ohio SIP because the test method meets EPA's 2008 Control Techniques Guidelines for reactive adhesives. Paragraph (E)(2) was amended to remove extraneous language so that it is clear the requirements of 40 CFR 60.503(b), (c), (e), and (f) are sufficient to determine the amount of VOC emissions from bulk gasoline terminals. The language removed from paragraph (E)(2) provided additional methodology for testing for bulk gasoline terminals, but the methodology was less stringent than the new source performance standards for bulk gasoline terminals which remain in the Ohio SIP, therefore EPA finds that the removal of the extraneous language is approvable into the Ohio SIP.

Rule 3745–21–25 ''Control of VOC Emissions From Reinforced Plastic Composites Production Operations''

Paragraph (F)(3) of this rule contains three subparagraphs, each containing a method to calculate a reinforced plastic composites production facility's VOC emissions threshold. However, the language in paragraph (F)(3) originally indicated that only two of the three methods may be used to calculate the VOC emissions threshold. Paragraph (F)(3) was amended to make clear that all three subparagraphs/methods can be used to calculate the threshold. Because it clarifies the requirements, EPA finds that this amendment is approvable into the Ohio SIP.

Rule 3745–21–26 ''Surface Coating of Miscellaneous Metal and Plastic Parts''

Paragraph (A)(3)(a)(i)(p) of this rule was amended to include an exemption for surface coating of any metal or plastic parts or products for which the owner or operator is both subject to and required to comply with Rule 3745–21–25 ''Control of VOC emissions from reinforced plastic composites production operations.'' The miscellaneous metal products and plastic parts categories do not include gel coats applied to fiber-reinforced plastic composites products which are removed from a mold or used as in-mold coatings in the production of fiberglass parts. Those composite products' VOC limits are instead specified in Rule 3745–21–25, therefore EPA finds that this amendment is approvable into the Ohio SIP.

Paragraph (G)(2) was amended to remove introductory language that, while technically correct in identifying paragraphs with relevant reporting and recordkeeping requirements for surface coating of miscellaneous metal and plastic parts, is superfluous and potentially confusing regarding the requirements of this chapter. Therefore, the introductory language, ''In addition to paragraphs (B)(3)(j) and (B)(3)(k) of Chapter 3745–21–09 of the Administrative Code'' has been removed. EPA finds that this amendment to the Ohio SIP is approvable because paragraph (G)(2) already comprehensively points to all relevant reporting and recordkeeping requirements. Lastly, paragraph (G)(1) was amended to correct a typographical error, and is approvable into the Ohio SIP.

Rule 3745–21–28 ''Miscellaneous Industrial Adhesives and Sealants''

This rule was amended to add paragraph (C)(4), which allows a facility to request Ohio to approve an alternative reasonably available control technology (RACT) emissions limit for production of miscellaneous industrial adhesives and sealants. This amendment is approvable because the conditions of the paragraph include the existing Ohio authority to approve alternate RACT emissions limits for these facilities, and also require a facility to obtain a federally-enforceable permit and EPA's approval of the alternate RACT emissions limit. Ohio does not need to have such a paragraph in the SIP for site-specific alternative RACT limit requests and approval because authority for such limits already exists. However, because the paragraph makes clearer the conditions which must be met for a facility to request an alternative RACT limit, EPA finds this paragraph approvable into the Ohio SIP.

Rule 3745–21–29 ''Control of Volatile Organic Compound Emissions From Automobile and Light-Duty Truck Assembly Coating Operations, Heavier Vehicle Assembly Coating Operations, and Cleaning Operations Associated With These Coating Operations''

Paragraph (F)(2) of this rule was amended to correct a reference to 40 CFR part 63, subpart PPPP, which outlines the procedure for determining the VOC content of a reactive adhesive. The amendment now references appendix A of 40 CFR part 63, subpart PPPP, which is the correct location of the reactive adhesive VOC content determination procedure. The amendment is approvable into the Ohio SIP.

III. Site-Specific VOC SIP Limits for Accel

On November 21, 2019, Ohio submitted a supplement to its April 5, 2019 submittal that includes a request for EPA to approve site-specific alternate VOC SIP limits of 4.98 pounds per gallon (lb/gal) and 65 tons per year (tpy) for Accel in the facility's operating permit. Ohio requested that EPA process this revision in parallel with the revisions to Rule 3745–21–28(c)(4), which is discussed in Section II. The limits are an alternative to the facility meeting the 2.1 lb/gal contact bond adhesive VOC limit in Rule 3745–21–28(c)(1).

Ohio reviewed multiple factors in its approval of site-specific alternate VOC SIP limits for the Accel facility. Among them, Ohio indicates that Accel had reviewed several options for meeting the 2.1 lb/gal contact bond adhesive VOC limit, and provided an adequate technological and financial demonstration for why meeting the 2.1 lb/gal limit is infeasible. Accel demonstrated that the custom blended adhesive that was used to meet the contact bond adhesive VOC limit was discontinued, and that attempts to recreate the blend with other available components did not produce adhesive that would remain soluble enough to adequately perform the same task as the now-unavailable custom blend. Further, available adhesives that meet the 2.1 lb/gal VOC limit are not post-formable, which is a requirement for the facility.

Accel also pursued changing the facility's production lines to use hot melt type adhesives. Using the control costs spreadsheet from EPA's Office of Air Quality Planning and Standards, Accel demonstrated that the cost to meet the existing contact bond adhesive limit versus the alternate site-specific limits using hot melt type adhesives would be $12,740/ton versus $1,050/ton, respectively. Further, Accel explained that even if the facility were to make such a fiscally unfeasible change, it is not known whether the new adhesive would create products that meet its customers' specifications.

Ohio indicated that there are no facilities similar to Accel in Ohio subject to Rule 3745–21–28. For that reason and the reasons demonstrated by Accel, Ohio approved 4.98 lb/gal and 65 tpy VOC limits for the facility into Accel's operating permit on September 16, 2019 and Ohio did not receive any comments on the action during its public comment period. The site-specific VOC limits for Accel are located in the following paragraphs of its September 16, 2019 permit:

—Section B ''Facility-wide Terms and Conditions'', paragraphs B.4, B.6, B.8, and B.9.c).
—Section C ''Emissions Unit (EU) Terms and Conditions'', paragraphs C.1.b)(1)d, C.1.b)(2)a, C.1.d)(2), C.1.d)(3), C.1.e)(3), C.1.f)(1)c, C.2.b)(1)d, C.2.b)(2)a, C.2.d)(2), C.2.d)(3), C.2.e)(3), and C.2.f)(1)e.

As noted in section II of this action, Ohio has the authority in its VOC SIP to allow site-specific alternate VOC SIP limits. OEPA has confirmed that the Type II adhesives limits will remain enforceable as part of the SIP for as long as the company keeps the permit active, and if the permit expires the limits revert to the more stringent 2.1 lb/gal contact bond adhesive VOC limit in OAC 3745–21–28(c)(1). EPA's proposed approval is based on OPEA's confirmation that ''[s]hould the company allow the permit to expire, or request a change in the federally approved limits or associated terms, they will lose their authority to operate the emissions unit under those limits and will be required to begin permitting again from scratch, including petitioning USEPA for a new, federally enforceable alternate limit.''

The revisions to Rule 3745–21–28(c)(4) and the site-specific alternate VOC SIP limits for Accel discussed above are approvable as they both clarify site-specific limits for affected sources and what steps that sources, Ohio, and EPA will take when approving and incorporating such limits into the Ohio SIP. EPA finds these revisions approvable into the Ohio SIP.

IV. What action is EPA taking?

EPA is proposing to approve the revisions to OAC Chapter 3745–21, specifically to Rules 3745–21–09, 3745–21–10, 3745–21–25, 3745–21–26, 3745–21–28, and 3745–21–29 as contained in Ohio's April 5, 2019, submittal. EPA is also proposing to approve the addition of paragraphs B.4, B.6, B.8, B.9.c), C.1.b)(1)d, C.1.b)(2)a, C.1.d)(2), C.1.d)(3), C.1.e)(3), C.1.f)(1)c, C.2.b)(1)d, C.2.b)(2)a, C.2.d)(2), C.2.d)(3), C.2.e)(3), and C.2.f)(1)e as listed in the September 19, 2019 operating permit for Accel into Ohio's SIP.

V. Incorporation by reference.

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following rules in Ohio Administrative Code Chapter 3745–21: Rules 3745–21–09, 3745–21–10, 3745–21–25, 3745–21–26, 3745–21–28, and 3745–21–29, effective February 16, 2019, discussed in Section II of this action, and certain provisions of the Division of Air Pollution Control Permit-to-Install and Operate for Accel Group, Inc., effective September 19, 2019, discussed in Section III of this action. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: July 7, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–15016 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0224; FRL–10011–98–Region 4]

Air Plan Approval; KY; Jefferson County Administrative Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet) on March 4, 2020. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and make minor changes for clarity, remove an exemption for public hearings for permitting actions, and amend the procedures for open records requests to maintain consistency with the Kentucky Open Records Act (KORA).

DATES: Comments must be received on or before August 21, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0224 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gobeail McKinley, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9230. Ms. McKinley can also be reached via electronic mail at *mckinley.gobeail@epa.gov.* You can also contact Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsythe Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. EPA's Proposed Action

EPA is proposing to approve changes to Regulation 1.08, *Administrative Procedures,* of the Jefferson County portion of the Kentucky SIP, submitted by the Commonwealth on March 4, 2020.[1] The March 4, 2020, SIP revision makes minor changes to Regulation 1.08 that do not alter the meaning of the regulation, for example, changes to clarify public hearing requirements, and relocation and reorganization of several sections. In addition, other changes strengthen the SIP by removing language exempting certain permitting actions from public hearings. Last, the SIP revision contains changes to sections related to public records to maintain consistency with the KORA. The SIP revision updates the current SIP-approved version of Regulation 1.08 (Version 13) to Version 14. The changes to this rule and EPA's rationale for proposing approval are described in more detail in Section II of this notice of proposed rulemaking.

II. EPA's Analysis of the Kentucky's Submittal

The SIP revision includes changes to the District's Regulation 1.08, *Administrative Procedures,* to: (1) Make minor changes for clarity; (2) remove an exemption for public hearings for permitting actions; and (3) amend the procedures for open records requests to maintain consistency with KORA.

There are minor revisions to Section 1, ''Public Hearings,'' such as adding the titles for various regulations and updating references, correcting typographical errors, and adjusting language for consistency between various subsections. With respect to the section titled ''Procedures at Public Hearings,'' this section is moved from

[1] The submittal includes a courtesy copy of Regulation 2.08, *Fees,* Version 24 which was adopted by the Commonwealth at the same time, however, the Commonwealth did not request that EPA incorporate that regulation into the SIP.

Section 3 to Section 2, and the subsections are renumbered to reflect this move. Additional changes to ''Procedures at Public Hearings'' include minor changes to clarify procedures (for example, the staff provides an explanation of a proposed action at a hearing) and the removal of language excepting certain hearing requirements for permitting decisions. The ''Compliance Plans and Schedules'' section (previously Section 2) is now moved to Section 3, and the subsections within Section 3 are renumbered to reflect the organizational change.

Section 6, ''Confidentiality and Opens Records Policy'' is renumbered and revised for consistency with KORA. The changes remove language regarding the format of KORA requests and details of the District's office. In addition, Section 6 is revised to specify that physical copies of any material not exempt will be provided to the requestor, to provide for reasonable fees, and to reference the Louisville Metro Air Pollution Control District Open Records Policy for hours, address of custodian, and other related information.

Section 7, ''Procedures for the Adoption, Amendment, or Repeal of a Regulation,'' is revised by renumbering and reorganizing to improve the readability of the provisions in that section.

These rule changes do not change any applicable emissions limitations or relax requirements for affected sources. EPA proposes to find that the changes serve to strengthen and clarify the SIP. Therefore, EPA has made the preliminary determination that the aforementioned changes will not have a negative impact on air quality and is therefore proposing to approve Version 14 of Regulation 1.08 into the Jefferson County portion of the Kentucky SIP.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the District's Regulation 1.08, *Administrative Procedures,* Version 14, effective November 20, 2019, which provides clarity, revises provisions related to Board meetings, and maintains consistency with KORA. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the changes to Regulation 1.08, *Administrative Procedures,* Version 14, of the Louisville Metro Air Pollution Control District portion of the Kentucky SIP, submitted by the Commonwealth on March 4, 2020. The March 4, 2020, SIP revision updates the current SIP-approved version of Regulation 1.08, Version 13 to Version 14. EPA is proposing to approve these changes because they are minor edits to clarify provisions related to public hearing requirements, SIP strengthening by removing an exemption from public hearings for certain permitting requirements, and maintaining consistency with KORA.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Reposting and recordkeeping requirements.

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

Dated: July 13, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–15536 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0009; FRL–10009–99–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Redstone Arsenal (USARMY/NASA) Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Partially Delete Operable Unit (OU)–09 (OU–20 for Redstone Arsenal) and OU–12 (OU–21 for Redstone Arsenal), which are located on the George C. Marshall Space Flight Center (MSFC) within the Redstone Arsenal (USARMY/NASA) Superfund Site (Site), in Huntsville, Madison County, Alabama, from the

National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Alabama, through the Alabama Department of Environmental Management (ADEM), have determined that all appropriate response actions at OU–09 and OU–12 have been completed under CERCLA. However, this deletion does not preclude future response actions under CERCLA at the Redstone Arsenal (USARMY/NASA) Superfund Site which includes the MSFC.

DATES: Comments must be received by August 21, 2020.

ADDRESSES: Submit your comments by one of the following methods:

• *https://www.regulations.gov.* Follow online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information for which disclosure is restricted by statute. Multimedia submissions, such as audio or video, must be accompanied by a written comment. The written comment is considered the official comment and should include a discussion of all points you wish to make. In general, the EPA will not consider comments or comment content located outside the primary submission, such as 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 *https://www2.epa.gov/dockets/commenting-epa-dockets.*

• Following Centers for Disease Control and Prevention (CDC) and Office of Policy Management (OPM) guidance and specific state guidelines impacting our regional offices, the EPA's workforce has been authorized to telework to help prevent transmission of the coronavirus [COVID–19]. As a result, there is a temporary shutdown of the EPA's Docket Center and the EPA Regional Records Centers. While in this workforce telework status, there are practical limitations on the ability of staff to collect, and for Agency personnel to respond to, ''hard copy'' mailed queries sent directly to Agency office locations. Therefore, until the workforce is able to return to office locations, the EPA recommends that, to the extent feasible, any correspondence mailed to the Agency should also be sent via email.

• For question on this Notice and submission of comments please contact—Brad Jackson, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW—MS9T25, Atlanta, GA 30303, (404) 562–8925, *jackson.brad@epa.gov* or Ron Tolliver, Community Involvement Coordinator, at *tolliver.ron@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1994–0009. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.*

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on the EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID –19. The EPA is committed to continuing our critical work on behalf of the American public while also safeguarding the health and safety of the public and the families of the EPA employees by taking responsible measures to help prevent transmission of the coronavirus. Thank you for your cooperation and understanding.

More information on the Site's Superfund Cleanup Program is available on the Web at: *https://eemo.msfc.nasa.gov/eemo/*.

FOR FURTHER INFORMATION CONTACT: Brad Jackson, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303, (404) 622–2876, email: *jackson.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The EPA Region 4 announces its intent to delete the surface water, sediment, soil and groundwater of OU–09 and the soil (including sediment) of OU–12 of the George C. Marshall Space Flight Center (MSFC) portion of the Redstone Arsenal (USARMY/NASA) Superfund site from the National Priorities List (NPL) and requests public comment on this proposed action. Groundwater beneath OU–12 is being addressed under CERCLA as part of the Site-wide Groundwater Operable Unit, OU–03 under the MSFC Federal Facility Agreement (FFA) between NASA, EPA Region 4, and ADEM (effective September 17, 2001). OU–09 and OU–12 are located on the MSFC portion of the NPL Superfund site managed by NASA and are identified by the Army and the EPA as Redstone OU–20 and OU–21, respectively. All other media and OUs which are part of the Redstone Arsenal (USARMY/NASA) Superfund Site are not being considered for deletion as part of this action and will remain on the NPL. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains on the NPL those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of surface water, sediment, soil and groundwater at OU–09 (OU–20 for Redstone Arsenal) and soil an OU–12 (OU–21 for Redstone Arsenal) from the Site is proposed in accordance with 40 CFR Section 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 [November 1, 1995]). As described in Section 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

The EPA will accept comments on the proposal to partially delete this Site for 30 days after publication of this document in the **Federal Register**.

The criteria for deleting sites from the NPL are explained in Section II and the procedures for this action are discussed in Section III. In Section IV, OU–09 (OU–20 for Redstone Arsenal) and OU–12 (OU–21 for Redstone Arsenal) of the MSFC portion of the Redstone Arsenal (USARMY/NASA) Superfund Site are described, along with how they meet the criteria for partial deletions.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making a determination pursuant to 40 CFR Section 300.425(e), the EPA will consider, in consultation with the State of Alabama, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to the deletion of soil and groundwater at OU–09 (OU–20 for Redstone Arsenal) and soil (including sediments) at OU–12 (OU–21 for Redstone Arsenal) of the Site:

(1) The EPA consulted with the State before developing this Notice of Intent for Partial Deletion;

(2) The EPA has provided the State 30 working days for review of this action prior to publication of it today;

(3) In accordance with the criteria discussed above, the EPA has determined that no further response is appropriate;

(4) On August 30, 2019, the State of Alabama through the Alabama Department of Environmental Management (ADEM) concurred with the deletion from the NPL MSFC portions of the Redstone Arsenal (USARMY/NASA) Superfund Site designated as OU–09 and OU–12;

(5) Concurrently with publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, *The Huntsville Times.* The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL; and

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket, made these items available for public inspection, and copying at the Site information repositories identified above.

If comments on this document are received within the 30-day comment period, the EPA will evaluate and respond accordingly to the comments before making a final decision to delete OU–09 (identified as OU–20 for Redstone Arsenal) and OU–12 (identified as OU–21 for Redstone Arsenal) from the Superfund Site. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if the EPA determines it is still appropriate to delete OU–09 and OU–12 located in MSFC portion of the Redstone Arsenal (USARMY/NASA) Superfund Site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions, and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist the EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides the EPA's rationale for deleting OU–09 (identified as OU–20 for Redstone Arsenal) and OU–12 (identified as OU–21 for Redstone Arsenal) located in the MSFC portion of the Redstone Arsenal (USARMY/NASA) Superfund Site from the NPL.

Site Background and History

The Redstone Arsenal (USARMY/NASA) Superfund Site (CERCLIS ID: AL7210020742) is located on the active Redstone Arsenal Army Installation that encompasses 38,300 acres of land southwest of Huntsville, Alabama. Since opening in the early-1940s, development within the Arsenal has largely revolved around the historical need to produce, and later dispose of, conventional and chemical munitions. From 1942 to 1945, the Army's operations were used to manufacture raw materials for toxic agents and incendiary materials and to assemble, store, and ship the final products. Onsite waste disposal activities included the disposal of construction debris, drums, and chemical munitions, as well as the open burning of combustible materials.

After WWII, Redstone Arsenal became a center for the receipt, storage, and demilitarization of Allied and German chemical agents. In 1949, the Arsenal's mission changed to research and development of rocketry and guided missile systems. In 1960, civilian rocketry and missile activities were transferred to the NASA, George C. Marshall Space Flight Center (MSFC), which is located on 1,841 acres within the central portion of the Arsenal.

Since then, the area known as MSFC has been used to develop, test, and manufacture space vehicles and components. MSFC is NASA's principal propulsion development center. NASA uses a state-of-the-art propulsion laboratory for developing and testing the newest propulsion system innovations at MSFC. Its scientists, engineers, and support personnel also play a significant role in managing experiments conducted on the International Space Station and managing and developing the Space Launch System.

The EPA proposed the Redstone Arsenal (USARMY/NASA) site to the NPL on June 23, 1993 (58 FR 34018) and listed the site as final on the NPL on May 31, 1994 (59 FR 27989). MSFC is part of the ''fence-to-fence'' listing of the Redstone Arsenal (USARMY/NASA) site on the NPL but is managed by NASA. The Army and NASA cleanup programs are separately funded and operated. They coordinate on common programmatic needs such as data sharing, consistent cleanup, and technical issues.

In 2001, the EPA, NASA, and ADEM signed a Federal Facilities Agreement (FFA) under CERCLA Section 120 for the MSFC portion of the site. The FFA integrates both NASA's Resource Conservation and Recovery Act (RCRA) and CERCLA requirements. The FFA requires that NASA will fully investigate environmental impacts associated with past and present activities and take the appropriate cleanup actions. The Site Management Plan required by the FFA establishes schedules, priorities, and enforceable milestones for cleanup activities at the MSFC. To date there has not been an FFA signed between the EPA, the Army, and ADEM for the Redstone Arsenal portion of the Superfund Site.

The MSFC portion of the Superfund Site includes over 80 areas with surface media (*e.g.,* soil, surface water, and sediment) contamination, five groundwater plumes, and 17 subsurface groundwater source areas. Proposed for deletion is OU–09 that addresses former surface water, sediment, soil, and groundwater contamination. Also proposed for deletion is OU–12 which addresses former soil (including sediment) contamination. The docket contains a map depicting these areas.

Description of OU–09 (Recorded by Army as OU–20 for Redstone Arsenal)

OU–9 is the Former Industrial Waste Treatment Facility (IWTF). The first phase of the IWTF was constructed in the 1960s. This phase included only the Industrial Waste Treatment Basin, which received flows from the industrial sewer. The second phase of the IWTF was constructed in the late-1960s or early-1970s. This phase included the remainder of the IWTF (ultimate lagoons, hydrostatic dump lagoon, concentrate receiving tank, caustic storage tank, transfer tank, and mix tank). This portion of the IWTF was constructed to treat the plating waste from Building 4760. The IWTF operated into the 1980s.

The Former IWTF consists of the following eight components:

1. Industrial Waste Treatment Basin (MSFC–044);
2. Concentrate Receiving Tank (MSFC–045);
3. Transfer Tank (MSFC–046);
4. Hydrostatic Dump Lagoon (MSFC–047);
5. Mix Tank (MSFC–048);
6. East Ultimate Lagoon (MSFC–049);
7. West Ultimate Lagoon (MSFC–050); and
8. Caustic Storage Tank (MSFC–A).

The IWTF or OU–9 (OU–20 for Redstone Arsenal) is shown on Figure 1.

Description of OU–12 (Recorded by Army as OU–21 for Redstone Arsenal)

OU–12 is the location of the former Stauffer Chemical Plant, which produced chlorine gas for the manufacture of mustard gas during the 1940s. These sites are adjacent to each other in the northern portion of MSFC near the Center's eastern border. OU–12 is bounded by Digney Road on the south, Morris Road on the east, Neal Street on the north, and Building 4207 on the west.

The sites in OU–12 consist of a former building, a nearby drainage ditch, a satellite waste accumulation area, and a product storage area. OU–12 comprises the following individual RCRA solid waste management units (SWMUs):

1. Satellite Waste Accumulation Area for Buildings 4241 and 4244 (MSFC–022);
2. Portion of Industrial Sewer North of MSFC–034 (MSFC–052a);
3. Site of the Former Stauffer Chemical Company Plant (MSFC–055);
4. Building 4241 Surface Drainage (MSFC–065);
5. Containment Area for Tanks 4234A, B, and C (MSFC–D); and
6. Buildings 4241 and 4244 Product Storage Area (MSFC–E).

OU–12 (OU–21 for Redstone Arsenal) is shown as Figure 2.

Remedial Investigation at OU–09 (Recorded by Army as OU–20 for Redstone Arsenal)

Three SWMUs (MSFC–044, MSFC–049, and MSFC–050) were closed under RCRA regulations and certified by ADEM in January 1990. A soil investigation at the remaining five units (MSFC–045, MSFC–046, MSFC–047, MSFC–048, and MSFC–A) was conducted by NASA in May 1996 to provide data for confirmation sampling. A soil investigation at the three RCRA-closed units (MSFC–044, MSFC–049, and MSFC–050) was conducted in May 1997 to provide data for the CERCLA remedial investigation (RI). These data were combined and presented in the MSFC OU–9 RI Report.

The 1999 RI evaluated the eight sites of OU–09 (former IWTF) to determine if a contaminant release had occurred at the site. Surface and subsurface soil samples were collected from borings installed around the remaining five sites (MSFC–045, MSFC–046, MSFC–047, MSFC–048, and MSFC–A), which are concrete structures, and within the sites that are surface impoundments lined with clay. Subsurface soil samples were collected from the natural soil beneath the locations where the RCRA-closed sites (MSFC–044, MSFC–049, and MSFC–050) were placed. Groundwater at OU–09 was evaluated through RCRA-required quarterly sampling for the closed units. The 1999 RI included a baseline risk assessment for soil and groundwater.

Soil and groundwater associated with OU–09 were proposed for no further action (NFA) in the OU–09 RI Report. Based on information provided in the report, it was concluded that further investigation of the soil and groundwater, monitoring of the groundwater under RCRA, and remedial action for soils were not necessary to ensure the protection of human health and the environment.

Remedial Investigation and Feasibility Study at OU–12 (Recorded by Army as OU–21 for Redstone Arsenal)

The 2008 OU–12 RI Report addressed the surface media at the OU–12 sites, including contaminated surface soil, subsurface soil, and sediment. Groundwater at the NASA-administered MSFC property is addressed in the FFA as OU–03 Site-wide Groundwater Operable Unit. The OU–12 RI included human health and ecological risk assessments for soil (including sediment), which are discussed in the OU–12 RI report, along with an evaluation of options for implementing non-time-critical removal actions.

Chemicals of concern (COCs) identified for OU–12 as a whole included polynuclear aromatic hydrocarbons (PAHs) (benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene, benzo(k)fluoranthene, chrysene, and indeno(1,2,3-cd)pyrene), polychlorinated biphenyls or PCBs

(Aroclor-1260 and Aroclor-1254), dieldrin, iron, and lead. Individual RCRA SWMUs located within OU–12 generally exhibited a subset of the COCs.

The results of the risk assessments indicated that response actions for contaminated soil and sediment were necessary to protect the public health and welfare or the environment from actual or threatened releases of hazardous substances into the environment.

NASA identified the following six remedial action alternatives in a Feasibility Study (FS) Report for consideration at OU–1–2:

(1) No action;

(2) Institutional Controls with Monitoring;

(3) Capping;

(4) Removal and offsite disposal to meet the residential risk criteria;

(5) Removal and offsite disposal to meet the industrial risk criteria; and

(6) Treatment.

At the conclusion of the remedial action alternative evaluation process, the recommended remedial action alternative for OU–12 provided in the Proposed Plan was removal of contaminated soil (including sediment) and offsite disposal to meet the residential risk criteria. Because of this method's effectiveness in reducing the risk associated with soil (including sediments) contamination to acceptable residential risk levels there was no need for land use controls (LUCs) to prevent exposure at the OU–12 Area. The Final Proposed Plan: Remedial Action at OU–12 (June 2010) sought public comments on the Preferred Alternative. NASA received no comments on the Proposed Plan during the 30-day public comment period.

Selected Remedy for OU–09 (Recorded by Army as OU–20 for Redstone Arsenal)

The Record of Decision (ROD) for OU–09, which recommended no further action (NFA), was signed by the EPA and NASA in 2000, along with concurrence by the State. The 2000 ROD documents that no CERCLA response action was necessary for OU–09 in order to protect human health and the environment and five-year reviews under CERCLA Section 121(c) would not be necessary for the soil or groundwater at OU–09.

Two years after the ROD was signed, ADEM requested that NASA prepare and submit a Clean Closure Equivalency Demonstration (CCED) for the three former RCRA units (MSFC–044, MSFC–049, and MSFC–050) within OU–09. The CCED presented the data, information, and risk assessment in a similar manner as the 1999 OU–09 RI Report. In addition, a revised screening level human health risk evaluation was conducted for the eight SWMUs to demonstrate that no further remedial action under CERCLA is warranted. The 1999 risk evaluation was revised to incorporate more current toxicity values, as well as to incorporate new site characterization data to fills data gaps identified by the regulatory agencies during their review of the CCED and the 2000 ROD, which was issued by the EPA for OU–09 (NASA, 2000a). The results are integrated into the 2006 Final CCED. The residential risk assessment for the CCED demonstrated that site surface and subsurface soil do not pose a significant risk; sitewide NASA groundwater and sediment issues remaining are being managed under the sitewide OU–03 Groundwater Operable Unit.

Selected Remedy for OU–12 (Recorded by Army as OU–21 for Redstone Arsenal)

NASA identified five areas of OU–12 that required the removal and disposal of contaminated soil (including sediment) to meet the residential risk criteria, as well as the removal and disposal of the entire length of industrial sewer pipeline within OU–12. Additionally, abandonment of select manholes by removing sediment and filling the manholes with grout to 1-foot below ground surface (bgs) was included in the selected remedy. The selected remedy was presented in the OU–12 ROD, which was signed by the EPA and NASA in 2012, along with State concurrence.

The remedial action objectives (RAOs) for the OU–12 remedial action were as follows:

- Prevent unacceptable human exposures (dermal contact, ingestion, inhalation) to contaminated surface soil, subsurface soil, and sediment by removing contaminated soil and sediment so that the concentrations of contamination are below the EPA Region 9 industrial and/or residential preliminary remediation goal (PRG) levels or applicable background levels (inorganic parameters only);
- Prevent the migration of contaminated soil (including sediment) offsite via stormwater runoff in ditches; and
- Clean up to a level that allows for unrestricted use and unlimited exposure at OU–12.

The 2012 ROD also documented significant changes to the preferred remedial alternative presented in the Proposed Plan (PP). In accordance with the 2009 action memorandum for the time-critical removal action (TCRA) for OU–12, approximately 350 feet of the 10-inch-diameter, vitrified clay pipeline on either side of manhole MHI–136 and associated with MSFC–052a (beneath the potential sodium hydroxide area of OU–12) were removed and disposed in an off-site landfill in 2010. The removal of this portion of pipeline is discussed in the 2018 OU–12 Removal Action Completion Report (RACR). The section of the industrial sewer pipeline removed during of the TCRA is part of MSFC–052a, the rest of which was removed as part of the 2012 ROD selected remedy.

Additionally, because soils and sediment at OU–12 were cleaned to unlimited use/unrestricted exposure (UU/UE) levels, the 2012 ROD documented a non-significant change. At the EPA's request, the remedial action alternative of institutional controls (ICs) with monitoring was removed from the ROD as an independent alternative since ICs with monitoring is part of other remedial alternatives. This was documented as a change to the Administrative Record for the selected remedy for OU–12.

Response Action for OU–09 (Recorded by Army as OU–20 for Redstone Arsenal)

As described above, a CERCLA response action was not required at OU–09 since conditions at the site did not pose an unacceptable risk to human health and the environment as verified with several investigations under both RCRA and CERCLA.

Response Action for OU–12 (Recorded by Army as OU–21 for Redstone Arsenal)

The selected response action was summarized in the Proposed Plan issued for public comment in 2010. The final approved remedial actions are documented in the ROD issued in 2012 and implemented through the 2012 Remedial Design (RD).

The selected remedy for the OU–12 remedial action included the removal of soil (including sediment) and offsite disposal to meet the residential risk criteria for surface soil, subsurface soil, and sediment contamination. For the former industrial sewer (MSFC–052a), NASA proposed to remove and dispose of each pipeline section and abandon each manhole by cutting them down approximately 1-foot below grade and filling each with cement and bentonite grout. The selected remedy accomplished the RAOs and met the CERCLA requirements for implementing remedial actions. The selected remedy achieved residential cleanup levels so that the site was suitable for unlimited use and unrestricted exposure (UU/UE) and eliminated the need for statutory five-year reviews per CERCLA Section 121(c) and land use controls (LUCs) which include use or activity restrictions to prevent unacceptable exposure to contamination left in place. No further monitoring and maintenance are required at OU–12.

Additional information led NASA to prepare an addendum to the RD in 2014 and an ESD in 2015. These documents provide the basis for the following changes to the scope of the OU–12 remedial action:

- Based on confirmation samples collected during the MSFC–D area excavation, an additional 2,200 cubic yards (yd^3) of impacted soil requiring remediation were identified and incorporated into Remedial Area (RA) 4;
- Two segments of industrial sewer pipeline could not be removed as originally planned. A segment within, and south of, RA–8 could not be removed because of the presence of an adjacent active sanitary sewer line made of fragile vitrified clay. The northern segment (near Buildings 4241 and 4244) could not be removed because of the potential to damage the foundation of Building 4241. These segments of the industrial sewer were abandoned in place;
- To improve excavation efficiency, staging piles instead of roll-off boxes were used for temporary storage of excavated soil during excavations in 2015. The soil in the staging piles was characterized, and nonhazardous contaminated material was loaded into dump trucks for waste disposal at an approved off-site RCRA permitted solid waste landfill. Soil considered RCRA hazardous waste was disposed in approved off-site RCRA permitted Subtitle C hazardous waste landfill; and
- As documented in the 2014 OU–12 RD Addendum, the names of several excavation areas within MSFC–D were revised and included within RA–4, as the areas fell within or near the revised RA excavation area boundary. In addition to the changes detailed in the 2014 OU–12 RD Addendum. The following additional changes were made, which are summarized in the 2018 Remedial Action Completion Report (RACR):

—During preparation for pressure-washing and grouting of the sewer lines near Building 4244, it was determined that no portion of the industrial sewer was connected to Building 4244 and that a previously unknown portion of the industrial sewer was present that extended parallel to, and connected with, the north side of Building 4241. These pipelines were disconnected from Building 4244 and plugged at an unknown time;

—During the site preparation phase, it also was discovered that the amount of industrial sewer south of RA–8 that would need to be grouted in place was underestimated in the 2014 OU–12 RD Addendum, because the active, fragile, vitreous clay sanitary sewer was adjacent to the industrial sewer line for a greater distance than had previously been thought. Therefore, the amount of sewer line abandoned in place increased;

—It was determined that no excavation would occur within 5 feet of the high value fiber optic communication line that was exposed in Ditch B, south of the intersection of Ditch B and Ditch C, due to the potential catastrophic consequences of any damage to this utility. This cable was contained in a terra cotta tile at the ditch crossing, which may have been damaged or broken during a heavy rain event prior to the OU–12 remedial action;

—The northern end of Ditch B was not excavated as originally designed. A relatively large concrete apron was identified as existing in this area. A historical RI sample (SX12–009) was collected atop this apron; when the remedial action for the Ditch B area began, most sediment and/or soil deposits were washed from this apron. It is likely that the remediation of Ditch D, Ditch E, Ditch F, and Ditch G (mostly brush clearing activities) resulted in elevated surface water flow during storm events, which aided in removing the soil atop this concrete apron. Remedial actions were not required in this area of Ditch B, and field personnel were unable to collect agency-requested sample SS12–263;

- Additional minor deviations from the 2012 OU–12 RD Report occurred that were driven by field conditions, such as minor shifts to the outline of the excavation areas, increasing the depth of excavation, and adjusting the work zones;
- Site conditions impacted the remedial plans for RA–8B. The proposed excavation plan (5-feet by 5-feet by 5-feet) changed into an elongated, trench-like excavation when a concrete-lined basin/slab was encountered. Soil was excavated to the horizontal and vertical walls of this area. Although the deepest confirmation sample results from station SB12–110B showed elevated concentrations of lead, impacted soil from this area was removed and the risk was mitigated.

The RACR documents the remedial action conducted at OU–12. A residual risk evaluation was also included in the RACR to assess the residual risk associated with the remaining sewer sections and exposure to potential contamination at the unexcavated area south of the intersection of Ditch B and Ditch C.

The potential risks associated with exposure to the limited volume of sediment, if present, in the remaining sections of sewer pipeline at MSFC–052a are expected to be within acceptable levels for ecological receptors, as well as for industrial receptors and hypothetical future residents. Therefore, no additional investigations or LUCs were recommended for the areas within the remaining sewer sections.

The estimated carcinogenic risks associated with the unexcavated ditch areas for all scenarios were less than ADEM's target risk level of 1×10^{-5} and the estimated noncarcinogenic hazard indexes for all scenarios were less than the target hazard index of 1. The estimated carcinogenic risks were within the EPA's Superfund Program target risk range (1×10^{-6} to 1×10^{-4}) for location SX12–012 and for the combined data from the upgradient locations SX12–012, and SS12–232. The estimated carcinogenic risks for location SS12–232 met the EPA's target risk range, specifically the point of departure level of 1×10^{-6}. Therefore, the potential risks associated with exposures to the unexcavated soil are within acceptable levels for an unrestricted land use scenario and no additional investigations or LUCs are recommended for soil at this area.

Soil and sediment removal activities at OU–12 began in September 2012 and were completed in May 2015, and site restoration activities were completed September 2015. Approximately 16,895 yds^3 cubic yards of contaminated soil (including sediment) were removed and disposed of offsite in approved RCRA permitted landfills. A total of 868 linear feet of industrial sewer pipeline was removed and a total of 187 yds^3 of grout was used to fill the portions of the industrial sewer that could not be excavated.

Cleanup Levels for OU–09

Remedial cleanup levels were not developed for OU–09 because remedial actions were not required at OU–09 since site conditions were determined to not present an unacceptable risk to human health and the environment.

Cleanup Levels for OU–12

Cleanup levels were developed for soil COCs (PAHs, PCBs, dieldrin, iron, and lead) at OU–21 on the basis of the EPA Region 9 PRGs listed for industrial and residential scenarios or on the basis of a background value for a particular parameter (iron), and therefore, the final remedy cleaned up OU–12 to residential standards suitable for UU/UE. The following are the cleanup levels for COCs at OU–12:

- PAH (as benzo(a)pyrene equivalent)—60 micrograms per kilogram (μg/kg) (residential) or 210 μg/kg (industrial);
- PCBs—220 μg/kg (residential) or 740 μg/kg (industrial);
- Dieldrin—30 μg/kg (residential) or 110 μg/kg (industrial);
- Lead—400 milligrams per kilogram (mg/kg) (residential) or 800 mg/kg (industrial); and
- Iron—66,400 mg/kg.

The cleanup level for iron is the subsurface soil background value, as referenced in the OU–12 RI Report (NASA, OU–12, 2008). The iron background value was used instead of the EPA Region 9 PRG despite that the background value is one order of magnitude higher than the PRG., the EPA policy does not require CERCLA cleaning up to below background levels in soils provided the levels are protective of human health and the environment. This cleanup level was obtained at OU–12.

Operation and Maintenance, If Applicable

Neither OU–09 nor OU–12 require any operation and maintenance (O&M) activities. All cleanup objectives in the RODs were met, and no further remedial action or O&M is required.

Five-Year Review, If Applicable

NASA conducted a statutory Five-Rear Review (FYR) of the MSFC Site in 2013 and 2018 in accordance with CERCLA Section 121(c). The 2018 FYR confirmed that soil and groundwater at OU–09 and soil (including sediment) at OU–12 met UU/UE criteria and further reviews are not required for either OU–09 and OU–12 (OU–20 or OU–21, respectively for Redstone Arsenal).

The soil media at OU–09 was recommended for NFA in the final 2000 ROD. To address the EPA and ADEM comments with respect to a residential risk evaluation, NASA collected additional soil samples at OU–09 and submitted a 2016 CCED. The FFA parties determined that the site met residential exposure levels and no further action required.

Remedial actions are complete for soil (including sediment) at OU–12 and any residual risks for that media are considered to be protective of human health and the environment for future unrestricted residential use and therefore does not require LUCs.

Community Involvement

The EPA and ADEM satisfied public participation activities as required in CERCLA Section 113(k), 42 United States Code (U.S.C.) 9613. The EPA published notifications in *The Huntsville Times* announcing the FYR and inviting the public to comment and express their concerns about the Site at the start of the 2013 and 2018 FYRs as well as offer public comment for proposed plans for all of the EPA Site decision documents and this proposed NPL partial deletion. The Administrative Record file contains the documentation NASA considered in selecting the CERCLA response actions for both OU–09 and OU–12 in accordance with the NCP requirements.

Determination That the Criteria for Deletion Have Been Met

OU–09 (including surface water, sediment, soil, and groundwater) and OU–12 (soil including sediment) meet all of the site completion requirements as specified in Office of Solid Waste and Emergency Response Directive 9320.2–22, *Close Out Procedures for National Priorities List Sites.* The EPA has followed NPL deletion procedures required by NCP at 40 CFR 300.425(e).

Soil and groundwater associated with OU–09 were proposed for NFA in the CERCLA 1999 OU–09 RI Report. The 2000 ROD selected NFA for OU–09. MSFC, ADEM, and the EPA concurred that additional remedial actions are not required at OU–09 to protect of human health and the environment and approved the ROD.

All cleanup actions specified in the OU–12 ROD have been implemented, and the Site has achieved the degree of cleanup or protection specified in the ROD and met ROD remedial action objectives. The soil (including sediment) area proposed for partial deletion has been cleaned up to residential risk levels for soil exposure pathways. The RAOs and associated cleanup goals are consistent with agency policy and guidance. Groundwater beneath OU–12 (OU–21 for Redstone Arsenal) is being investigated by NASA under the FFA as part of OU–3 Site-wide Groundwater and, therefore, is not included in this proposed deletion action.

The EPA has determined that no further Superfund response is necessary at OU–09 and OU–12 -to protect human health and the environment and supports the partial deletion of these operable units from the MSFC portion of the Redstone Arsenal (USARMY/NASA) Superfund Site.

The NCP (40 CFR Section 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. The EPA, in consultation with the State of Alabama, has determined that all required response actions have been implemented and no further response action by the responsible parties is appropriate for these identified OUs at the MSFC.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251*et seq.*

Dated: June 26, 2020.

Mary Walker,

Regional Administrator EPA R4.

[FR Doc. 2020–14429 Filed 7–21–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES11110900000201]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Two Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on two petitions to add species to the List of Endangered and Threatened Plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate status reviews of the Las Vegas bearpoppy (*Arctomecon californica*) and Tiehm's buckwheat (*Eriogonum tiehmii*) to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive,

we are requesting scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act.

DATES: These findings were made on July 22, 2020. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the species or their habitats. Any information we receive during the course of our status reviews will be considered.

ADDRESSES: *Supporting documents:* Summaries of the basis for the petition findings contained in this document are available on *http://www.regulations.gov* under the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available for public inspection, by appointment, during normal business hours by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the species for which we are initiating status reviews, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard* copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [Insert appropriate docket number; see table under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Las Vegas bearpoppy	Glen Knowles, 702–515–5230; *glen_knowles@fws.gov.*
Tiehm's buckwheat	Lee Ann Carranza, 775–861–6300; *lee ann_carranza@fws.gov.*

If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (*i.e.,* ''list'' a species), remove a species from the List (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to ''credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted'' (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summaries of Petition Findings

The petition findings contained in this document are listed in the table below, and the basis for each finding, along with supporting information, is available on *http://www.regulations.gov* under the appropriate docket number.

TABLE—STATUS REVIEWS

Common name	Docket No.	URL to docket on *http://www.regulations.gov*
Las Vegas bearpoppy	FWS–R8–ES–2020–0016	*https://www.regulations.gov/docket?D=FWS-R8-ES-2020-0016.*
Tiehm's buckwheat	FWS–R8–ES–2020–0017	*https://www.regulations.gov/docket?D=FWS-R8-ES-2020-0016.*

Evaluation of a Petition To List the Las Vegas Bearpoppy

Species and Range

Las Vegas bearpoppy (*Arctomecon californica*); Clark County, Nevada, and Mohave County, Arizona.

Petition History

On August 14, 2019, we received a petition from the Center for Biological Diversity requesting that the Las Vegas bearpoppy be listed as endangered and that critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Las Vegas bearpoppy due to potential threats associated with the following: Urbanization, mining, grazing, and recreation (Factor A); and nonnative bees (including Africanized) and climate change (Factor E). The petition also presented substantial information that the existing regulatory mechanisms may be inadequate to address impacts of these threats (Factor D).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0016 under the Supporting Documents section.

Evaluation of a Petition To List Tiehm's Buckwheat

Species and Range

Tiehm's buckwheat (*Eriogonum tiehmii*); Esmeralda County, Nevada.

Petition History

On October 7, 2019, we received a petition from the Center for Biological Diversity, requesting that Tiehm's buckwheat be emergency listed as threatened or endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required at 50 CFR 424.14(c). The Act does not provide for a process to petition emergency listing; therefore, we are evaluating this petition under the normal process of determining if it presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding addresses the petition.

Finding

Based on our review of the petition and sources cited in the petition, and other readily available information, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted for Tiehm's buckwheat due to the potential destruction of habitat from mining (Factor A). The petitioners also presented information suggesting invasive species, off-road vehicles, wildfires, climate change, and grazing may be threats to Tiehm's buckwheat. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to consider the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of this petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0017 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) and 4(b)(3)(D)(i) of the Act, we have determined that the petitions summarized above for the Las Vegas bearpoppy and Tiehm's buckwheat present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–15154 Filed 7–21–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 85, No. 141

Wednesday, July 22, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2020 Through June 30, 2021

AGENCY: Food and Nutrition Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals and snacks served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and snacks served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the laws and regulations governing the Child and Adult Care Food Program.

DATES: These rates are effective from July 1, 2020 through June 30, 2021.

FOR FURTHER INFORMATION CONTACT: J. Kevin Maskornick, Branch Chief, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, (703) 305–2537, 1320 Braddock Place, Suite 401, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and 7 CFR 226.4, 226.12 and 226.13 of the Program regulations, notice is hereby given of the new payment rates for institutions participating in the Child and Adult Care Food Program (CACFP). As provided for under the law, all rates in the CACFP must be revised annually, on July 1, to reflect changes in the Consumer Price Index (CPI), published by the Bureau of Labor Statistics of the United States Department of Labor, for the most recent 12-month period. These rates are in effect during the period July 1, 2020 through June 30, 2021.

Adjusted Payments

The following national average payment factors and food service payment rates for meals and snacks are in effect from July 1, 2020 through June 30, 2021. All amounts are expressed in dollars or fractions thereof. Due to a higher cost of living, the reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico, and Guam use the figures specified for the contiguous States. These rates do not include the value of USDA Foods or cash-in-lieu of USDA Foods, which institutions receive as additional assistance for each lunch or supper served to participants under the Program. A notice announcing the value of USDA Foods and cash-in-lieu of USDA Foods is published separately in the **Federal Register**.

Adjustments to the national average payment rates for all meals served under the Child and Adult Care Food Program are rounded down to the nearest whole cent.

National Average Payment Rates for Centers

The changes in the national average payment rates for centers reflect a 2.93 percent increase during the 12-month period from May 2019 to May 2020 (from 283.394 in May 2019, as previously published in the **Federal Register**, to 291.709 in May 2020) in the food away from home series of the CPI for All Urban Consumers.

Payments for breakfasts served are: Contiguous States—paid rate—32 cents (1 cent increase from 2019–2020 annual level), reduced price rate—1 dollar and 59 cents (5 cents increase), free rate—1 dollar and 89 cents (5 cents increase); *Alaska*—paid rate—49 cents (2 cents increase), reduced price rate—2 dollars and 73 cents (8 cents increase), free rate—3 dollars and 3 cents (8 cents increase); *Hawaii*—paid rate –37 cents (1 cent increase), reduced price rate –1 dollar and 91 cents (6 cents increase), free rate—2 dollars and 21 cents (6 cents increase).

Payments for lunch or supper served are: Contiguous States—paid rate—33 cents (1 cent increase from 2019–2020 annual level), reduced price rate—3 dollars and 11 cents (10 cents increase), free rate—3 dollars and 51 cents (10 cents increase); *Alaska*—paid rate—54 cents (1 cent increase), reduced price rate—5 dollars and 30 cents (16 cents increase), free rate—5 dollars and 70 cents (16 cents increase); *Hawaii*—paid rate—39 cents (1 cent increase), reduced price rate—3 dollars and 71 cents (11 cents increase), free rate—4 dollars and 11 cents (11 cents increase).

Payments for snack served are: Contiguous States—paid rate—8 cents (no change from 2019–2020 annual level), reduced price rate—48 cents (1 cent increase), free rate—96 cents (2 cents increase); *Alaska*—paid rate—14 cents (1 cent increase), reduced price rate—78 cents (2 cents increase), free rate—1 dollar and 56 cents (4 cents increase); *Hawaii*—paid rate—10 cents (no change), reduced price rate—56 cents (1 cent increase), free rate—1 dollar and 13 cents (3 cents increase).

Food Service Payment Rates for Day Care Homes

The changes in the food service payment rates for day care homes reflect a 4.82 percent increase during the 12-month period from May 2019 to May 2020 (from 242.145 in May 2019, as previously published in the **Federal Register**, to 253.827 in May 2020) in the food at home series of the CPI for All Urban Consumers.

Payments for breakfast served are: Contiguous States—Tier I—1 dollar and 39 cents (6 cents increase from 2019–2020 annual level) and Tier II—50 cents (2 cents increase); *Alaska*—Tier I—2 dollars and 22 cents (10 cents increase) and Tier II—78 cents (3 cents increase); *Hawaii*—Tier I—1 dollar and 62 cents (8 cents increase) and Tier II—58 cents (2 cents increase).

Payments for lunch and supper served are: Contiguous States—Tier I—2 dollars and 61 cents (12 cents increase from 2019–2020 annual level) and Tier II—1 dollar and 58 cents (8 cents increase); *Alaska*—Tier I—4 dollars and 24 cents (20 cents increase) and Tier II—2 dollars and 55 cents (11 cents increase); *Hawaii*—Tier I—3 dollars and 6 cents (14 cents increase) and Tier II—1 dollar and 84 cents (8 cents increase).

Payments for snack served are: Contiguous States—Tier I—78 cents (4 cents increase from 2019 –2020 annual level) and Tier II—21 cents (1 cent increase); *Alaska*—Tier I—1 dollar and 26 cents (6 cents increase) and Tier II—35 cents (2 cents increase); *Hawaii*—Tier I—91 cents (4 cents increase) and Tier II—25 cents (1 cent increase).

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 0.12 percent increase during the 12-month period, May 2019 to May 2020 (from 256.092 in May 2019, as previously published in the **Federal Register**, to 256.394 in May 2020) in the series for all items of the CPI for All Urban Consumers.

Monthly administrative payments to sponsors for each sponsored day care home are:

Contiguous States—Initial 50 homes—120 dollars (no change from 2019–2020 annual level), next 150 homes—91 dollars (no change), next 800 homes—71 dollars (no change), each additional home—63 dollars (no change); *Alaska*—Initial 50 homes—194 dollars (no change), next 150 homes—148 dollars (no change), next 800 homes—116 dollars (1 dollar increase), each additional home—102 dollars (no change); *Hawaii*—Initial 50 homes—140 dollars (no change), next 150 homes—107 dollars (no change), next 800 homes—84 dollars (1 dollar increase), each additional home—73 dollars (no change).

Payment Chart

The following chart illustrates the national average payment factors and food service payment rates for meals and snacks in effect from July 1, 2020 through June 30, 2021.

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars, effective from July 1, 2020–June 30, 2021]

Centers	Breakfast	Lunch and supper [1]	Supplement
CONTIGUOUS STATES:			
PAID	0.32	0.33	0.08
REDUCED PRICE	1.59	3.11	0.48
FREE	1.89	3.51	0.96
ALASKA:			
PAID	0.49	0.54	0.14
REDUCED PRICE	2.73	5.30	0.78
FREE	3.03	5.70	1.56
HAWAII:			
PAID	0.37	0.39	0.10
REDUCED PRICE	1.91	3.71	0.56
FREE	2.21	4.11	1.13

Day care homes	Breakfast		Lunch and supper		Supplement	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
CONTIGUOUS STATES	1.39	0.50	2.61	1.58	0.78	0.21
ALASKA	2.22	0.78	4.24	2.55	1.26	0.35
HAWAII	1.62	0.58	3.06	1.84	0.91	0.25

Administrative reimbursement rates for sponsoring organizations of day care homes *(per home/per month rates in U.S. dollars)*	Initial 50	Next 150	Next 800	Each additional
CONTIGUOUS STATES	120	91	71	63
ALASKA	194	148	116	102
HAWAII	140	107	84	73

[1] These rates do not include the value of USDA Foods or cash-in-lieu of USDA Foods which institutions receive as additional assistance for each CACFP lunch or supper served to participants. A notice announcing the value of USDA Foods and cash-in-lieu of USDA Foods is published separately in the **Federal Register**.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

CACFP is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR 415.3–415.6).

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(B)).

Pamilyn Miller,

Administrator, USDA Food and Nutrition Service.

[FR Doc. 2020–15765 Filed 7–21–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to the national average payments, the amount of money the Federal Government provides States for lunches, afterschool snacks, and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; to the maximum reimbursement rates, the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and to the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children.

DATES: These rates are effective from July 1, 2020 through June 30, 2021.

FOR FURTHER INFORMATION CONTACT: J. Kevin Maskornick, Branch Chief, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, (703) 305–2537, 1320 Braddock Place, Suite 401, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. Further adjustments are made to these rates to reflect higher costs of providing meals in Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands. The payments and rates are prescribed on an annual basis each July.

Overall, reimbursement rates this year for the National School Lunch and Breakfast Programs either remained the same or increased compared to last year while the rate for the Special Milk Program went down slightly.

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

National School Lunch and School Breakfast Programs—Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Levels—Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The Richard B. Russell National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C.1759 (a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Performance-based Reimbursement—In addition to the funding mentioned above, school food authorities certified as meeting the meal pattern and nutrition standard requirements set forth in 7 CFR parts 210 and 220 are eligible to receive performance-based cash assistance for each reimbursable lunch served (an additional seven cents per lunch available beginning July 1, 2019, and adjusted annually thereafter).

Afterschool Snack Payments in Afterschool Care Programs—Section 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price, and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in ''severe need'' because they serve a high percentage of needy children.

Adjusted Payments

The following specific section 4, section 11, and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2020 through June 30, 2021. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands are higher than those for all other States. The District of Columbia uses figures specified for the contiguous States. These rates do not include the value of USDA Foods or cash-in-lieu of USDA Foods which schools receive as additional assistance for each meal served to participants under the Program. A notice announcing the value of USDA Foods and cash-in-lieu of USDA Foods is published separately in the **Federal Register**.

Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Special Milk Program Payments

For the period July 1, 2020 through June 30, 2021, the rate of reimbursement for a half-pint of milk served to a non-needy child in a school or institution that participates in the Special Milk Program is 20.25 cents reflecting a decrease of 1.25 cents from the School Year (SY) 2019–2020 level. This change is based on the 5.65 percent decrease in the Producer Price Index for Fluid Milk Products from May 2019 to May 2020.

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch Program Payments

Overall, payments for the National School Lunch Program and the Afterschool Snack Program either remained the same or increased from last year's payments due to a 2.93 percent increase in the national average payment rates for schools and residential child care institutions for the period July 1, 2020 through June 30, 2021 in the Consumer Price Index for All Urban Consumers for the food away from home series during the 12-month period May 2019 to May 2020 (from a level of 283.394 in May 2019, as previously published in the **Federal Register** to 291.709 in May 2020).

These changes are reflected below.

Section 4 National Average Payment Factors—In school food authorities that served less than 60 percent free and reduced price lunches in School Year (SY) 2018–2019, the payments for meals served are: *Contiguous States*—paid rate—33 cents (1 cent increase from the SY 2019–2020 level), free and reduced price rate—33 cents (1 cent increase), maximum rate—41 cents (1 cent increase); *Alaska*—paid rate—54 cents (1 cent increase), free and reduced price rate—54 cents (1 cent increase), maximum rate—65 cents (2 cents increase); *Guam, Hawaii, Puerto Rico, and the Virgin Islands*—paid rate—39 cents (1 cent increase), free and reduced price rate—39 cents (1 cent increase), maximum rate—47 cents (1 cent increase).

In school food authorities that served 60 percent or more free and reduced price lunches in School Year 2018–2019, payments are: *Contiguous States*—paid rate—35 cents (1 cent increase from the SY 2019–2020 level), free and reduced price rate—35 cents (1 cent increase), maximum rate—41 cents (1 cent increase); *Alaska*—paid rate—56 cents (1 cent increase), free and reduced price rate—56 cents (1 cent increase), maximum rate—65 cents (2 cents increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—paid rate—41 cents (1 cent increase), free and reduced price rate—41 cents (1 cent increase), maximum rate—47 cents (1 cent increase).

School food authorities certified to receive the performance-based cash assistance will receive an additional 7 cents (adjusted annually) added to the above amounts as part of their section 4 payments.

Section 11 National Average Payment Factors—Contiguous States—free lunch—3 dollars and 18 cents (9 cents increase from the SY 2019–2020 level), reduced price lunch—2 dollars and 78 cents (9 cents increase); *Alaska*—free lunch—5 dollars and 16 cents (15 cents increase), reduced price lunch—4 dollars and 76 cents (15 cents increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free lunch—3 dollars and 72 cents (10 cents increase), reduced price lunch—3 dollars and 32 cents (10 cents increase).

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—96 cents (2 cents increase from the SY 2019–2020 level), reduced price snack—48 cents (1 cent increase), paid snack—8 cents (no change); *Alaska*—free snack—1 dollar and 56 cents (4 cents increase), reduced price snack—78 cents (2 cents increase), paid snack—14 cents (1 cent increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free snack—1 dollar and 13 cents (3 cents increase), reduced price snack—56 cents (1 cent increase), paid snack—10 cents (no change).

School Breakfast Program Payments

Overall, payments for the National School Breakfast Program either remained the same or increased from last year's payments due to a 2.93 percent increase in the national average payment rates for schools and residential child care institutions for the period July 1, 2020 through June 30, 2021 in the Consumer Price Index for All Urban Consumers in the Food Away from Home series during the 12-month period May 2019 to May 2020 (from a level of 283.394 in May 2019, as previously published in the **Federal Register** to 291.709 in May 2020).

These changes are reflected below.

For schools ''*not in severe need*'' *the payments are: Contiguous States*—free breakfast—1 dollar and 89 cents (5 cents increase from the SY 2019–2020 level), reduced price breakfast—1 dollar and 59 cents (5 cents increase), paid breakfast—32 cents (1 cent increase); *Alaska*—free breakfast—3 dollars and 3 cents (8 cents increase), reduced price breakfast—2 dollars and 73 cents (8 cents increase), paid breakfast—49 cents (2 cents increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free breakfast—2 dollars and 21 cents (6 cents increase), reduced price breakfast—1 dollar and 91 cents (6 cents increase), paid breakfast—37 cents (1 cent increase).

For schools in ''severe need'' the payments are: *Contiguous States*—free breakfast—2 dollars and 26 cents (6 cents increase from the SY 2019–2020 level), reduced price breakfast—1 dollar and 96 cents (6 cents increase), paid breakfast—32 cents (1 cent increase); *Alaska*—free breakfast—3 dollars and 64 cents (11 cents increase), reduced price breakfast—3 dollars and 34 cents (11 cents increase), paid breakfast—49 cents (2 cents increase); *Guam, Hawaii, Puerto Rico and the Virgin Islands*—free breakfast—2 dollars and 64 cents (7 cents increase), reduced price breakfast—2 dollars and 34 cents (7 cents increase), paid breakfast—37 cents (1 cent increase).

Payment Chart

The following chart illustrates the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including severe need schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia are those specified for the contiguous States.

SCHOOL PROGRAMS

MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

Expressed in Dollars or Fractions Thereof

Effective from: July 1, 2020 - June 30, 2021

NATIONAL SCHOOL LUNCH PROGRAM[1]		LESS THAN 60%	LESS THAN 60% + 7 cents[2]	60% OR MORE	60% or MORE+ 7 cents[2]	MAXIMUM RATE	MAXIMUM RATE+ 7 cents[2]
CONTIGUOUS STATES	PAID	0.33	0.40	0.35	0.42	0.41	0.48
	REDUCED PRICE	3.11	3.18	3.13	3.20	3.28	3.35
	FREE	3.51	3.58	3.53	3.60	3.68	3.75
ALASKA	PAID	0.54	0.61	0.56	0.63	0.65	0.72
	REDUCED PRICE	5.30	5.37	5.32	5.39	5.54	5.61
	FREE	5.70	5.77	5.72	5.79	5.94	6.01
GUAM, HAWAII, PUERTO RICO and VIRGIN ISLANDS	PAID	0.39	0.46	0.41	0.48	0.47	0.54
	REDUCED PRICE	3.71	3.78	3.73	3.80	3.90	3.97
	FREE	4.11	4.18	4.13	4.20	4.30	4.37

SCHOOL BREAKFAST PROGRAM		NON-SEVERE NEED	SEVERE NEED
CONTIGUOUS STATES	PAID	0.32	0.32
	REDUCED PRICE	1.59	1.96
	FREE	1.89	2.26
ALASKA	PAID	0.49	0.49
	REDUCED PRICE	2.73	3.34
	FREE	3.03	3.64
GUAM, HAWAII, PUERTO RICO and VIRGIN ISLANDS	PAID	0.37	0.37
	REDUCED PRICE	1.91	2.34
	FREE	2.21	2.64

SPECIAL MILK PROGRAM	ALL MILK	PAID MILK	FREE MILK
PRICING PROGRAMS WITHOUT FREE OPTION	0.2025	N/A	N/A
PRICING PROGRAMS WITH FREE OPTION	N/A	0.2025	Average Cost Per 1/2 Pint of Milk
NONPRICING PROGRAMS	0.2025	N/A	N/A

AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS		
CONTIGUOUS STATES	PAID	0.08
	REDUCED PRICE	0.48
	FREE	0.96
ALASKA	PAID	0.14
	REDUCED PRICE	0.78
	FREE	1.56
GUAM, HAWAII, PUERTO RICO and VIRGIN ISLANDS	PAID	0.10
	REDUCED PRICE	0.56
	FREE	1.13

[1] Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds

[2] Performance-based cash reimbursement (adjusted annually for inflation)

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

National School Lunch, School Breakfast, and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553, and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 2 CFR 415.3–415.6).

Authority: Sections 4, 8, 11, and 17A of the Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–15764 Filed 7–21–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2020 Through June 30, 2021

AGENCY: Food and Nutrition Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2021 (July 1, 2020 through June 30, 2021) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: *Implementation date:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Erica Antonson, Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place Alexandria, VA 22314, or telephone (703) 305–2680.

SUPPLEMENTARY INFORMATION: These programs are located in the Assistance Listings under Nos. 10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866. 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).

National Average Minimum Value of Donated Foods for the Period July 1, 2020 Through June 30, 2021

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Producer Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 24.50 cents for the period July 1, 2020 through June 30, 2021.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry, and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index increased by 3.33 percent from 206.58 for March, April, and May of 2019, as previously published in the **Federal Register**, to 213.45 for the same three months in 2020. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2020 through June 30, 2021 will be 24.50 cents per meal. This is an increase of three quarters of a cent from the school year 2020 (July 1, 202019 through June 30, 2020) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–15762 Filed 7–21–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–20-Business-0028]

Stakeholder Listening Sessions on New Rural Innovation Stronger Economy (RISE) Regulation

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS) is hosting three listening sessions for public input about the new Rural Innovation Stronger Economy (RISE) program and regulation. The RISE program will assist rural job accelerator partnerships in improving the ability of distressed rural communities to create high-wage jobs, accelerate the formation of new businesses, and help rural communities identify and maximize local assets. This rule will be published as a direct-final regulation after addressing comments received from the listening sessions and written comments in response to this request for information. RBCS is currently drafting the RISE regulation and requests input on application implementation and project priorities to reach the desired outcomes.

DATES: *Listening sessions will be held on:* July 28, 2020 at 2pm EDT virtually at *https://attendee.gotowebinar.com/register/5379245598321536014.*

July 30, 2020 at 2pm EDT virtually at *https://attendee.gotowebinar.com/register/2719620429219806478.*

ADDRESSES: Comments submitted in response to this notice may be submitted online Via the Federal eRulmaking Portal. Go to *http://*

www.regulations.gov and search for the Docket ID RBS–20–Business–0028. Follow the online instructions for submitting comments. All comments received will be posted without change and will be publicly available on *regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Will Dodson, Business Loan and Grant Analyst, USDA, Rural Development, STOP 3226 1400 Independence Avenue SW, Washington, DC 20250–3224, telephone (202) 762–0592, email *Will.Dodson@usda.gov*.

SUPPLEMENTARY INFORMATION:

Overview of RISE

The RISE Program is authorized in Section 6424 of the 2018 Farm Bill (Pub.L. 115–34) as a new grant program. The intent of RISE is to encourage partnerships and development of innovation centers that will provide innovative approaches to developing workforces in rural areas. The program currently proposes the following assistance: grants for the innovation center to establish job accelerators and to establish and support job accelerators and related programs. RISE has two major goals. The first goal includes improving the ability of distressed rural communities to create high-wage jobs, accelerate the formation of new businesses with high-growth potential, and strengthen regional economies, including by helping to build capacity in the applicable region to achieve those goals. The second goal is to help rural communities identify and maximize local assets and connect to regional opportunities, networks, and industry clusters that demonstrate high growth potential. Eligible entities are those comprised of key community and regional stakeholders in a working group that focuses on shared goals and the needs of industry clusters that are identified as existing, emerging, or declining. The partnership must include one or more of the following entities: Indian tribes; institution of higher education; private entity; or government entity. The partnership must also include a lead application from one of the following types of entities: district organization; Indian tribe or consortium of Indian tribes; state and local government or political subdivisions; institution of higher education or a consortium of institutions of higher education; or public or private nonprofit organization.

As per Section 6424 of the Agriculture Improvement Act of 2018, the competitive grant awards will be limited to no greater than 80 percent of the project cost, with a minimum grant amount of $500,000 and a maximum grant of $2,000,000. The grant scope of work period is four years and no more than 10% of the award can be utilized for indirect costs associated with administering the award. Funds may be used for constructing, purchasing, or equipping a building to serve as an innovation center or for program support of a job accelerator which assists the objectives of the jobs accelerator in meeting the requirements of the program.

This notice and listening sessions request information on various portions of the regulation as it is being developed. The public input provided in response to this notice from interested stakeholders will advise RBCS to the RISE program funding priorities and efficient process for program implementation.

Instructions

Response to this notice is voluntary. Each individual or institution is requested to submit only one response as directed in the **ADDRESSES** section of this notice. Submission must not exceed 10 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Comments containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered. Comments submitted in response to this notice are subject to Freedom of Information Act (FOIA). Responses to this notice may also be posted, without change, on a Federal website.

Therefore, we request that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this notice. In accordance with FAR 15–202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Additionally, the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

To inform the Federal government's decision-making and establish the Nation's guiding principles in the promotion of the RISE Program, USDA now seeks public input on how U.S. Government action might appropriately support the expansion of a nationwide effort. To that end, responders are specifically requested to answer one or more of the following questions in their submissions. Consortia responses are also encouraged.

1. USDA Rural Development is seeking feedback for the RISE application in terms of required application materials and input to demonstrate how an applicant's proposal meets the objectives of RISE.

2. One of the RISE Program's objectives is to improve the ability of distressed rural communities to create high-wage jobs, accelerate the formation of new businesses with high-growth potential, and strengthen regional economies, including by helping to build capacity in the applicable region to achieve those goals. The Agency is seeking input on how RISE can qualify successful applications in this regard. What are potential successful benchmarks? How should these be evaluated?

3. Another RISE Program objective is to help rural communities identify and maximize local assets. The Agency is seeking input on how RISE can qualify successful applications in this regard. What are potential successful benchmarks? How should these be evaluated?4. Additionally, the RISE Program is authorized to help rural communities connect to regional opportunities, networks, and industry clusters that demonstrate high growth potential. The Agency is seeking input on how RISE can qualify successful applications in this regard. What are potential successful benchmarks?

5. Please provide any suggestions on how USDA, Rural Development should monitor and service the awarded grants, and which emphasis factors should be included in evaluating outcomes of the RISE Program.

6. The RISE Program provides statutory selection criteria including the ability of the partnership to link rural communities to markets, networks, industry clusters and other regional opportunities and assets. How can the Agency quantify this criteria?

7. The RISE Program provides statutory selection criteria including the prospects for the proposed center and related programming to have sustainability beyond the full maximum length of assistance under RISE, *i.e.* 4 years. How can the Agency quantify this criteria?

8. The RISE Program provides statutory selection criteria, which measures the commitment of participating core stakeholders in the jobs accelerator partnerships, including a demonstration that investment organizations and institutions of higher education, applied research institutions, workforce development entities and

community-based organizations are committed. How can the Agency quantify this criteria?

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in, or administering, USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) Fax: (202) 690–7442; or (3) Email: *program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–15821 Filed 7–21–20; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–43–2020]

Foreign-Trade Zone (FTZ) 61—San Juan, Puerto Rico; Notification of Proposed Production Activity; HP International Trading B.V. (Puerto Rico Branch), LLC (Inkjet Ink and 3D Printing Fluids (Bulk and Cartridges) and Related Subassemblies), Aguadilla, Puerto Rico

HP International Trading B.V. (Puerto Rico Branch), LLC (HP International), submitted a notification of proposed production activity to the FTZ Board for its facility in Aguadilla, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 24, 2020.

The HP International facility is located within Subzone 61V. The facility is used for the production of inkjet inks/dispersions/printing fluids/cartridges, 3D printing fluids/cartridges and related subassemblies used in the commercial and industrial graphics markets. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt HP International from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, HP International would be able to choose the duty rates during customs entry procedures that apply to: bulk inkjet water-based 3D printing fluids (in drums or totes); inkjet UV, solvent, and water-based black inks (bulk -drums, totes, or bottle); inkjet UV, solvent, and water-based color inks; bulk inkjet water-based dispersions and printing fluids (in drums or totes); empty 3D supply assemblies (consisting of bags, valves, and other plastic parts); empty inkjet plastic (vinyl acetate copolymer) bag subassemblies; filled large format inkjet cartridges (bag in a box); and, filled 3D powder or fluid cartridges (bag in a box) (duty rate ranges from duty-free to 6.5%). HP International would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: methanesulfonic acids (for PH balancing); disodium catechol disulfonate (chelating agent); tripropylene glycol methyl ether solvents (for inkjet vehicle formulation); tripropylene glycol monobutyl ether solvents (for inkjet vehicle formulation); tetraethylene glycol solvents (for inkjet vehicle formulation); succinic acids (for PH balancing); tris(hydroxymethyl)aminomethane buffer (for PH stabilization); sodium hydroxide (chelating agent); acetic acid, hydroxy, monosodium salt (chelating agent); 2-pyrrolidone (solvents for inkjet vehicle formulation); 1-(2-hydroxyethyl) pyrrolidin-2-one (solvents for inkjet vehicle formulation); pigment green 7 (powder for water-based inkjet inks); pigment blue 15, 15:1, 15:2, 15:3, 15:4, 15:6 (powder for water-based inkjet inks); pigment orange 43 (powder for water-based inkjet inks); pigment red 122/pigment violet 19 magenta pigment (for water-based inkjet inks); 1,2 butanediol (solvents for inkjet vehicle formulation); 2-methylisothiazol-3H(2H)-one (biocides for inkjet ink preservation); polymer solution for inkjet inks; aluminum, hydroxy[29H,31H-phthalocyaninato(2-)-.kappa.n29, .kappa.n30,.kappa.n31,.kappa.n32], chloro sulfo derivatives, sodium salts (chelating agent); oxirane, methyl-, polymer with oxirane, mono (3,5,5-trimethylhexyl) ether (wetting agent for inkjet inks); polyamide powder for 3D printing applications; coagulant agent (processing aid for industrial application); bag assembly for powder cartridges (plastic bag with a cardboard frame attached); high density polyethylene (HDPE) bottles for lab samples; plastic lids and caps for inkjet/powder cartridges; plastic sheets for packaging 3D powder supplies; plastic and foam components for 3D powder cartridges—spouts, rivets, and retainers; nitrile o-rings; rubber membrane film for cartridges valves; stainless steel springs; stainless steel balls for valves; 3D powder cartridge components packaging support—plastic valves and cardboard packaging; and, 3D powder cartridge valves (duty rate ranges from 2.0% to 6.5%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is August 31, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: July 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–15835 Filed 7–21–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–903]

Polyethylene Terephthalate Sheet from the Republic of Korea: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that polyethylene terephthalate sheet (PET sheet) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation (POI), July 1, 2018 through June 30, 2019. The final weighted-average dumping margins are listed below in the section entitled ''Final Determination.''

DATES: Applicable July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine Sliney, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2437.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2020, Commerce published the *Preliminary Determination* in this investigation, and invited interested parties to comment on our findings.[1] The petitioners in this investigation are Advanced Extrusion, Inc., Ex-Tech Plastics, Inc., and Multi-Plastics Extrusions, Inc. (collectively, the petitioners). The mandatory respondents subject to this investigation are the Jin Young Group [2] and Plastech Col, Ltd. (Plastech). A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[3]

The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The POI is July 1, 2018 through June 30, 2019.

Scope of the Investigation

The product covered by this investigation is PET sheet from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On February 25, 2020, we issued a Preliminary Scope Memorandum.[4] We received no scope case briefs from interested parties. Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Verification

Commerce normally verifies information relied upon in making its final determination, pursuant to section 782(i)(1) of the Act. However, during the course of this investigation, we were unable to conduct verification.[5] Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use ''facts otherwise available'' in reaching the applicable determination. Accordingly, we relied on facts available in making our final determination.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculations for the Jin Young Group since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero, *de minimis,* or any margins determined entirely under section 776 of the Act.

Because the weighted-average dumping margin for Plastech Co., Ltd, the non-participating mandatory respondent is based entirely on adverse

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[1] *See Polyethylene Terephthalate Sheet from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 12500 (March 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] Commerce previously determined that the mandatory respondent, Jin Young Chemical Co., Ltd. (JYC) is affiliated with Jinyoung Co. Ltd. (JYL) within the meaning of section 771(33) of the Tariff Act of 1930, as amended (the Act) and also determined JYC and JYL to be a single entity (collectively, the Jin Young Group). *See* Memorandum, ''Affiliation and Collapsing Memorandum for Jin Young Chemical Co., Ltd.,'' dated March 4, 2020 (Collapsing Memo). On June 26, 2020, the Jin Young Group consented to withdraw its request for proprietary treatment of the identity of the Korean affiliate, JYL, in the event that Commerce continues to collapse JYC and the affiliate in the final determination. Because no party commented on the decision to collapse these companies, we continue to find the companies comprise a single entity and hereby treat all record references to JYL as public information on this record.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Polyethylene Terephthalate Sheet from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Antidumping Duty Investigations of Polyethylene Terephthalate Sheet from the Republic of Korea and the Sultanate of Oman: Preliminary Scope Decision Memorandum,'' dated February 25, 2020 (Preliminary Scope Memorandum).

[5] *See* Memorandum, ''Cancellation of Verification,'' dated April 7, 2020.

facts available,[6] the rate Commerce calculated for the Jin Young Group is assigned as the rate for all other producers and exporters.

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Jin Young Chemical Co., Ltd. (JYC) and Jinyoung Co. Ltd. (JYL) (collectively, the Jin Young Group)	7.19
Plastech Co., Ltd.	52.01
Chungdang Co	52.01
K Stout Co	52.01
Kemicolor Corp	52.01
KP Tech Ltd.	52.01
Moojin Che	52.01
OKS Poly	52.01
Puyoung Industry Co	52.01
Samjin Plastic Co	52.01
Sangil Corp	52.01
SK Chemicals	52.01
Tae Kwang New Tech. Co., Ltd.	52.01
Unidesign Co	52.01
All Others	7.19

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of PET sheet, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after March 3, 2020, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

Pursuant to section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of PET sheet no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is raw, pretreated, or primed polyethylene terephthalate sheet, whether extruded or coextruded, in nominal thicknesses of equal to or greater than 7 mil (0.007 inches or 177.8 μm) and not exceeding 45 mil (0.045 inches or 1143 μm) (PET sheet). The scope includes all PET sheet whether made from prime (virgin) inputs or recycled inputs, as well as any blends thereof. The scope includes all PET sheet meeting the above specifications regardless of width, color, surface treatment, coating, lamination, or other surface finish.

The merchandise subject to this investigation is properly classified under statistical reporting number 3920.62.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Changes Since the *Preliminary Determination*
VI. Discussion of the Issues
Comment 1: Whether to Grant JYC's Duty Drawback Adjustment
Comment 2: Whether to Revise JYC's Calculation of Home Market Credit
Comment 3: Selection of the Surrogate Short-Term U.S. Market Interest Rate
Comment 4: Whether to Grant JYC's Constructed Export Price Offset
VII. Recommendation

[FR Doc. 2020–15896 Filed 7–21–20; 8:45 am]

BILLING CODE 3510–DS–P

[6] Commerce also assigned a rate based on adverse facts available to the following companies which did not submit a response to Commerce's initial request for quantity and value information: Chungdang Co., K Stout Co., Kemicolor Corp., KP Tech Ltd., Moojin Che, OKS Poly, Puyoung Industry Co., Samjin Plastic Co., Sangil Corp., SK Chemicals, Tae Kwang New Tech. Co., Ltd., and Unidesign Co.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–813]

Polyethylene Terephthalate Sheet From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that polyethylene terephthalate sheet (PET sheet) from the Sultanate of Oman (Oman) is being, or is likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation (POI), July 1, 2018 through June 30, 2019.

DATES: Applicable July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2020, Commerce published the *Preliminary Determination* in this investigation.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Period of Investigation

The POI is July 1, 2018 through June 30, 2019.

Scope of the Investigation

The product covered by this investigation is PET sheet from Oman. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On February 25, 2020, we issued a Preliminary Scope Memorandum.[3] We received no scope case briefs from interested parties. Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

Commerce normally verifies information relied upon in making its final determination, pursuant to section 782(i)(1) of the Tariff Act of 1930, as amended (the Act). However, during the course of this investigation, we were unable to conduct verification.[4] Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use ''facts otherwise available'' in reaching the applicable determination. Accordingly, we relied on the information submitted on the record, which we used in making our *Preliminary Determination* (and as further developed via responses to subsequent supplemental questionnaires and factual information submitted on the record), as facts available in making our final determination.[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculations for OCTAL SAOC—FZC (OCTAL) since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an estimated weighted-average dumping margin for OCTAL that is not zero, *de minimis,* or based entirely on facts otherwise available. Commerce determined the all-others rate using the estimated weighted-average dumping margin calculated for OCTAL, the sole respondent.

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
OCTAL SAOC—FZC (OCTAL) ..	4.74
All Others	4.74

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of PET sheet, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for

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[1] *See Polyethylene Terephthalate Sheet from the Sultanate of Oman: Preliminary Affirmative Determination of Sales at Less than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 12513 (March 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Polyethylene Terephthalate Sheet from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Polyethylene Terephthalate Sheet from the Republic of Korea and the Sultanate of Oman: Preliminary Scope Decision Memorandum,'' dated February 25, 2020.

[4] *See* Memorandum, ''Antidumping Duty Investigation of Polyethylene Terephthalate Sheet from the Sultanate of Oman,'' dated April 9, 2020.

[5] *Id.*

consumption on or after March 3, 2020, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

Pursuant to section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of PET sheet no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is raw, pretreated, or primed polyethylene terephthalate sheet, whether extruded or coextruded, in nominal thicknesses of equal to or greater than 7 mil (0.007 inches or 177.8 µm) and not exceeding 45 mil (0.045 inches or 1143 µm) (PET sheet). The scope includes all PET sheet whether made from prime (virgin) inputs or recycled inputs, as well as any blends thereof. The scope includes all PET sheet meeting the above specifications regardless of width, color, surface treatment, coating, lamination, or other surface finish.

The merchandise subject to this investigation is properly classified under statistical reporting number 3920.62.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Changes Since the *Preliminary Determination*
VI. Discussion of the Issues
Comment 1: Whether to Apply a Downward Adjustment to OCTAL's Reported Gross Unit Price for its U.S. Sales to Customer A
Comment 2: Treatment of Merchandise with Non-Conformities and/or Material Defects
Comment 3: Clerical Error in the Calculation for Certain Movement Expenses
Comment 4: Date of Sale for Comparison Market and U.S. Sales
Comment 5: Whether Commerce Should Use Zeroing in Its Margin Calculation via the
Average-to-Transaction Methodology
Comment 6: Whether the Interim Closing Adjustment from OCTAL's Cost Reconciliation Should Be Added to or Subtracted from the Cost of Manufacturing
Comment 7: Whether OCTAL's Cyclone-Related Expenses Should Be Excluded from the Reported Costs
VII. Recommendation

[FR Doc. 2020–15897 Filed 7–21–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Notice of Correction to Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the final results of the administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico.

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8362.

SUPPLEMENTARY INFORMATION: On July 1, 2020, Commerce published the final results of the 2017–2018 antidumping duty administrative review of carbon and certain alloy steel wire rod from Mexico.[1] In that notice, Commerce made a typographical error with respect to the spelling of the company name of Talleres y Aceros S.A. de C.V., a non-selected respondent in this review. Specifically, Commerce misspelled the company name as ''Talleres y Aceros de C.V'' in the margin rate table of the *Final Results.* The correct spelling of the company name is ''Talleres y Aceros S.A. de C.V.'' As a result, we hereby correct the *Final Results.*

Notification to Interested Parties

This correction to the *Final Results* is issued and published in accordance

[1] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 39527 (July 1, 2020) (*Final Results*).

with sections 751(a) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–15854 Filed 7–21–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–857]

Certain Oil Country Tubular Goods From India: Preliminary Determination of No Shipments in the Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that Jindal SAW, Ltd. (JSL), the sole company for which a review was requested, made no shipments of certain oil country tubular goods (OCTG) from India during the period of review (POR) from September 1, 2018 through August 31, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Kathryn Turlo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3870.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on OCTG from India.[1] On September 30, 2019, Maverick Tube Corporation, Tenaris Bay City, Inc., TMK IPSCO, Vallourec Star, L.P., Welded Tube USA, and United States Steel Corporation (collectively, the domestic interested parties) timely requested that Commerce conduct an administrative review of JSL.[2] We received no other requests for review. On November 12, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *Order* with respect to JSL, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[3]

On April 1, 2020, Commerce issued its initial AD questionnaire to JSL,[4] and on April 20, 2020, JSL notified Commerce that it had no sales, shipments, or entries of subject merchandise during the POR.[5] On May 28, 2020, Commerce issued a no shipment inquiry to U.S. Customs and Border Protection (CBP) to corroborate JSL's claim.[6] On June 9, 2020, Commerce notified all interested parties that CBP found no evidence of shipments of subject merchandise produced and/or exported by JSL during the POR and established a period for comments regarding CBP's findings.[7] No parties submitted comments concerning CBP's findings.

Scope of the Order

The merchandise covered by the *Order* is OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Order* also covers OCTG coupling stock.

Excluded from the scope of the *Order* are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the *Order* may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

Because JSL timely filed a statement reporting that they made no shipments of subject merchandise to the United States during the POR, and we were able to confirm this claim with CBP, we preliminarily determine that JSL had no shipments of subject merchandise during the POR.[8] Consistent with Commerce's practice, we are not preliminarily rescinding the review

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 45949, 45950 (September 3, 2019); *see also Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Order*).

[2] *See* Domestic Interested Parties' Letter, ''Oil Country Tubular Goods from India: Request for Administrative Review,'' dated September 30, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 61011, 61013 (November 12, 2019).

[4] *See* Commerce's Initial AD Questionnaire, dated April 1, 2020.

[5] *See* JSL's Letter, ''Oil Country Tubular Goods from India: Statement of no sales, entries or shipment of subject merchandise during the Period of Review,'' dated April 20, 2020 (JSL No Shipment Letter).

[6] *See* Customs Instructions Message 0149406, dated May 28, 2020.

[7] *See* Memorandum, ''Certain Oil Country Tubular Goods from India: Results of No Shipment Inquiry and Deadline for Comment Period,'' dated June 9, 2020.

[8] *Id.; see also* JSL No Shipment Letter.

with respect to JSL but, rather, will complete the review and issue appropriate instructions to CBP based on the final results.[9]

Public Comment

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Case and rebuttal briefs must be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and must also be served on interested parties.[12] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13] ACCESS is available to registered users at *http://access.trade.gov.* An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time on the date that the document is due.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[14] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[15] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[16]

Assessment Rates

If we continue to find, in the final results, that JSL had no shipments of subject merchandise, for entries of subject merchandise during the POR produced by JSL for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[17]

Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for JSL will remain unchanged from the rate assigned to them in the most recently completed segment for the company; [18] (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be zero percent, the all-others cash deposit rate established in the less-than-fair-value investigation.[19] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–15853 Filed 7–21–20; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.303.

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

[17] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *See Order,* 79 FR at 53694 n17.

[19] *See Order,* 79 FR at 53694 n.17.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–905]

4th Tier Cigarettes From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that 4th Tier Cigarettes from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2018 through September 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Jesse Montoya, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–8211, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 15, 2020.[1] On May 6, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now July 15, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are 4th Tier Cigarettes from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for KT&G Corporation, or for ''all others.'' For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for KT&G Corporation, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for KT&G Corporation is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
KT&G Corporation	5.48	5.48
All Others	5.48	5.48

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 21 days after the date of publication of the

[1] *See 4th Tier Cigarettes From the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 2390 (January 15, 2020) (*Initiation Notice*).

[2] *See 4th Tier Cigarettes from the Republic of Korea: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 85 FR 27991 (May 12, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of 4th Tier Cigarettes from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 2391.

[6] *See* Memorandum, ''Polyethylene Terephthalate Sheet from the Republic of Korea: Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

preliminary determination, unless Commerce alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether subject imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 15, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain tobacco cigarettes, commonly referred to as ''4th tier cigarettes.'' The subject cigarettes are composed of a tobacco blend rolled in paper, have a nominal minimum total length of 7.0 cm but do not exceed 12.0 cm in total nominal length, and have a nominal diameter of less than 1.3 cm. These sizes of cigarettes are frequently referred to as ''Kings'' and ''100's,'' but subject merchandise that meets the physical description of the scope is included regardless of the marketing description of the size of the cigarettes. Subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems.

Subject merchandise is typically sold in packs of 20 cigarettes per pack which generally includes the marking ''20 Class A Cigarettes'' but are included regardless of packaging. 4th tier cigarette packages are typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack.

Both menthol and non-menthol cigarettes and cigarettes with or without a filter attached are covered by the scope of this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2402.20.8000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Negative Preliminary Determination of Critical Circumstances
VII. Discussion of the Methodology
VIII. Date of Sale
IX. Product Comparisons
X. Constructed Export Price
XI. Normal Value
XII. Currency Conversion
XIII. Recommendation

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BILLING CODE 3510–DS–P

[7] *See* 19 CFR 351.309; and 19 CFR 351.303 (for general filing requirements); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[8] *See Temporary Rule.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–834]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Additionally, Commerce preliminarily determines that a company for which we initiated a review had no shipments during the period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2019, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from Italy.[1] This review covers seven producers and/or exporters of the subject merchandise. Commerce selected two companies, NLMK Verona SpA (NVR) and Officine Tecnosider s.r.l. (OTS), for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

On January 9, 2020, Commerce extended the preliminary results of this review by 119 days, until May 29, 2020.[2] On April 24, 2020, Commerce tolled all deadlines in administrative

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[2] *See* Memorandum, ''Carbon and Alloy Steel Cut-to-Length Plate from Italy: Extension of Deadline for Preliminary Results of 2018–2019 Antidumping Duty Administrative Review,'' dated January 9, 2020.

reviews by 50 days, thereby extending the deadline for these results until July 20, 2020.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Italy. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[4]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Determination of No Shipments

One company under review, Lyman Steel Company (Lyman), filed a statement reporting that it made no shipments of subject merchandise to the United States during the POR.[5] We were able to confirm Lyman's claim with U.S. Customs and Border Protection (CBP).[6] Consequently, we preliminarily determine that Lyman had no shipments during the POR. Consistent with its practice, Commerce finds that it is not appropriate to preliminarily rescind the review with respect to this company but, rather, to complete the review with respect to it and issue appropriate instructions to CBP based on the final results of this review.[7]

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period May 1, 2018 through April 30, 2019:

Producers/exporters	Weighted-average dumping margin (percent)
NLMK Verona SpA	1.39
Officine Tecnosider s.r.l	1.23
Review-Specific Average Rate Applicable to the Following Companies: [8]	
O.ME.P SpA	1.30
Ofar SpA	1.30
Sesa SpA	1.30
Tim-Cop Doo Temerin	1.30

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[9] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[14] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[15] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[16]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess,

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[4] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2018–2019 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Lyman's Letter ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy; Lyman Steel Company's Certification of No Sales, Shipments, or Entries,'' dated August 14, 2019.

[6] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy (A–475–834),'' dated April 13, 2020.

[7] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review;* 2012–2013, 79 FR 51306 (August 28, 2014).

[8] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c).

[11] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* Section 751(a)(3)(A) of the Act.

antidumping duties on all appropriate entries.[17]

Where the respondent did not report entered value or reported amounts based on average data, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [18] of the cash deposit rates calculated for NVR and OTS, excluding any which are zero or *de minimis* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[19]

Further, if we continue to find, in the final results, that Lyman had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under their AD case number (*i.e.,* at that exporter's rate), or at the all-others rate, if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.08 percent, the all-others rate established in the LTFV investigation.[20] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2020–15840 Filed 7–21–20; 8:45 am]

BILLING CODE 3510–DS–P

[17] *See* 19 CFR 351.212(b).

[18] This rate was calculated as discussed in footnote 5, above.

[19] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[20] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research. This meeting is open to the public.

DATES: The Board on Coastal Engineering Research will meet from 9:30 a.m. to 5:00 p.m. on August 25, 2020 and reconvene from 9:30 a.m. to 3:45 p.m. on August 26, 2020 Central Time Zone. The Executive Session of the Board will convene from 4:00 p.m. to 5:00 p.m. on August 26, 2020. All sessions are open to the public and are held in Central Time Zone.

ADDRESSES: The meetings will be held by videoconference/teleconference. To participate in the meeting, see the Meeting Accessibility section for instructions. For more information about the Board, please visit *https://www.erdc.usace.army.mil/CHL/CERB/.*

FOR FURTHER INFORMATION CONTACT: Dr. Julie Dean Rosati Designated Federal Officer (DFO), U.S. Army Engineer Research and Development Center, Waterways Experiment Station, Coastal and Hydraulics Laboratory, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, phone (202) 761–1850, or *Julie.D.Rosati@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Board on Coastal Engineering Research provides broad policy guidance and reviews plans for the conduct of research and the development of research projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers.

Purpose of the Meeting: The theme of the meeting is ''Compound Flooding, Multiple Hazards & Increasing Risk.'' The purpose of the meeting is to identify Corps coastal research priorities related to present and future compound flooding and multiple, coincident hazards that increase coastal risk.

Agenda: On Tuesday morning, August 25, 2020, panel presentations will address Compound Flooding/Threats. Presentations will include: Numerical Advancements, Levee Overtopping, and Compound Flooding; Compound Flooding Issues and Advancements; Compounding Cultural and Social Issues within a Flood/Storm Decision-Framework; and Compounding Risk with Multi-Hazards. The afternoon panel entitled Physical and Field Facilities Addressing Compound Phenomenon will include the following presentations: River loading to coastal zone and Low Sill Model; and Current Status and Future of Coastal Physical Modeling at CHL. The day will end with a virtual tour of CHL Physical/Field Facilities.

On Wednesday morning, August 26, 2020, the Board will reconvene to discuss Delivering Technology to the Field. Presentations include: CHL's Technology Transfer Plan; Research to Tech Transfer: Unmanned Aerial Systems and Mini-Argus; USCRP multi-agency/academic/stakeholder collaborative coastal research program. After lunch the last panel session entitled Future Research Needs in Compounding Risks will have presentation on: Academic Perspective; Research Needs in Probability Science to Estimate Compound Risk; and Strategic Target/Focus Area in Compound Flooding and Research Needed to Advance State of Science.

The Board will meet in Executive Session to discuss ongoing initiatives and future actions on Wednesday afternoon, August 26, 2020 from 4:00pm to 5:00pm.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, the meeting is open online to the public from 9:30 a.m. to 5:00 p.m. daily. Persons desiring to participate in the meeting online or by phone are required to submit their name, organization, email and telephone contact information to Ms. Tanita Warren at *Tanita.S.Warren@usace.army.mil* no later than Thursday, August 20, 2020. Specific instructions, both for online or teleconference participation in the meeting, will be provided by reply email. The meeting agenda will be available prior to the meeting on the Board's website at: *https://www.erdc.usace.army.mil/CHL/CERB/*

Oral participation by the public is scheduled for 2:30 p.m. on Wednesday, August 26, 2020. For additional information about public access procedures, please contact Dr. Julie Dean Rosati, the Board's DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: It is encouraged for individuals who wish to attend the meeting of the Board to register with the DFO by email, the preferred method of contact, no later than August 20, 2020, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: Pursuant to 41 CFR 102–3.015(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Dr. Julie Dean Rosati, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–15862 Filed 7–21–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0115]

Agency Information Collection Activities; Comment Request; CARES Act 18004(a)(1) Reserve Fund Application

AGENCY: Office of Postsecondary Education (OPE), 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 information collection.

DATES: Approval by the OMB has been requested by July 17, 2020. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before September 21, 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–0115. 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 Gaby Watts, 202–453–7195.

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: CARES Act 18004(a)(1) Reserve Fund Application.

OMB Control Number: 1840–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Organizations; Private Sector.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 150.

Abstract: Section 18004(a)(1) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary of Education to allocate formula grant funds to participating institutions of higher educations (IHEs). Section 18004(c) of the CARES Act requires the IHEs to use no less than fifty percent of the funds received to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance such as food, housing, course materials, technology, health care, and child care).

This collection includes application materials for those institutions not included in the original formula-based allocation table under 18004(a)(1) because the requisite Integrated Postsecondary Education Data System (IPEDS) enrollment data and Federal Student Aid (FSA) Pell data were not available. OMB approval requested date is July 20, 2020.

Additional Information: An emergency clearance approval for the use of the system is described below due to the following conditions: Section 18004(a)(1) of the CARES Act authorizes the Secretary of Education to allocate formula grant funds to participating institutions of higher educations (IHEs). Section 18004(c) of the CARES Act requires the IHEs to use no less than fifty percent of the funds received to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance such as food, housing, course materials, technology, health care, and child care).

Dated: July 17, 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. 2020–15825 Filed 7–21–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0116]

Agency Information Collection Activities; Comment Request; CARES Act 18004(a)(3) Budget and Expenditure Reporting

AGENCY: Office of Postsecondary Education (OPE), 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 information collection.

DATES: Approval by the OMB has been requested by July 17, 2020. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before September 21, 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–0116. 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 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Gaby Watts, 202–453–7195.

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: CARES Act 18004(a)(3) Budget and Expenditure Reporting.

OMB Control Number: 1840–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local and Tribal Organizations; Private Sector.

Total Estimated Number of Annual Responses: 538.

Total Estimated Number of Annual Burden Hours: 1,076.

Abstract: Section 18004(a)(3) of the CARES Act authorizes the Secretary to allocate funds for part B of Title VII of the HEA, for institutions of higher education that the Secretary determines have the greatest unmet needs related to coronavirus. This collection includes a budget and expenditure reporting form for institutions potentially eligible for funds under this section.

Additional Information: An emergency clearance approval for the use of the system is described below due to the following conditions: If this emergency collection is not approved, the Department will be unable to issue these awards in a timely manner. These awards are particularly needed by IHEs that have experienced the greatest economic and educational disruptions caused by 2019–nCoV in order to support their recovery.

Dated: July 17, 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. 2020–15824 Filed 7–21–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0077]

Certification and Agreement for the ESSER Fund Application; ED–2020–SCC–0077; Correction

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Correction notice.

SUMMARY: On June 16, 2020, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** (Vol. 85, No 116, Page 36385, Column 1, 2 and 3) seeking public comment for an information collection entitled, ''Certification and Agreement for the ESSER Fund Application.'' The total estimated number of annual burden hours of 260 was incorrect, and the correct number is 76,653 to include the LEA burden from the approved emergency collection under 1810–0744. The burden that relates to the Equitable Services Interim Final Rule will now be part of the 1810–0743 information collection.

The PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 16, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division Office of Chief Data Officer.

[FR Doc. 2020–15803 Filed 7–21–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 11–128–LNG, 19–156–LNG]

Change in Control; Dominion Energy Cove Point LNG, LP

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Notification in Accordance with Procedures for Changes in Control (Notice) filed by Dominion Energy Cove Point LNG, LP (DECP) in the above-referenced dockets on July 9, 2020. The Notice describes changes in DECP's ownership. The Notice was filed under section 3 of the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 6, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

DECP states that 75% of its limited partnership interest is currently owned by Dominion MLP Holding Company II, LLC (Dominion MLP Holding), a Virginia limited liability company that is a wholly-owned, direct subsidiary of Dominion Energy Gas Holdings, LLC, which in turn is a wholly-owned subsidiary of Dominion Energy, Inc. (DEI). The remaining 25% of DECP's limited partnership interest is owned by Bowie Acquisitions LLC, an affiliate of Brookfield Asset Management Inc. (Brookfield). The general partnership interest in DECP is currently held by Cove Point GP Holding Company, LLC (Cove Point GP), a Delaware limited liability company and a wholly-owned, direct subsidiary of Dominion MLP Holding.

DECP provides notification of a planned transaction in which Berkshire Hathaway Energy Company (BHE), an Iowa corporation and a subsidiary of Berkshire Hathaway Inc. (a Delaware corporation), will acquire indirect ownership and control of 100% of the general partnership interests of DECP, as well as 25% of DECP's limited partnership interests. DECP states that 50% of its limited partnership interest will continue to be owned directly or indirectly by DEI. Brookfield will continue to own the remaining 25% of DECP's limited partnership interest through Bowie Acquisitions LLC.

According to DECP, BHE is acquiring these interests in DECP as part of a larger transaction, with an enterprise value of approximately $9.7 billion, involving the acquisition by BHE of a number of subsidiaries of DEI, pursuant to a Purchase and Sale Agreement dated as of July 3, 2020. DECP states that BHE generally will have day-to-day management and control of DECP. DECP will remain the holder of the export authorizations.

Additional details can be found in DECP's Notice, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2020/07/f76/DECP_BHE_DOE_CIC_filing.pdf*

DOE/FE Evaluation

DOE/FE will review DECP's Notice in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[1] Consistent with the CIC Procedures, this notice addresses DECP's authorizations to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries, granted in DOE/FE Order Nos. 3331–A [2] (FE Docket No. 11–128–LNG) and 4508 (FE Docket No. 19–156–LNG).[3] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** in order to move to intervene, protest, and answer DECP's Notice.[4] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in DECP's Notice. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: emailing the filing to *fergas@hq.doe.gov;* (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in ADDRESSES; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in ADDRESSES. All filings must include a reference to the individual FE Docket Number(s) in the title line, or Dominion Energy Cove Point LNG, LP Change in Control in the title line. *Please Note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

DECP's Notice, and any filed protests, motions to intervene, notices of intervention, and comments, are available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC, 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

DECP's Notice, and any filed protests, motions to intervene, notices of intervention, and comments, will also be available electronically by going to the following DOE/FE Web address: *https://fossil.energy.gov/ng_regulation/.*

Signed in Washington, DC, on July 17, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–15894 Filed 7–21–20; 8:45 am]

BILLING CODE 6450–01–P

[1] 79 FR 65541 (Nov. 5, 2014).

[2] DOE/FE Order No. 3331 was subsequently amended by DOE/FE Order Nos. 3331–B and 3331–C.

[3] DECP's Notice also applies to its existing authorizations to export LNG to FTA countries and to import natural gas from various international sources, but DOE/FE will respond to those portions of the document separately pursuant to the CIC Procedures, 79 FR 65542.

[4] Intervention, if granted, would constitute intervention only in the change in control portion of this proceeding, as described herein.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF20–1–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Planned Northern Lights 2021 Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Northern Lights 2021 Expansion Project involving construction and operation of facilities by Northern Natural Gas Company (Northern) in Dakota, Scott, Pine, Carleton, and Morrison counties, Minnesota. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 10, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on December 6, 2019, you will need to file those comments in Docket No. PF20–1 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC website (*www.ferc.gov*) under the natural gas Landowner Topics link (*https://www.ferc.gov/industries-data/natural-gas/natural-gas-project-landownerstakeholder-topics-interest*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overviewtoregisterforeSubscription.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF20–1) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Planned Project

Northern plans to construct a pipeline loop [1] and a pipeline extension totaling about 1.5 miles, replace a 425-foot-long 8-inch-diameter branch line with 12-inch-diameter pipeline of the same length, construct one new compressor station, and add additional compression at one existing compressor station, all located in various counties in Minnesota. According to Northern, the planned facilities are required to serve the firm transportation requirements of its customers associated with increased energy needs.

The Northern Lights 2021 Project would consist of the following facilities:

- The Willmar D Branch Line Extension (about 0.8 mile of 24-inch-diameter pipeline);
- the Carlton Interconnect Loop (about 0.7 mile of 24-inch-diameter pipeline);
- replacement of 425 feet of 8-inch-diameter pipeline on the Viking Interconnect Branch Line with a 12-inch-diameter branch line of the same length;
- a new greenfield natural gas-fired Hinckley Compressor Station, which would include one 11,153-horsepower natural gas-fired turbine, one gas heating skid, and one natural gas-fired backup electric generator;
- modifications of the Pierz Compressor Station consisting of adding an additional 1,100 horsepower electric motor-driven compressor unit; and,
- appurtenant facilities including one new pig [2] receiver and one new pig launcher, and associated piping and valves.

The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

Construction of the planned facilities would disturb about 34.8 acres of land for the aboveground facilities and the pipeline. Following construction, Northern would maintain about 14.4 acres for permanent operation of the project facilities; the remaining acreage would be restored and revert to former uses. About 95 percent of the planned pipeline routes parallel existing pipeline, utility, or road rights-of-way.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate possible alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas.

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Although no formal application has been filed, Commission staff has already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact Federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present Commission staff's independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [4] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff has the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the EA.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[6] The EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Becoming an Intervenor

Once Northern files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* PF20–1). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events*along with other related information.

Dated: July 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15262 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–455–000]

Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, FLNG Liquefaction 3, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Noble Gas Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Noble Gas Project involving construction and operation of facilities by Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (together referred to as Freeport LNG) in Brazoria County, Texas. The Commission will use this EA

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, § 1501.6.

[6] The Advisory Council on Historic Preservation regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of an authorization. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 17, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on May 13, 2020, you will need to file those comments in Docket No. CP20–455–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the following address using the U.S. Postal Service. Be sure to reference the project docket number (CP20–455–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be sent to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 2225 Wilkins Avenue, Rockville, Maryland 20852.

Summary of the Proposed Project

Freeport LNG requests authorization to site, construct, and operate modifications to Freeport LNG's existing Pretreatment Facility in Brazoria County, Texas, to allow for the extraction of helium from the existing compressed boil-off gas (BOG) pipeline. The Pretreatment Facility is part of the Freeport LNG Terminal facilities, and is located about 1.5 miles from the Freeport LNG Terminal facilities on Quintana Island. The modifications to the Pretreatment Facility include tie-ins to the BOG pipeline, a firewater system, and a nitrogen utility unit at the Pretreatment Facility. The purpose is to support the extraction of helium from the BOG pipeline. These tie-ins, along with a non-jurisdictional helium extraction and purification plant and associated non-jurisdictional electric supply tie-in, are referred to collectively as the Noble Gas Project (Project).

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The Project would be located entirely within Freeport LNG's existing Pretreatment Facility. Construction would affect about 3.6 acres and operation would affect less than 0.1 acre of land within the current Pretreatment Facility footprint. A 9.9-acre existing access road would be used during construction of the Project.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached Mailing List Update Form (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP20–455). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15877 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–494–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

Take notice that on July 6, 2020, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP20–494–000 a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, to abandon a supply lateral and related facilities located in offshore federal waters in the Gulf of Mexico near Louisiana. Specifically Texas Eastern intends to: (i) Abandon in place approximately 3.53 miles of its 12-inch Line 40–G–1 from milepost (MP) 0.00 in West Delta Block 87 to approximately MP 3.53 in West Delta Block 86, and (ii) abandon by removal metering and regulating (M&R) station 72137 and approximately 0.07 miles of connecting 12-inch Line 40–G–1 pipeline from MP 3.53 to MP 3.60 on Platform A, West Delta Block 86. (Line 40–G–1 Abandonment Project).

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Lisa A. Connolly, Director, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, by telephone at (713) 627–4102, by fax at (713) 627–5947, or by email at *lisa.connolly@enbridge.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15878 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4428–011]

Walden Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 4428–011.

c. *Date filed:* May 29, 2020.

d. *Applicant:* Walden Hydro, LLC.

e. *Name of Project:* Walden Hydroelectric Project.

f. *Location:* On the Wallkill River, in the Village of Walden, Orange County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Ms. Elise Anderson, Senior Environmental Permitting Specialist, Walden Hydro, LLC, Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810; Phone at (978) 447–4408 or email at *Elise.Anderson@enel.com.*

i. *FERC Contact:* Samantha Pollak at (202) 502–6419, or *samantha.pollak@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* September 14, 2020.

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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis at this time.

l. The Walden Project consists of the following existing facilities: (1) A 417-foot-long, V-shaped concrete dam topped with 2-foot-high flashboards; (2) an impoundment with a surface area of 69 acres at the normal pool elevation of 321.3 feet National Geodetic Vertical Datum of 1929 (NGVD29); (3) an intake structure consisting of a 252-foot-long, 56-foot-wide, 18-foot-deep canal forebay; (4) four 40-foot-long steel penstocks; (5) a 60-foot-long, 45-foot-wide, 29-foot-high powerhouse containing three horizontal double-runner Francis turbine units with ratings of 980 kilowatts (kW), 630 kW, and 500 kW, respectively for a total rated capacity of 2,110 kW; (6) a 30-foot-long, 37-foot-wide tailrace; (7) a 230-foot-long bypassed reach consisting primarily of bedrock; (8) a transmission line; (9) a substation with a single-phase 12.5-kilovolt transformer; and (10) appurtenant facilities.

The project operates in a run-of-river mode with a minimum flow of 31 cubic feet per second. The project has an average annual generation of 3,333 megawatt-hours between 2012 and 2019.

m. The Commission provides all interested persons with an opportunity to view and/or print the EA 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 the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST or MOTION TO INTERVENE; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments: November 2020.

Request Additional Information (if necessary): January 2021.

Issue Scoping Document 2 (if necessary): February 2021.

Issue Notice of Ready for Environmental Analysis: February 2021.

Commission issues EA: September 2021.

Comments on EA: October 2021.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15865 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1023–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Hartree to United Energy 802517 to be effective 7/16/2020.

Filed Date: 7/15/20.

Accession Number: 20200715–5013.

Comments Due: 5 p.m. ET 7/27/20.

Docket Numbers: RP20–1024–000.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: § 4(d) Rate Filing: Non-conforming TSA—Wapiti to be effective 8/14/2020.

Filed Date: 7/15/20.

Accession Number: 20200715–5032.

Comments Due: 5 p.m. ET 7/27/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15876 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–554–000; CP15–554–001; CP15–554–008; CP15–555–000; CP15–555–006]

Atlantic Coast Pipeline, LLC, Dominion Energy Transmission, Inc.; Notice of Modified Request for Extension of Time

Take notice that on July 10, 2020, Atlantic Coast Pipeline, LLC (Atlantic) and Dominion Energy Transmission, Inc. (DETI) (collectively, applicants), filed a ''Modification of Request for Extension of Time'' (Amended Request). Applicants originally filed a June 16, 2020 ''Request for Extension of Time'', requesting that the Federal Energy Regulatory Commission (Commission) grant a two-year extension of time, until October 13, 2022, to construct and place into service the facilities that comprise Atlantic's Atlantic Coast Pipeline (ACP) and DETI's Supply Header Project (SHP) as described in the original certificate authorization issued on October 13, 2017 (Certificate Order).[1] The Certificate Order required Atlantic and DETI to construct and place the facilities in service by October 13, 2020.[2]

[1] *Atlantic Coast Pipeline, LLC,* 161 FERC ¶ 61,042 (2017).

[2] *Id.* at Ordering Paragraph E.

DETI explains that on July 5, 2020, DETI and Duke Energy announced the cancellation of the Atlantic Coast Pipeline. DETI avers that it will not be placing the ACP in service and that it has initiated planning the abandonment and restoration of ACP project areas. DETI further stated that because ACP will not be placed in-service, it no longer requests an extension of the Order condition related to making its facilities available for service. However, DETI requests, to the extent its necessary, a one-year extension of time, until October 13, 2021, to complete any construction activities that may be required to complete the abandonment and restoration of the ACP project areas.

Additionally, DETI states that approximately 31 percent of the SHP mainline has been installed, and substantial work has occurred at three of the four existing compressor stations. DETI states that it is exploring options to utilize certain SHP facilities in conjunction with its existing system. Accordingly, DETI requests a two-year extension of time, until October 13, 2022 to complete construction of certain SHP facilities.

This notice establishes a 15-calendar day comment period deadline. Any person wishing to comment on Atlantic's and DETI's modified request for an extension of time may do so. No reply comments or answers will be considered.

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 in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on August 3, 2020.

Dated: July 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15966 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–17–000]

Impacts of COVID–19 on the Energy Industry; Notice Inviting Post-Technical Conference Comments

On July 8 and 9, 2020, the Federal Energy Regulatory Commission convened a Commissioner-led technical conference to discuss the ongoing, serious impacts that the emergency conditions caused by COVID–19 are having on various segments of the United States' energy industry. During the conference, the Commission explored the potential longer-term impacts on the entities that it regulates in order to ensure the continued efficient functioning of energy markets, transmission of electricity, transportation of natural gas and oil, and reliable operation of energy infrastructure today and in the future, while also protecting consumers.

All interested persons are invited to file post-technical conference comments on any or all of the topics discussed at the July 8–9 technical conference. Commenters may also respond to the questions outlined in the July 1, 2020 supplemental notice of technical conference.[1] Commenters need not answer all of the questions included in the July 1, 2020 notice, but, to the extent that commenters respond to any of these questions, please utilize the question numbering included in that notice. Comments must be submitted on or before 45 days from the date of this notice.

For more information about this notice, please contact:

Aileen Roder (Technical Information), Office of Energy Policy and Innovation, (202) 502–6735, *aileen.roder@ferc.gov*

Zeny Magos (Technical Information), Office of Energy Market Regulation, (202) 502–8244, *zeny.magos@ferc.gov*

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15867 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–34–000]

Constellation Power Source Generation, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On July 16, 2020, the Commission issued an order in Docket No. EL20–34–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into the continued justness and reasonableness of Constellation Power Source Generation, LLC's rate schedule for Reactive Supply and Voltage Control from Generation or Other Sources Service. *Constellation Power Source Generation, LLC,* 172 FERC 61,051 (2020).

The refund effective date in Docket No. EL20–34–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL20–34–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2019), within 21 days of the date of issuance of the order.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15863 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2535–126]

Dominion Energy South Carolina, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2535–126.

c. *Date Filed:* May 15, 2020.

d. Submitted By: Dominion Energy South Carolina, Inc.

e. *Name of Project:* Stevens Creek Hydroelectric Project.

f. *Location:* At the confluence of Stevens Creek and the Savannah River, in Edgefield and McCormick Counties, South Carolina, and Columbia County, Georgia. The project occupies approximately 104 acres of federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Amy Bresnahan, Dominion Energy South Carolina, Inc., 220 Operation Way, Mail Code A221, Cayce, SC 29033–3712; (803) 217–9965; email—*Amy.Bresnahan@dominionenergy.com.*

i. *FERC Contact:* Sarah Salazar at (202) 502–6863; or email at *sarah.salazar@ferc.gov.*

j. Dominion Energy South Carolina, Inc. filed its request to use the Traditional Licensing Process on May 15, 2020. Dominion Energy South Carolina, Inc. provided public notice of its request on May 13 and 14, 2020. In a letter dated July 16, 2020, the Director of the Division of Hydropower Licensing approved Dominion Energy South Carolina, Inc.'s request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the South Carolina and Georgia State Historic Preservation Officers, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Dominion Energy South Carolina, Inc. as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the

[1] *See Supplemental Notice of Technical Conference,* Docket No. AD20–17–000 (July 1, 2020).

Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Dominion Energy South Carolina, Inc. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*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. The PAD is also available on the applicant's project website at *www.stevenscreekrelicense.com.* At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2535–126. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 2023.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15864 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–212–000.
Applicants: Millican Solar Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Millican Solar Energy LLC.
Filed Date: 7/16/20.
Accession Number: 20200716–5111.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: EG20–213–000.
Applicants: Prineville Solar Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Prineville Solar Energy LLC.
Filed Date: 7/16/20.
Accession Number: 20200716–5114.
Comments Due: 5 p.m. ET 8/6/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1887–002.
Applicants: Versant Power.
Description: Compliance filing: Response to Order on Compliance Filing (Order No. 845—Docket No. ER19–1887–) to be effective 5/20/2019.
Filed Date: 7/16/20.
Accession Number: 20200716–5005.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER19–1947–002.
Applicants: Puget Sound Energy, Inc.
Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.
Filed Date: 7/16/20.
Accession Number: 20200716–5092.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER19–2233–003.
Applicants: Smoky Mountain Transmission LLC.
Description: Order Nos. 845 and 845–A Compliance Filing and Request for Waiver of Smoky Mountain Transmission LLC.
Filed Date: 7/16/20.
Accession Number: 20200716–5115.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–1491–002.
Applicants: Wind Wall 1 LLC.
Description: Tariff Amendment: Second Supplement to Market-Based Rate—Notice of Date Change to be effective 7/17/2020.
Filed Date: 7/16/20.
Accession Number: 20200716–5014.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2434–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Generator Special Facilities Agreement, et al. of Pacific Gas and Electric Company.
Filed Date: 7/15/20.
Accession Number: 20200715–5167.
Comments Due: 5 p.m. ET 8/5/20.

Docket Numbers: ER20–2435–000; TS20–6–000.
Applicants: Smoky Mountain Transmission LLC.
Description: Petition for Waiver of Open-Access Requirements of Order Nos. 888, et al. of Smoky Mountain Transmission LLC.
Filed Date: 7/15/20.
Accession Number: 20200715–5172.
Comments Due: 5 p.m. ET 8/5/20.

Docket Numbers: ER20–2436–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–16_SA 2871 NSP-North Star Solar 2nd Rev GIA (J385) to be effective 6/30/2020.
Filed Date: 7/16/20.
Accession Number: 20200716–5018.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2437–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–16_SA 3519 NSP-North Star Solar FSA (J385) to be effective 6/30/2020.
Filed Date: 7/16/20.
Accession Number: 20200716–5019.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2438–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–16_SA 2885 NSP-Marshall Solar 2nd Rev GIA (J400) to be effective 12/31/9998.
Filed Date: 7/16/20.
Accession Number: 20200716–5021.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2439–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–16_SA 3514 NSP-Marshall Solar FSA (J400) to be effective 6/30/2020.
Filed Date: 7/16/20.
Accession Number: 20200716–5024.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2440–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–07–16_SA 3462 3463 3464 3465 3466 3467 3468 NSPM–GRE T-Ts Filing to be effective 7/16/2020.
Filed Date: 7/16/20.
Accession Number: 20200716–5053.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2441–000.
Applicants: Basin Electric Power Cooperative.
Description: Baseline eTariff Filing: Basin Electric Submission of Rate Schedule A to be effective 7/16/2020.
Filed Date: 7/16/20.
Accession Number: 20200716–5067.
Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2442–000.

Applicants: Basin Electric Power Cooperative.

Description: Initial rate filing: Submission of Wholesale Power Contracts FERC Rate Schedules 1 through 19 to be effective 7/16/2020.

Filed Date: 7/16/20.

Accession Number: 20200716–5069.

Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2443–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–07–16 ESDER 3B to be effective 10/1/2020.

Filed Date: 7/16/20.

Accession Number: 20200716–5076.

Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2444–000.

Applicants: Millican Solar Energy LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 9/15/2020.

Filed Date: 7/16/20.

Accession Number: 20200716–5093.

Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2445–000.

Applicants: Prineville Solar Energy LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 9/15/2020.

Filed Date: 7/16/20.

Accession Number: 20200716–5094.

Comments Due: 5 p.m. ET 8/6/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15875 Filed 7–21–20; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1247; FRS 16937]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 21, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1247.

Title: Part 32 Uniform System of Accounts.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 949 respondents; 1,944 responses.

Estimated Time per Response: 20–40 hours.

Frequency of Response: On occasion, and annual reporting requirements; recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 10, 201, 219–220, 224, 254(k), 272(e)(3), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 160, 201, 219–220, 224, 254(k), 272(e)(3), and 403.

Total Annual Burden: 69,820 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On February 24, 2017, the Commission released the *Part 32 Order,* WC Docket No. 14–130, CC Docket No. 80–286, FCC 17–15, which minimized the compliance burdens imposed by the Uniform System of Accounts (USOA) on price cap and rate-of-return telephone companies, while ensuring that the Commission retains access to the information it needs to fulfill its regulatory duties. The Commission consolidated Class A and Class B accounts by eliminating the current classification of carriers, which divides incumbent LECS into two classes for accounting purposes based on annual revenues. Carriers subject to Part 32's USOA are now only required to keep Class B accounts.

Pursuant to the *Part 32 Order,* price cap carriers may elect to use generally accepted accounting principles (GAAP) for all regulatory accounting purposes if they: (1) Establish an ''Implementation Rate Difference'' (IRD) which is the difference between pole attachment rates calculated under Part 32 and under GAAP as of the last full year preceding the carrier's initial opting out of Part 32 accounting requirements; and (2) adjust their annually-computed GAAP-based pole attachment rates by the IRD for a period of 12 years after the election. Alternatively, price cap carriers may elect to use GAAP accounting for all purposes other than those associated with pole attachment rates and continue to use the Part 32 accounts and procedures applicable to pole attachment rates for up to 12 years. A price cap carrier may be required to submit pole attachment accounting data to the Commission for three years following the effective date of the rule permitting a price cap carrier to elect GAAP accounting. If a pole attacher informs the Commission of a suspected problem with pole attachment rates, the Commission will require the price cap carrier to file its pole attachment data for the state in question. This requirement may be extended for an additional three years, if necessary.

The Commission reduced the accounting requirements for telephone companies with a continuing obligation to comply with Part 32 in a number of areas. Telephone companies may: (1) Carry an asset at its purchase price when it was acquired, even if its value has increased or declined when it goes into regulated service; (2) reprice an asset at market value after a merger or acquisition consistent with GAAP; (3) use GAAP principles to determine Allowance-for-Funds-Used-During Construction; and (4) employ the GAAP standard of materiality. Rate-of-return carriers receiving cost-based support must determine materiality consistent with the general materiality guidelines promulgated by the Auditing Standards Board. Price cap carriers with a continuing Part 32 accounting obligation must maintain continuing property records necessary to track substantial assets and investments in an accurate, auditable manner. The carriers must make such property information available to the Commission upon request. Carriers subject to Part 32 must continue to comply with the USOA's depreciation procedures and its rules for cost of removal-and-salvage accounting.

Pursuant to the October 24, 2018 *Rate-of-Return Business Data Services Report and Order,* WC Docket No. 17–144, FCC 18–146, rate-of-return carriers currently receiving model-based or other fixed high-cost support may voluntarily elect to transition their business services offerings from rate-of-return to incentive regulation. Thus, electing carriers that choose to use GAAP instead of the Uniform System of Accounts are relieved of virtually all of the filing and recordkeeping requirements of the Uniform System of Accounts, with the sole exception of the same data provisioning requirements for the calculation of pole attachment rates as price cap carriers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–15849 Filed 7–21–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16938]

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 21, 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–XXXX.

Title: 3.7 GHz Band Relocation Coordinator and Relocation Payment Clearinghouse Real-Time Disclosure of Communications Required by Sections 27.1413(c)(6) and 27.1414(b)(4)(i).

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for profit entities.

Number of Respondents: 2 respondents; 12 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to Obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309.

Total Annual Burden: 12 hours.

Total Annual Costs: No cost.

Nature and Extent of Confidentiality: The information collected under this collection will be made publicly available.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Commission adopted a Report and Order, FCC 20–22, (3.7 GHz Report and Order) in which it reformed the use of the 3.7–4.2 GHz band, also known as the C-Band. The 3.7–4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. The 3.7 GHz Report and Order calls for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and making the lower 280 megahertz (3.7–3.98 GHz) available for flexible-use throughout the contiguous United States through a Commission-administered public auction of overlay licenses in the 3.7 GHz Service that is scheduled to occur later this year, with the 20 megahertz from 3.98–4.0 GHz reserved as a guard band. The Commission adopted a robust transition schedule to achieve an expeditious relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation wireless deployments, while also ensuring effective accommodation of relocated incumbent users. The 3.7 GHz Report and Order establishes a deadline of December 5, 2025, for full relocation to ensure that all FSS operations are cleared in a timely manner, but provides an opportunity for accelerated clearing of the band by allowing incumbent space station operators, as defined in the 3.7 GHz Report and Order, to commit to voluntarily relocate on a two-phased accelerated schedule (with additional obligations and incentives for such operators), with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.

The Commission concluded in the 3.7 GHz Report and Order that a neutral, independent third-party Relocation Payment Clearinghouse (RPC) should be established to administer the cost-related aspects of the transition in a fair, transparent manner, mitigate financial disputes among stakeholders, and collect and distribute payments in a timely manner to transition incumbent space station operators out of the 3.7–3.98 GHz band. The Commission also concluded that a Relocation Coordinator (RC) should be appointed to ensure that all incumbent space station operators are relocating in a timely manner, and to be responsible for receiving notice from earth station operators or other satellite customers of any disputes related to comparability of facilities, workmanship, or preservation of service during the transition and notify the Commission of disputes and recommendations for resolution.

To protect the fair and level playing field for applicants to participate in the Commission's auction for overlay licenses in the 3.7 GHz Service, the RPC and the RC are each required to make real-time, public disclosures of the content and timing of and the parties to communications, if any, from or to such applicants, as applicants are defined by the Commission's rule prohibiting certain auction-related communications, 47 CFR 1.2105(c)(5)(i), whenever the prohibition in 47 CFR 1.2105(c) applies to competitive bidding for licenses in the 3.7 GHz Service. See 47 CFR 27.1413(c)(6), 27.1414(b)(4)(i) (as adopted in the 3.7 GHz Report and Order). The Commission is seeking approval for a new information collection to permit the RPC and the RC to make the required real-time, public disclosure of any such communications, as necessary.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–15850 Filed 7–21–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1210; FRS 16936]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before August 21, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1210.

Title: Wireless E911 Location Accuracy Requirements (PS Docket No. 07–114).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, State, Local or Tribal Government, and Federal Government.

Number of Respondents and Responses: 4,394 respondents; 29,028 responses.

Estimated Time per Response: 2–10 hours.

Frequency of Response: Recordkeeping, on occasion; one-time; quarterly and semi-annual reporting requirements, and third-party disclosure requirements.

Obligation to Respond: Statutory authority for this information collection is contained in 47. U.S.C. Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 143,138 hours.

Total Annual Cost: No Cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is requesting that respondents submit confidential information to the Commission in the context of the test bed. Nationwide Commercial Mobile Radio Service (CMRS) providers must make data from the test bed available to small and regional CMRS providers so that the smaller providers can deploy technology throughout their networks that is consistent with a deployment that was successfully tested in the test bed. CMRS providers also may request confidential treatment of live 911 call data reports, but the Commission reserves the right to release aggregate or anonymized data on a limited basis to facilitate compliance with its rules.

Needs and Uses: Section 9.10(i)(2)(ii)(A) requires that, within three years of the effective date of rules, CMRS providers shall deliver to uncompensated barometric pressure data from any device capable of delivering such data to PSAPs. This requirement is necessary to ensure that PSAPs are receiving all location information possible to be used for dispatch. This requirement is also necessary to ensure that CMRS providers implement a vertical location solution in the event that the proposed ''dispatchable location'' solution does not function as intended by the three-year mark and beyond.

Section 9.10(i)(2)(ii)(B) requires that the four nationwide providers submit to the Commission for review and approval a reasonable metric for z-axis (vertical) location accuracy no later than 3 years from the effective date of rules. The requirement is critical to ensure that the vertical location framework adopted in the Fourth Report and Order is effectively implemented.

Section 9.10(i)(2)(ii)(C) and (D) requires that in each of the top 50 cellular market areas (CMAs), nationwide CMRS providers shall deploy either dispatchable location, or z-axis technology. CMRS providers that deploy z-axis technology must also comply with the compliance certification and live call data reporting requirements of paragraphs (i)(2)(iii) and (i)(3) of section 9.10. Pursuant to Section 9.10(i)(2)(ii)(E), non-nationwide CMRS providers shall have an additional year to comply with these requirements.

Section 9.10(i)(2)(iii) requires CMRS providers to certify compliance with the Commission's rules at various benchmarks throughout implementation of improved location accuracy. This requirement is necessary to ensure that CMRS providers remain ''on track'' to reach the goals that they themselves agreed to.

Section 9.10(i)(3)(i) requires that within 12 months of the effective date, the four nationwide CMRS providers must establish the test bed described in the Fourth Report and Order, which will validate technologies intended for indoor location. The test bed is necessary for the compliance certification framework adopted in the Fourth Report and Order.

Section 9.10(i)(3)(ii) requires that beginning 18 months from the effective date of the rules, CMRS providers providing service in any of the six Test Cities identified by ATIS (Atlanta, Denver/Front Range, San Francisco, Philadelphia, Chicago, and Manhattan Borough of New York City) or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls. Nationwide CMRS providers must submit call data on a quarterly basis; non-nationwide CMRS providers need only submit this data every six months. Non-nationwide providers that do not provide service in any of the Test Cities may satisfy this requirement by collecting and reporting data based on the largest county within the carrier's footprint. This reporting requirement is necessary to validate and verify the compliance certifications made by CMRS providers.

The Commission developed a reporting template to assist CMRS providers in collecting, formatting, and submitting aggregate live 911 call data in accordance with the requirements in the rules. The template will also assist the Commission in evaluating the progress CMRS providers have made toward meeting the 911 location accuracy benchmarks. The template is an Excel spreadsheet and will be available for downloading on the Commission's website. The Commission may also develop an online filing mechanism for these reports in the future.

Section 9.10(i)(4)(ii) requires that no later than 18 months from the effective date, each CMRS provider shall submit to the Commission a report on its progress toward implementing improved indoor location accuracy. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan.

Section 9.10(i)(4)(iii) requires that prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD. This requirement is necessary to ensure that the four nationwide CMRS providers are building in privacy and security measures to the NEAD from its inception.

Section 9.10(i)(4)(iv) requires that before use of the NEAD or any information contained therein, CMRS providers must certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law. This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected by the NEAD.

Section 9.10(i)(4)(v) requires that prior to use of z-axis information to meet the Commission's 911 vertical location accuracy requirements in paragraph (i)(2)(ii) of section 9.10, ''CMRS providers must certify that neither they nor any third party they rely on to obtain z-axis information will use z-axis information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that CMRS providers and any third party they rely on to obtain z-axis information will provide z-axis location information privacy and security protection equivalent to the NEAD.''

Section 9.10(j) requires CMRS providers to provide standardized confidence and uncertainty (C/U) data for all wireless 911 calls, whether from outdoor or indoor locations, on a per-call basis upon the request of a PSAP. This requirement will serve to make the use of C/U data easier for PSAPs.

Section 9.10(j)(4) also requires upon meeting the timeframes pursuant to paragraphs (i)(2)(ii)(C) and (D) of this section, CMRS providers shall provide with wireless 911 calls that have dispatchable location or z-axis (vertical) information the C/U data required under paragraph (j)(1) of this section. Where available to the CMRS provider, floor level information must be provided with associated C/U data in addition to z-axis location information.

Section 9.10(k) requires that CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call, as well as confidence and uncertainty data. This information must be made available to PSAPs upon request, as a measure to promote transparency and accountability for this set of rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–15851 Filed 7–21–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201254–001.

Agreement Name: Sealand/CMA CGM West Coast of Central America Slot Charter Agreement.

Parties: Maersk A/S DBA Sealand and CMA CGM S.A.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment: (i) Deletes APL as a party to the Agreement; (ii) updates the name of Maersk; (iii) updates the address of CMA CGM; (iv) adds Panama to the geographic scope of the Agreement; and (v) revises the amount of space to be chartered. It also restates the Agreement.

Proposed Effective Date: 8/24/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/Agreement History/10193.

Dated: July 17, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–15832 Filed 7–21–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member Meeting

July 27, 2020. 10:00 a.m. Telephonic

Open Session

1. Approval of the June 22, 2020 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Policy
   (d) Budget Review
   (e) Audit Status
4. CARES Act Update
5. Multi-asset Manager Update
6. 5-Year L Funds Update

Executive Session

Information covered under 5 U.S.C. 552b (c)(9)(b) and (c)(10).

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION: Dial-in (listen only) information: Number: 1–877–446–3914, Code: 6819060.

Dated: July 16, 2020.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020–15834 Filed 7–21–20; 8:45 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[Notice MV–2020–02; Docket No. 2020–0002; Sequence No. 27]

Notice of GSA Live Webinar Regarding GSA's Implementation of Section 889 of the FY 2019 National Defense Authorization Act (NDAA)

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Virtual Webinar Meeting notice.

SUMMARY: The General Services Administration (GSA) is committed to fostering productive relationships between GSA and its industry partners. Toward that end, GSA is hosting a live and recorded virtual webinar on August 12, 2020.

DATES: Wednesday, August 12, 2020, at 1:00 p.m. Eastern Standard Time (EST).

ADDRESSES: The webinar will be held virtually and the call-in information will be made available to registrants. Industry partners wishing to virtually attend must register HERE. Members of the press, in addition to registering for this event, must also RSVP to *press@gsa.gov* by August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Patricia Richardson at *patricia.m.richardson@gsa.gov* or Maria Swaby at 202–208–0291.

SUPPLEMENTARY INFORMATION:

Background

Section 889 of the FY 2019 National Defense Authorization Act

(NDAA)legislation was passed to combat national security and intellectual property threats that face the United States and contains two prohibitions: Part A and Part B.

- Part A went into effect last year (August 13, 2019), and prohibits the government from buying or obtaining certain prohibited telecommunications and video surveillance equipment and services.
- Part B will go into effect on (August 13, 2020), and prohibits the government from contracting with any entity that uses certain prohibited telecommunications and video surveillance equipment or services, regardless of whether or not that usage is in performance of work under a government contract. The Part B prohibition applies to every sector and every dollar amount. Your contracts will be impacted by Part B.

Format

GSA's live and recorded virtual webinar features panel leaders from GSA's business lines who will explain how they are implementing Section 889 FAR rule in their specific business lines. Panelists will also answer questions that have been pre-collected from industry. Please send in your questions no later than COB August 5, 2020, Eastern to *gsaombudsman@gsa.gov.*

Special Accommodations

This virtual meeting is accessible to people with Disabilities as Zoom has a close captioned feature.

Live Webinar Panelists

- Michael Thompson, *Senior Policy Advisor General Services Acquisition Policy Division, OGP, Moderator*
- Stephanie Shutt, *Director, Multiple Awards Schedule Program Management Office, FAS*
- Mary Gartland, *Director City Pair Program, Office of Travel, Employee Relocation, and Transportation, FAS*
- Lawrence Hale, *Director, IT Security Subcategory Office of Information Technology Category, FAS*
- Julie Milner, *Director, Special Programs Division, Office of Project Delivery, Office of Design and Construction, PBS*
- Chip Pierpont, *Director, Innovation Technology and Performance Division, Office of Facilities Management, PBS*
- Justin Hawes, *Division Director, Lease Policy and Innovation Division, Office of Leasing, PBS*
- Len Fedoruk, *Director, Vehicle Purchasing Division Office of Motor Vehicle Management, FAS*

Agenda

- 1:00–1:05: GSA Ombudsman Welcome
- 1:05–1:10: Introduction of Panel participants by GSA Moderator.
- 1:10–2:25: Panel discussion of GSA's 889 Implementation by Business lines
- 2:25–2:30: GSA Ombudsman Close out

Maria Swaby,

GSA Procurement Ombudsman & Industry Liaison, General Services Administration.

[FR Doc. 2020–15846 Filed 7–21–20; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Management of Acute and Chronic Pain: Opportunity for Stakeholder Engagement

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces an opportunity to hear stakeholders' perspectives on and experiences with pain and pain management, including but not limited to the benefits and harms of opioid use. These stakeholders include patients with acute or chronic pain, patients' family members and/or caregivers, and healthcare providers who care for patients with pain or conditions that can complicate pain management (*e.g.,* opioid use disorder or overdose). As part of this effort, CDC will be holding approximately 100 individual conversations with stakeholders over the phone or through an internet-enabled virtual platform. CDC is asking stakeholders interested in participating to contact CDC as outlined in the SUPPLEMENTARY INFORMATION section. These conversations are intended to supplement the efforts of CDC's prior FRN (85 FR 21441) which solicited written public comment on the same topical areas between April and June 2020.

DATES: Persons interested in participating should contact CDC as described below no later than 5:00 p.m. EDT August 21, 2020.

FOR FURTHER INFORMATION CONTACT: Shannon Lee, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop S106–9, Atlanta, Georgia, 30329, Telephone: 404–498–3290, email: *InjuryCenterEngage@cdc.gov*

SUPPLEMENTARY INFORMATION:

Purpose

Input gathered through these conversations will help inform CDC's understanding of stakeholders' values and preferences related to pain and pain management and will complement CDC's ongoing work to update or expand the CDC Guideline for Prescribing Opioids for Chronic Pain, published in 2016 (Available at *https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1er.htm*). More information about CDC's process for updating the Guideline and the establishment of a Federal advisory committee workgroup to provide expert input and observations on the Guideline update is available at *https://www.cdc.gov/injury/bsc/opioid-workgroup-2019.html.* CDC will request public comment on the updated draft Guideline through a notice in the **Federal Register** prior to final publication.

Engagement Structure

During these conversations, CDC will talk with individual participants between 45–60 minutes on the phone or an internet-enabled virtual platform to listen to personal perspectives and experience related to the themes described below in the THEMES section.

Participation

Persons interested in participating in these conversations should email the following information to *InjuryCenterEngage@cdc.gov:*

- Full name
- Whether you would be participating primarily as a healthcare provider, patient, or family member and/or caregiver
  - If you are a healthcare provider, please describe whether you care for patients with chronic pain, acute pain, and/or conditions that can complicate pain management (*e.g.,* opioid use disorder or overdose)
  - If you are a patient, please identify if you mostly experience acute or chronic pain and if you feel opioid pain medications have mostly helped you, mostly harmed you, neither, or an even mix of both
  - If you are a family member and/or caregiver, please identify if the person you care for experiences acute or chronic pain and if you feel opioid pain medications have mostly helped or mostly harmed them, neither, or an even mix of both

Persons having trouble submitting by email or unable to submit by email should call 404–498–3290.

See PARTICIPANT SELECTION PROCEDURE below for information on how CDC will select participants from among those who express interest and how participants will be notified about their participation status.

Prior to analyzing the input gathered through these conversations, will remove all personally identifiable information, which is any information that can be used to distinguish or trace an individual's identity, such as name, date and place of birth.

Themes

During the conversations, CDC will invite input specifically on topics focused on using or prescribing opioid pain medications, non-opioid medications, or non-pharmacological treatments (*e.g.,* exercise therapy or cognitive behavioral therapy). These topics are:

- Experiences managing pain, which might include benefits, risks, and/or harms of the pain management options listed above.
- Experiences choosing among the pain management options listed above, including considering factors such as each option's accessibility, cost, benefits, and/or risks.
- Experiences getting information needed to make pain management decisions.

Participant Selection Procedure

From people who express interest by the deadline, CDC will identify persons at random from within the targeted populations (*i.e.* patients with acute or chronic pain, patients' family members and/or caregivers, and healthcare providers who care for patients with pain or conditions that can complicate pain management (*e.g.,* opioid use disorder or overdose)). CDC will seek to balance representation on factors including pain type (acute or chronic); experience (mostly benefitted, mostly harmed, neither, both); and role (provider, patient, family member and/or caregiver). Identified participants will receive an invitation to participate, as well as possible scheduling reminders, by email or phone calls.

Further Communications

Persons who wish to receive information related to CDC's ongoing work specific to drug overdose prevention (including the ongoing response to the opioid overdose epidemic) as well as other updates (*e.g.,* pertaining to resources and tools) may sign up at: *www.cdc.gov/emailupdates* and select topics of interest. Available offerings include:

- Subscription Topics: Injury, Violence & Safety
- Subtopic: Drug Overdose News

Resources

CDC's National Center for Injury Prevention and Control is committed to suicide prevention. If you are in immediate danger, please call 9–1–1 or go to your nearest emergency department. If you or someone you care for needs help, you may contact the National Suicide Prevention Lifeline (*https://suicidepreventionlifeline.org*) or your local crisis line. The National Disaster Distress Helpline is available to anyone experiencing emotional distress related to COVID–19. Call 1–800–985–5990 or text TalkWithUs to 66746 to speak to a caring counselor. For additional help, please see the many helpful resources at *https://suicidepreventionlifeline.org/current-events/supporting-your-emotional-well-being-during-the-covid-19-outbreak/*

Applicability of the Paperwork Reduction Act

The data are being collected under OMB Control Number 0920–1050, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, Expiration date: May 31, 2022.

Dated: July 17, 2020.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2020–15855 Filed 7–21–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1450]

Electronic Submissions; Data Standards; Support for the International Institute of Electrical and Electronics Engineers Bioinformatics Computations and Analyses Standard for Bioinformatic Workflows

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing support for use in regulatory submissions the current version of the International Institute of Electrical and Electronics Engineers (IEEE) bioinformatics computations and analyses standard for bioinformatic workflows (BioCompute) and an update to include this standard in the FDA Data Standards Catalog for the submission of high-throughput sequencing (HTS) data in new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and investigational new drug applications (INDs) to the Center for Biologics Evaluation and Research (CBER), Center for Drug Evaluation and Research (CDER), and Center for Food Safety and Applied Nutrition (CFSAN).

DATES: Submit either electronic or written comments on the notice by August 21, 2020.

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–1450 for ''Electronic Submissions; Data Standards; Support for the International Institute of Electrical and Electronics Engineers Bioinformatics Computations and Analyses Standard for Bioinformatic Workflows.'' 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 laws. 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: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or 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; or Cindee Hogan, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2181.

SUPPLEMENTARY INFORMATION: FDA is announcing support for the use in regulatory submissions the current version of the IEEE BioCompute standard (available at *https://standards.ieee.org/standard/*) and an update to include this standard in the FDA Data Standards Catalog for the submission of HTS data in NDAs, ANDAs, BLAs, and INDs to CBER, CDER, and CFSAN.

Scientific workflows have emerged as a model for representing and managing complex scientific computations. The BioCompute standard facilitates the exchange of HTS bioinformatics workflows (*i.e.,* computations and analyses) between various organizations by specifying the information needed to understand and organize bioinformatic analyses. Currently, the range of bioinformatics tools and associated parameters of those tools makes it difficult to describe, exchange, and assess the reproducibility of a complex analysis in a standardized format.

The BioCompute standard represents a distillation of the bioinformatics workflows, describing the mechanisms for each step on the pipeline. The pipeline steps are organized into groups of conceptually related information or domains, which provides the ability to describe the full extent of the analysis, the purpose of the experiment, and any other relevant information. BioCompute tracks the flow of data from the beginning to the end of the bioinformatics pipeline, making transformations apparent at each step. In this way, an analysis formatted according to the BioCompute standard provides the manifest (metadata) for the HTS data files.

Dated: July 16, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–15771 Filed 7–21–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1079]

Cannabis and Cannabis-Derived Compounds: Quality Considerations for Clinical Research; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Cannabis and Cannabis-Derived Compounds: Quality Considerations for Clinical Research.'' This draft guidance outlines FDA's current thinking on several topics relevant to the development of cannabis and cannabis-derived products: The source of cannabis and cannabis-derived compounds for clinical research; general quality considerations for developing drugs that contain cannabis and cannabis-derived compounds; and calculation of percent delta-9 tetrahydrocannabinol (THC) in botanical raw materials, extracts, and finished products. This draft guidance has been developed to help support clinical research into development of cannabis and cannabis-derived products.

DATES: Submit either electronic or written comments on the draft guidance by September 21, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2020–D–1079 for ''Cannabis and Cannabis-Derived Compounds: Quality Considerations for Clinical Research.'' 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.

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Amy Muhlberg, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, Rm. 3117, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–6901 or Cassandra Taylor, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, Rm. 4150, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–5290.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Cannabis and Cannabis-Derived Compounds: Quality Considerations for Clinical Research.''

This draft guidance outlines FDA's current thinking on several topics relevant to the development of drugs containing cannabis and cannabis-derived compounds: (1) The source of cannabis and cannabis-derived compounds for clinical research; (2) general quality considerations for developing drugs that contain cannabis and cannabis-derived compounds; and (3) calculation of percent delta-9 THC in botanical raw materials, extracts, and finished products. This draft guidance has been developed to help support clinical research into development of drugs containing cannabis and cannabis-derived compounds.

Cannabis and cannabis-derived compounds have been the subject of interest from consumers, industry, researchers, the public, and regulators. The Agriculture Improvement Act of 2018, Public Law 115–334 (the 2018 Farm Bill), changed certain federal authorities relating to the production and marketing of cannabis and cannabis-derived compounds. Among other things, the 2018 Farm Bill removed *hemp* from Schedule I controls in the Controlled Substances Act (CSA). The 2018 Farm Bill also explicitly preserved FDA's authority to regulate products containing cannabis or cannabis-derived compounds under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262). In doing so, Congress recognized FDA's important public health role with respect to all the products it regulates. Accordingly, consistent with the 2018 Farm Bill, drugs that contain cannabis and cannabis-derived compounds are subject to the same authorities and requirements as FDA-regulated products containing any other substance, regardless of whether the products fall within the definition of *hemp* under the 2018 Farm Bill.

The Drug Enforcement Administration (DEA) is the lead Federal agency for regulating controlled substances. FDA does not enforce the CSA or other laws within DEA's jurisdiction. Activities related to growing and manufacturing cannabis for use as an investigational drug for research must comply with CSA and DEA requirements if the cannabis exceeds the threshold of 0.3 percent delta-9 THC by dry weight. Sponsors and investigators are encouraged to contact DEA with questions regarding Schedule I cannabis or the CSA.

FDA held a public hearing [1] on May 31, 2019, to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds. The hearing was attended by more than 600 participants in person and over 2,300 joining remotely. Presentations by over 100 speakers represented a broad and diverse array of stakeholders. Nearly 4,500 comments were submitted to the docket associated with the hearing, and the docket's closing date was extended to

[1] ''Scientific Data and Information About Products Containing Cannabis or Cannabis-Derived Compounds''; *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/scientific-data-and-information-about-products-containing-cannabis-or-cannabis-derived-compounds.*

accommodate greater participation. FDA developed this draft guidance in part to respond to issues and questions raised in the discussion at that hearing and in many of the public comments received.

Although the hearing was not exclusively about cannabidiol (CBD), this compound was a key discussion topic. FDA and many stakeholders have concerns about marketed products that contain CBD, including concerns about potential contamination and inaccurate or misleading labeling. FDA would like to reiterate that EPIDIOLEX® (cannabidiol) is the sole FDA-approved [2] product derived from an extract of the cannabis plant.

Many sponsors initiating clinical research for drugs containing cannabis and cannabis-derived compounds may be unclear regarding, or unfamiliar with, applicable drug quality expectations. In general, drugs containing cannabis and cannabis-derived compounds are subject to the same authorities and requirements as drugs containing any other substance. Drugs intended for human use are evaluated by FDA's Center for Drug Evaluation and Research (CDER [3]) to ensure that drugs marketed in the United States are safe and effective for their intended uses and will be manufactured in a manner that ensures quality. CDER has published extensive regulations and guidance documents regarding the drug development and review process. In addition, FDA's website contains useful explanations regarding drug research and development. Finally, CDER's Small Business and Industry Assistance helps small pharmaceutical businesses and industry navigate the wealth of information that FDA offers, and assists in understanding the regulation of human drug products.

FDA's support of drug development extends to drugs containing cannabidiol and other compounds found in cannabis. One important element is encouraging drug developers to meet with FDA early in their development programs—ideally, before submitting an investigational new drug (IND) application. The pre-IND meeting is an opportunity to obtain FDA input on research plans and required content for an IND submission. The pre-IND meeting can be valuable in planning a drug development program, especially if sponsors' questions are not fully answered by guidances and other information provided by FDA. Early interactions with FDA staff through a pre-IND meeting can answer sponsors' questions related to a specific drug development program and provide information that will assist them in preparing complete IND applications. Efficient use of FDA resources can lead to more efficient drug development.

The FDA web page ''FDA and Cannabis: Research and Drug Approval Process'' (available at *https://www.fda.gov/news-events/public-health-focus/fda-and-cannabis-research-and-drug-approval-process*) provides the basic roadmap for conducting clinical research at FDA using cannabis and cannabis-derived compounds. The resources on this page may be helpful to those interested in better understanding FDA processes for conducting clinical trials using cannabis and cannabis-derived compounds.

Calculating the amount of a substance in a botanical raw material by dry weight is a standard procedure. However, the calculation of dry weight for an extract or solid oral dosage form is less familiar to many stakeholders than the standard calculation for botanical raw materials. Therefore, the draft guidance recommends calculating delta-9 THC by dry weight in intermediates and drug products by removing the water content, including water contained in excipients. We invite comment from the public on this recommended approach. In addition, FDA invites public comment on the appropriate manufacturing controls over materials that cross under the 0.3 percent delta-9 THC by dry weight threshold during the production of a drug that contains cannabis or cannabis derived compounds.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Cannabis and Cannabis-Derived Compounds: Quality Considerations for Clinical Research.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required.

However, this draft guidance refers to previously approved FDA collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 312 and 314 for submission and approval of applications for investigational drugs and new drugs have been approved under OMB control numbers 0910–0014 and 0910–0001 respectively; and current Good Manufacturing Practices for Finished Pharmaceuticals as outlined in 21 CFR parts 210 and 211 have been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: July 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15907 Filed 7–21–20; 8:45 am]

BILLING CODE 4164–01–P

[2] See Epidiolex drug approval package and labeling, available at *https://www.accessdata.fda.gov/drugsatfda_docs/nda/2018/210365Orig1s000TOC.cfm.*

[3] FDA's Center for Biologics Evaluation and Research (CBER) also has regulatory responsibilities with respect to the review of human drugs.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of a Supplemental Award, Initiated by the Maternal and Child Health Bureau, to the University of Mississippi Medical Center for the Early Childhood Developmental Health System: Implementation in a High Need State Cooperative Agreement

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of a Supplemental Award.

SUMMARY: HRSA announces the award of a supplement for $3,500,000 to the University of Mississippi Medical Center for the Early Childhood Developmental Health System: Implementation in a High Need State program. The supplement will add another year of funding to the current recipient, during the period of September 30, 2020–September 29, 2021, to continue a study focused on improving child health through a statewide system of early childhood developmental screenings and interventions.

FOR FURTHER INFORMATION CONTACT: Dina Lieser, Division of Home Visiting and Early Childhood Systems, HRSA, 26 Federal Plaza, Room 3337, New York, NY 10278, Phone: (240) 463–7726 or Email: *dlieser@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Intended Recipient of Award: University of Mississippi Medical Center.

Amount of Award: $3,500,000.

Project Period: 09/30/2020–09/29/2021.

CFDA Number: 93.110.

Authority: Social Security Act, Title V, § 501(a)(2), (42 U.S.C. 701(a)(2)).

Justification: The Early Childhood Developmental Health System: Implementation in a High Need State program was first funded in September 2017. At that time, HRSA awarded $3,500,000 to the University of Mississippi Medical Center for a 3-year project period to conduct this program. After an extensive needs assessment of children ages 0–5 years and their families in Mississippi, progress has been made towards goals articulated in the Notice of Funding Opportunity: (1) Increasing the proportion of children receiving age appropriate developmental screening and (2) increasing the number of the state's early childhood providers who demonstrate improved practices around developmental health promotion.

The purpose of the non-competitive supplement from HRSA is to give the recipient the opportunity to maximize the efficiency, reach and impact of the program and leverage findings that will be valuable to other states. This extended year will allow the recipient to continue efforts to promote systemic change and support spread, scale, and sustainability of interventions and impact. The lessons learned and progress made in the first 3 years of the program will help to increase understanding of facilitators and barriers to implementation and will serve as a model for other states.

Grantee/organization name	Grant No.	State	FY 2019 authorized funding level	FY 2020 proposed funding level
University of Mississippi Medical Center	UK2MC31456	MS	$3,500,000	$3,500,000

Thomas J. Engels,

Administrator.

[FR Doc. 2020–15802 Filed 7–21–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on June 1, 2020, through June 30, 2020. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Thomas J. Engels,

Administrator.

List of Petitions Filed

1. David Hall, Franklin, North Carolina, Court of Federal Claims No: 20–0663V
2. Jonathan Gussler, Ashland, Kentucky, Court of Federal Claims No: 20–0664V
3. Dwayne Lee, St. Louis, Missouri, Court of Federal Claims No: 20–0665V
4. Valerie Murphy, Clovis, California, Court of Federal Claims No: 20–0666V
5. Sameer Patel, Phoenix, Arizona, Court of Federal Claims No: 20–0667V
6. Tracy Brienen, Chicago, Illinois, Court of Federal Claims No: 20–0668V
7. Natalie Ann Springer on behalf of G. H. S., Portland, Oregon, Court of Federal Claims No: 20–0669V
8. Richard Jaye, Sterling Heights, Michigan, Court of Federal Claims No: 20–0672V
9. Charles Richardson, Mokena, Illinois, Court of Federal Claims No: 20–0674V
10. Cristhian Berrios, Boston, Massachusetts, Court of Federal Claims No: 20–0675V
11. Laura Schram, Madison, Wisconsin, Court of Federal Claims No: 20–0676V
12. Stanley Romanek, Loveland, Colorado, Court of Federal Claims No: 20–0677V
13. Heather Shaffer, Mariette, Wisconsin, Court of Federal Claims No: 20–0678V
14. Alice B. Fields, Henderson, North Carolina, Court of Federal Claims No: 20–0679V
15. Jeff Kleinschmidt, Westminster, Colorado, Court of Federal Claims No: 20–0680V
16. Lauren Kapranci on behalf of D. T., Westlake, Ohio, Court of Federal Claims No: 20–0681V
17. Gail McNulty, Pembroke, Massachusetts, Court of Federal Claims No: 20–0683V
18. Jamie Guy, Buda, Texas, Court of Federal Claims No: 20–0684V
19. Anatoliy Chudnoviskiy, Furlong, Pennsylvania, Court of Federal Claims No: 20–0685V
20. Elizabeth Brown, Big Stone Gap, Virginia, Court of Federal Claims No: 20–0687V
21. Nazareth June Lajon, Levittown, Puerto Rico, Court of Federal Claims No: 20–0689V
22. Newbery Frias on behalf of N. D., Dallas, Texas, Court of Federal Claims No: 20–0690V
23. Michael Keller, Sarasota, Florida, Court of Federal Claims No: 20–0693V
24. Raymond Zalewski, Cromwell, Connecticut, Court of Federal Claims No: 20–0694V
25. Robert Willis on behalf of A. W., Louisville, Ohio, Court of Federal Claims No: 20–0695V
26. Charlene Pressley, Davenport, Iowa, Court of Federal Claims No: 20–0698V
27. Kiley Logan, Ankeny, Iowa, Court of Federal Claims No: 20–0699V
28. Joy Adams, Roaring Springs, Pennsylvania, Court of Federal Claims No: 20–0703V
29. Donna Jackson, University Heights, Ohio, Court of Federal Claims No: 20–0705V
30. Sharie Elise Lewis, Sandy, Utah, Court of Federal Claims No: 20–0707V
31. Karen Belanger, Salem, New Hampshire, Court of Federal Claims No: 20–0708V
32. Floraida Martinez on behalf of M. M., East Stroudsburg, Pennsylvania, Court of Federal Claims No: 20–0709V
33. Richard P. Bures, New Bedford, Massachusetts, Court of Federal Claims No: 20–0713V
34. John Franklin Metzger, Jacksonville, Florida, Court of Federal Claims No: 20–0714V
35. Frank Poleto, Colonie, New York, Court of Federal Claims No: 20–0718V
36. Ruth Hardiman, Huntington, West Virginia, Court of Federal Claims No: 20–0719V
37. Herbert Degan, III, Sewall, New Jersey, Court of Federal Claims No: 20–0720V
38. Kristie Wisenbaker, Cleburne, Texas, Court of Federal Claims No: 20–0721V
39. Martha Klug, Madison, Wisconsin, Court of Federal Claims No: 20–0722V
40. Emma Patricia Hernandez, El Paso, Texas, Court of Federal Claims No: 20–0723V
41. Stacy Hospes, Oswego, Illinois, Court of Federal Claims No: 20–0725V
42. Tanya Jean Potkonjak, Puyallup, Washington, Court of Federal Claims No: 20–0726V
43. Richard Stenger, Eureka, California, Court of Federal Claims No: 20–0727V
44. Carlington Keith Myers, Columbia, South Carolina, Court of Federal Claims No: 20–0729V
45. Meredith Turner, Milwaukee, Wisconsin, Court of Federal Claims No: 20–0730V
46. Horace Knowlton, New Port Richey, Florida, Court of Federal Claims No: 20–0731V
47. Jackilyn Davis, Reading, Pennsylvania, Court of Federal Claims No: 20–0732V
48. Barbara Glover, Cullman, Alabama, Court of Federal Claims No: 20–0736V
49. Jeffrey Bello and Oksana Y. Oganesov on behalf of C. J. B., Atlantic City, New Jersey, Court of Federal Claims No: 20–0739V
50. Sylvia Rowe, Rochester, New York, Court of Federal Claims No: 20–0740V
51. Randall Bazell, Ironton, Ohio, Court of Federal Claims No: 20–0742V
52. Donna Gilbert, Allentown, Pennsylvania, Court of Federal Claims No: 20–0744V
53. Lindy Sells, River Ridge, Louisiana, Court of Federal Claims No: 20–0745V
54. Douglas Miller, Washington, District of Columbia, Court of Federal Claims No: 20–0747V
55. Melissa Schnell, Washington, District of Columbia, Court of Federal Claims No: 20–0748V
56. Evans Manes, Mount Kisco, New York, Court of Federal Claims No: 20–0754V
57. Camille Jefferson, Columbus, Georgia, Court of Federal Claims No: 20–0756V
58. Mary Ann Hatlelid, Richmond, Virginia, Court of Federal Claims No: 20–0759V
59. Sarah Easton, Carmel, Indiana, Court of Federal Claims No: 20–0760V
60. Geraldine Talley, Holly Springs, Mississippi, Court of Federal Claims No: 20–0761V

61. Kediala Magassouba, New York City, New York, Court of Federal Claims No: 20–0762V
62. James Sokol, Seattle, Washington, Court of Federal Claims No: 20–0763V
63. Joanie Arseneault, Melbourne, Florida, Court of Federal Claims No: 20–0765V
64. Gregory Carter, Raleigh, North Carolina, Court of Federal Claims No: 20–0767V
65. Destiny Maynard and Elijah Bunch on behalf of C. B., Deceased, East Moline, Illinois, Court of Federal Claims No: 20–0768V
66. Candice E. Hutchison, Belfast, Maine, Court of Federal Claims No: 20–0773V
67. Kelly Steele, Baltimore, Maryland, Court of Federal Claims No: 20–0775V
68. Lorraine Ferrucci on behalf of J. B., Orchard Park, New York, Court of Federal Claims No: 20–0776V
69. Lisa Black, St. Paul, Minnesota, Court of Federal Claims No: 20–0777V
70. Sharon Danberry, Mankato, Minnesota, Court of Federal Claims No: 20–0778V
71. Brianna Meyers, Albany, New York, Court of Federal Claims No: 20–0779V
72. Sandra Francis, Leesburg, Florida, Court of Federal Claims No: 20–0780V
73. Renee Byndloss, Chicago, Illinois, Court of Federal Claims No: 20–0781V
74. Juliet Wolf, Dresher, Pennsylvania, Court of Federal Claims No: 20–0782V
75. Larry Alex Klickstein, Pasadena, California, Court of Federal Claims No: 20–0785V
76. Antonios Tsamasiros, Rockaway Beach, New York, Court of Federal Claims No: 20–0786V
77. Patricia Parks, White Plains, New York, Court of Federal Claims No: 20–0788V
78. Cheree Roach and Jason Roach on behalf of I. R., Eagle River, Alaska, Court of Federal Claims No: 20–0789V
79. Jacqueline Stokes, Chicago, Illinois, Court of Federal Claims No: 20–0790V
80. Niberley Walton, Fort Belvoir, Virginia, Court of Federal Claims No: 20–0791V
81. Adam Smith, San Antonio, Texas, Court of Federal Claims No: 20–0794V
82. Nydia Ellentuch, Saint Cloud, Florida, Court of Federal Claims No: 20–0795V
83. Julie Leibold, Blue Springs, Missouri, Court of Federal Claims No: 20–0796V
84. Keri H. Daigle, Richmond, Virginia, Court of Federal Claims No: 20–0797V

[FR Doc. 2020–15830 Filed 7–21–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0324]

Agency Information Collection Request: 30-Day Public Comment Request

AGENCY: Office of the Secretary, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 21, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Resport of Dental Examination of Applicants to the Commissioned Corps of the U.S. Public Health Service.

Type of Collection: Reinstatement.

OMB No.: 0990–0324.

Abstract: The Commissioned Corps of the U.S. Public Health Service has a need for the information in order to assess the qualifications of each applicant and make a determination whether the applicant meets the requirements to receive a commission. The information is used to make determinations on candidates/applicants seeking appointment to the Corps to assess their medical suitability. The purpose is to evaluate the medical suitability of applicants on the basis of the Corps' medical accession standards and policy. The protected information is accessed by appropriate personnel and clinical reviewers. The form is not disclosed to external entities, other than for uses authorized by law.

Type of respondent; frequency (annual); Applicants/Candidates to the Commissioned Corps of the U.S. Public Health Service.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Annual	1000	1	1	1000
Total	1000	1	1	1000

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–15786 Filed 7–21–20; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Guidance on Elimination of Institutional Review Board (IRB) Review of Research Applications and Proposals: 2018 Requirements

AGENCY: The Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health, is announcing the availability of a guidance document titled, ''Guidance on Elimination of Institutional Review Board (IRB) Review of Research Applications and Proposals: 2018 Requirements.'' The guidance document provides OHRP's first formal guidance on this topic. The document, which is available on OHRP's website at *https://www.hhs.gov/ohrp/regulations-and-policy/guidance/index.html,* is intended primarily for institutions, IRBs, investigators, HHS funding agencies, and others that may be responsible for the review, conduct, or oversight of nonexempt research involving human subjects conducted or supported by HHS. The guidance document announced in this notice finalizes the draft guidance that was made available for public comment through a notice in the **Federal Register** on July 25, 2018 (83 FR 35278). OHRP received 2 comments from individuals or organizations on the draft document and those comments were considered as the guidance was finalized.

DATES: Comments on OHRP guidance documents are welcome at any time.

ADDRESSES: Submit written requests for a single copy of the guidance document titled ''Guidance on Elimination of Institutional Review Board (IRB) Review of Research Applications and Proposals: 2018 Requirements'' to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–453–8420. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

Submit written comments to: Comments on Elimination of Institutional Review Board (IRB) Review of Research Applications and Proposals: 2018 Requirements Guidance, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Comments also may be sent via email to *ohrp@hhs.gov* or via facsimile at 240–453–8420.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Ph.D., Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, 240–453–6700; email *Irene.Stith-Coleman@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OHRP is announcing the availability of a guidance document titled ''Guidance on Elimination of Institutional Review Board (IRB) Review of Research Applications and Proposals: 2018 Requirements.'' The guidance document provides OHRP's first formal guidance on this topic. The document is intended primarily for institutions, IRBs, investigators, HHS funding agencies, and others that may be responsible for the review, conduct, or oversight of nonexempt research involving human subjects conducted or supported by HHS.

The guidance document applies to nonexempt research involving human subjects that is conducted or supported by HHS. It provides guidance on the elimination of the requirement in section 45 CFR 46.103(f) of the pre-2018 Requirements that each application or proposal for research undergo IRB review and approval as part of the certification process. This guidance also addresses the requirement in the 2018 Requirements for certification of each proposed research study prior to initiation. In particular, the guidance addresses the following two topics: (1) Pre-2018 Requirements; and, (2) 2018 Requirements.

The guidance document announced in this notice finalizes the draft guidance that was made available for public comment through a notice in the **Federal Register** on July 25, 2018 (83 FR 35278).

II. Electronic Access

Persons with access may obtain the draft guidance documents on OHRP's website at OHRP's website at *https://www.hhs.gov/ohrp/regulations-and-policy/guidance/index.html.*

Dated: July 16, 2020.

Jerry Menikoff,

Director, Office for Human Research Protections.

[FR Doc. 2020–15808 Filed 7–21–20; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee.

Date: October 23, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NICHD, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Clayton W. Mash, Ph.D., Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6710B, Rockledge Drive, Rm. 2131A, Bethesda, MD 20892, (301) 496–6866, *mashc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 16, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15783 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Review (U01 & R01).
Date: August 12, 2020.
Time: 9:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NINDS, NSC, 6001 Executive Blvd., Rockville, MD 20892 (Virtual Meeting).
Contact Person: Mir Ahamed Hossain, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *mirahamed.hossain@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; ZNS1 SRB X11 BRAIN K99 to Promote Diversity.
Date: September 15–16, 2020.
Time: 9:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, NSC Building, 6001 Executive Blvd., Bethesda, MD 20892–9529 (Virtual Meeting).
Contact Person: Delany Torres, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, Neuroscience Center Building (NSC), 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, *delany.torressalazar@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15860 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Allergy and Infectious Diseases Council, September 14, 2020, 08:30 a.m. to September 14, 2020, 05:00 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on December 27, 2019, 84 FR 71438.

This notice is being amended to change the meeting from in-person to a virtual meeting. The date and times remain the same. Open session will be videocast from the *https://videocast.nih.gov/*. The meeting is partially Closed to the public.

Dated: July 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15859 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Clinical trials for COVID 19 management in older individuals.
Date: August 10, 2020.
Time: 11:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892 (Video Meeting).
Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15782 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Specimen Repository.
Date: August 18, 2020.
Time: 10:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A, Rockville, MD 20892 (Telephone Conference Call).
Contact Person: J. Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A, Bethesda, MD 20892–9823, 240–669–5045, *sundstromj@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15820 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 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 Eye Institute Special Emphasis Panel; BRAIN Initiative: New Concepts and Early Stage Research for Large Scale Recording and Modulation in the Nervous System (R21).

Date: August 17, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700B Rockledge Drive, Suite 3400, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 16, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15780 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel; R13 Conference Grants.

Date: August 26, 2020.

Time: 8:00 a.m. to 6:00 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.*

(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: July 16, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15781 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Mental Health Council, September 15, 2020, 9:00 a.m. to September 15, 2020, 5:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852, which was published in the **Federal Register** on January 07, 2020, 85 FR 725.

This notice is being amended to change the format of the meeting from in-person to a virtual meeting. Open session will be videocast from this link: *https://videocast.nih.gov/watch=38157.* The date and times of the meeting will remain the same. The meeting is partially Closed to the public.

Dated: July 16, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15785 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; 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 for Complementary and Integrative Health.

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, should notify the Contact Person listed below in advance of the meeting. The Open Session will be open to the public via NIH Videocast. The URL link to access this meeting is *https://videocast.nih.gov.*

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 for Complementary and Integrative Health.

Date: September 25, 2020.

Closed: 8:30 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Virtual Meeting).

Open: 10:15 a.m. to 3:30 p.m.

Agenda: A report from the Director of the Center and Other Staff.

Place: National Institutes of Health, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Partap Singh Khalsa, Ph.D., DC, Director, Division of Extramural Activities National Center for Complementary and Integrative Health, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892–5475, 301–594–3462, *khalsap@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.

Any member of the public may submit written comments no later than 15 days after the meeting.

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 16, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15779 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the AIDS Research Advisory Committee, NIAID, September 14, 2020, 01:00 p.m. to September 14, 2020, 05:00 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on December 27, 2019, 84 FR 71435.

This notice is being amended to change the meeting type from regular in person to a virtual meeting. The URL link to this meeting is: *https://videocast.nih.gov/.*

The URL link to this committee is: *https://www.niaid.nih.gov/about/committees-aids-research.* Any member of the public may submit written comments no later than 15 days after the meeting. This meeting is open to the public.

Dated: July 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15858 Filed 7–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2020–0009]

Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: The Cybersecurity and Infrastructure Security Agency (CISA) is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting is open to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on August 5, 2020.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on August 5, 2020.

Meeting Date: The NSTAC will meet on August 12, 2020 from 2:00 p.m. to 3:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NSTAC@cisa.dhs.gov* by 5:00 p.m. ET on August 5, 2020.

Comments: Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that participants may discuss during the meeting will be available at *www.dhs.gov/cisa/national-security-telecommunications-advisory-committee* for review as of July 28, 2020. Comments may be submitted by 5:00 p.m. ET on August 5, 2020 and must be identified by Docket Number CISA–2020–0009. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@cisa.dhs.gov.* Include the Docket Number CISA–2020–0009 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2020–0009.

A public comment period may be held during the meeting from 2:35 p.m.–2:45 p.m. ET. Speakers who wish to participate in the public comment period must register by emailing *NSTAC@cisa.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, 703–705–6276 or *NSTAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC was established by Executive Order (E.O.) 12382, 47 FR 40531 (September 13, 1982), as amended and continued under the authority of E.O. 13889, dated September 27, 2019. Notice of this meeting is given under the FACA, 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Wednesday, August 12, 2020, to discuss committee activities and the Administration's NS/EP priorities with CISA leadership and other senior Government officials. The meeting will include a discussion on ongoing Government and industry activities related to fifth generation technologies; a status update from the NSTAC Communications Resiliency Subcommittee; and a deliberation and vote on the *NSTAC Report to the President on Software-Defined Networking.*

Helen Jackson,

Designated Federal Officer, NSTAC.

[FR Doc. 2020–15763 Filed 7–21–20; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2013–0090; FXES111X0500000–XXX–FF05E00000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Indiana Bat and Northern Long-Eared Bat for the Forestry Habitat Conservation Plan for Bats on Pennsylvania State Game Lands, State Forests, and State Parks; and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application from the Pennsylvania Game Commission (PGC) and Pennsylvania Department of Conservation and Natural Resources (DCNR) (applicants), for an incidental take permit (ITP) under the Endangered Species Act (ESA). The applicants request the ITP for take of the federally endangered Indiana bat (*Myotis sodalis*) and threatened northern long-eared bat (*Myotis septentrionalis*) incidental to otherwise lawful activities associated with forestry activities on State Game Lands, State Forests, and State Parks. The applicants propose a conservation program to minimize and mitigate for the unavoidable incidental take as described in their Forestry Habitat Conservation Plan for Bats on Pennsylvania State Game Lands, State Forests, and State Parks (HCP). We request public comment on the application, which includes the applicants' proposed HCP, and the Service's draft environmental assessment, prepared pursuant to the National Environmental Policy Act. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before August 21, 2020.

ADDRESSES:

Reviewing documents: You may obtain copies of the application, including the HCP and the draft environmental assessment, in Docket No. FWS–R5–ES–2013–0090 at *http://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R5–ES–2013–0090.

• *U.S. mail or hand-delivery:* Public Comments Processing; Attn: Docket No. FWS–R5–ES–2013–0090; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For additional information about submitting comments, see Request for Public Comments and Public Availability of Comments under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Pamela R. Shellenberger, by telephone at 814–234–4090, extension 7459. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect "listed animal species", or to attempt to engage in such conduct" (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Proposed Project

The applicants request a 30-year incidental take permit (ITP) for take of the federally listed endangered Indiana bat and the federally listed threatened northern long-eared bat (covered species) incidental to forestry activities on 4 million acres of State Game Lands, State Forests, and State Parks (covered lands). PGC manages 1.5 million acres of State Game Lands, and DCNR manages 2.2 million acres of State Forests and 300,000 acres of State Parks. These predominantly forested lands provide potential foraging, roosting, maternity colony, and fall swarming habitat for all bat species that occur in Pennsylvania, including the Indiana bat and northern long-eared bat. The applicants determined that forestry activities on these lands are reasonably certain to result in unavoidable incidental take of these federally listed covered species. Activities that could result in incidental take of Indiana bats and northern long-eared bats (covered activities) can be categorized in five major groups—timber harvest, operations (fencing and firewood collection), road and trail construction and maintenance, prescribed fire, and implementation of the conservation program.

The HCP includes measures to minimize and mitigate impacts to the covered species, including but not limited to implementing seasonal restrictions on various activities, installing bat-safe gates at known hibernacula, removing air flow obstructions around known hibernacula, minimizing impacts to summer roosting habitat, avoiding timber harvest effects on non-volant pups in maternity colonies, seasonally restricting prescribed fire, avoiding activities within 50 feet of riparian areas, installing artificial roost structures, and identifying, assessing, protecting, and enhancing potential hibernacula.

We request public comments on the permit application, which includes a proposed HCP, and an EA prepared in accordance with NEPA.

The applicants' HCP describes the activities that will be undertaken to implement forestry activities, as well as the mitigation and minimization measures proposed to address the impacts to the covered species. Pursuant to NEPA, the EA analyzes the impacts the ITP issuance would have on the covered species and the environment.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We prepared a draft EA that analyzes the environmental impacts on the human environment resulting from three alternatives: A no-action alternative, the HCP with specific timber harvest restrictions, and the proposed action. The proposed action alternative is issuance of the ITP and implementation of the HCP as submitted by the applicants. The applicants anticipate affecting 19,770 acres annually for Indiana bats, which accounts for less than 1 percent of all State Lands, and 130,366 acres annually for northern long-eared bats which accounts for 3.3 percent of all State Lands.

Next Steps

The Service will evaluate the application and the comments received to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicants.

Public Comments

The Service invites the public to comment on the proposed HCP and draft EA during a 30-day public comment period (see **DATES**). You may submit comments by one of the methods shown under **ADDRESSES**.

Public Availability of Comments

We will post on *http://regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Pamela Toschik,

Acting Assistant Regional Director, Ecological Services, North Atlantic-Appalachian Region.

[FR Doc. 2020–15831 Filed 7–21–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2020–N086; FXES11130200000–201–FF02ENEH00]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act of 1973, as amended (ESA), prohibits certain activities that may impact endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please submit your written comments by August 21, 2020.

ADDRESSES:

Document availability: Request documents by phone or email: Susan Jacobsen, 505–248–6641, *susan_jacobsen@fws.gov.*

Comment submission: Submit comments by email to *fw2_te_permits@fws.gov.* Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–123456).

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Classification and Restoration Division, 505–248–6641. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing but also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Releasing documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the application number when submitting comments.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE066550 ..	Logan Simpson Design, Inc.; Tempe, Arizona.	Black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*).	Arizona, New Mexico, Utah.	Presence/absence surveys, habitat surveys, nest monitoring.	Capture, harm, harass, injury, death.	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE028605	SWCA; Flagstaff, Arizona.	Black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*), Spikedace (*Mega fulgida*), loach minnow (*Tiaroga cobitis*), Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*), Virgin River chub (*Gila seminuda (=robusta)*).	Arizona, New Mexico.	Presence/absence surveys, habitat surveys, nest monitoring.	Harm, harass, injury, death.	Renew.
TE822998	USDA, Coronado National Forest; Tucson, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), Mexican long-nosed bat (*Leptonycteris nivalis*), ocelot (*Leopardus pardalis*), jaguar (*Panthera onca*), Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*), Northern aplomado falcon (*Falco femoralis septentrionalis*), masked bobwhite quail (*Colinus virginianus ridgwayi*), Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*), Gila topminnow (*Poeciliopsis occidentalis*), desert pupfish (*Cyprinodon macularius*), Yaqui chub (*Gila purpurea*), Gila chub (*Gila intermedia*).	Arizona, New Mexico.	Presence/absence surveys.	Harm, harass	Renew.
TE43777A	Sea Life Aquarium; Grapevine, Texas.	Kemp's ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretmochelys imbricata*), green sea turtle (*Chelonia mydas*).	Texas	Captive breeding, rehabilitation.	Harm, harass	Renew.
TE155413	Sonoran Institute; Tucson, Arizona.	Gila topminnow (*Poeciliopsis occidentalis*)	Arizona	Presence/absence surveys; collection.	Harass, harm, capture, injury, death.	New.
TE28787B	Lawrence, Cindy; Buena Vista, Colorado.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	New Mexico, Utah	Presence/absence surveys.	Harm, harass	Renew.
TE75679D	Ramirez, Alex; Katy, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*)	Texas	Presence/absence surveys.	Harm, harass	New.
TE091552	Homesley, Zane; Austin, Texas.	American burying beetle (*Nicrophorus americanus*), golden-cheeked warbler (*Setophaga chrysoparia*), southwestern willow flycatcher (*Empidonax traillii extimus*), Houston toad (*Bufo houstonensis*).	Texas	Presence/absence surveys.	Harm, harass	Renew.
TE584243B	Hill, Austin; Richardson, Texas.	American burying beetle (*Nicrophorus americanus*)	Arkansas, Kansas, Oklahoma, Texas.	Presence/absence surveys.	Harass, harm	Renew.
TE54802B	Philips-Schaap, Megan; Tulsa, Oklahoma.	American burying beetle (*Nicrophorus americanus*)	Arkansas, Kansas, Missouri, Ohio, Oklahoma, Nebraska, Texas.	Presence/absence surveys.	Harm, harass	Renew.
TE74315D	Hogue, Chaylum; Ada, Oklahoma.	American burying beetle (*Nicrophorus americanus*)	Oklahoma	Presence/absence surveys.	Harm, harass	Renew.
TE75601D	Horner, Kaitlyn; Goodyear, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona	Presence/absence surveys.	Harm, harass	New.
TE52561B	Teague, Trevor; Bixby, Oklahoma.	American burying beetle (*Nicrophorus americanus*)	Arkansas, Kansas, Oklahoma, Texas.	Presence/absence surveys.	Harass, harm	Renew.
TE053104	ACI Group, LLC.; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*), Houston toad (*Bufo houstonensis*), Coffin Cave mold beetle (*Batrisodes texanus*), Helotes mold beetle (*Batrisodes venyivi*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*Cicurina madla*), Bracken Bat Cave meshweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Tooth Cave spider (*Neoleptoneta myopica*), Ground beetle (*Rhadine exilis*), Ground beetle (*Rhadine infernalis*), Tooth Cave ground beetle (*Rhadine persephone*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Cokendolpher cave harvestman (*Texella cokendolpheri*), Bee Creek Cave harvestman (*Texella reddilli*), Bone Cave harvestman (*Texella reyesi*).	Texas	Presence/absence surveys.	Harass, harm	Renew.
TE233205	Bonn, Thomas; Lockhart, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*)	Texas	Presence/absence surveys.	Harm, harass,	Renew.
TE43746A	Johnson, Matthew; Flagstaff, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona, Colorado, New Mexico, Utah.	Presence/absence surveys.	Harm, harass,	Renew.
TE043399	Eagle Environmental; Vinita, Oklahoma.	American burying beetle (*Nicrophorus americanus*), interior least tern (*Sterna antillarum athalassos*).	Arkansas, Kansas, Louisiana, Oklahoma, Texas.	Presence/absence surveys,.	Harm, harass	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE820730 ..	New Mexico Energy, Minerals, and Natural Resources Department; Santa Fe, New Mexico.	Sacramento prickly poppy (*Argemone pinnatisecta*), Mancos milk-vetch (*Astragalus humillimus*), Sacramento Mountains thistle (*Cirsium vinaceum*), Lee's pincushion cactus (*Coryphantha sneedii* var. *leei*), Sneed's pincushion cactus (*Coryphantha sneedii* var. *sneedii*) gypsum wild buckwheat (*Erigonum gypsophilum*), Todsen's pennyroyal (*Hedeoma todsenii*), Pecos sunflower (*Helianthus paradoxus*), Holy Ghost ipomopsis (*Ipomopsis sancti-spiritus*), Mesa Verde cactus (*Sclerocactus mesae-verdae*).	New Mexico	Seed collection	Harm, harass	Renew.
TE27791B ..	National Park Service, Montezuma Castle and Tuzigoot National Monuments; Camp Verde, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona	Presence/absence surveys.	Harm, harass	Renew.
TE33889B ..	Miami University; Oxford, Ohio.	Diminutive amphipod (*Gammarus hyalleloides*), Noel's amphipod (*Gammarus desperatus*), Pecos amphipod (*Gammarus pecos*), Socorro isopod (*Thermosphaeroma thermophilum*), Chupadera springsnail (*Pyrgulopsis chupaderae*), Alamosa springnail (*Tryonia alamosae*).	New Mexico, Texas.	Presence/absence surveys.	Harm, harass	Renew.
TE830213 ..	EcoPlan Associates, Inc.; Mesa, Arizona.	Black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*), Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*), Sonoran pronghorn (*Antilocapra americana sonoriensis*), Gila topminnow (*Poeciliopsis occidentalis*), desert pupfish (*Cyprinodon macularius*), Yaqui chub (*Gila purpurea*), Gila chub (*Gila intermedia*).	Arizona	Presence/absence surveys.	Harm, harass	Renew.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2020–15801 Filed 7–21–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L17110000.BK0000.20XL1116AF.HAG 20–077]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, August 21, 2020.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

Willamette Meridian, Oregon

T. 5 S., R. 2 E., accepted March 4, 2020
T. 31 S., R. 6 W., accepted May 18, 2020
T. 22 S., R. 7 W., accepted May 18, 2020
T. 29 S., R. 9 W., accepted May 18, 2020
T. 32 S., R. 7 W., accepted July 14, 2020
T. 38 S., R. 3 W., accepted July 14, 2020
T. 31 S., R. 7 W., accepted July 14, 2020
T. 35 S., R. 5 W. accepted July 14, 2020
T. 34 S., R. 4 W., accepted July 14, 2020
T. 9 S., R. 41 E., accepted July 14, 2020
T. 23 S., R. 6 W., accepted July 14, 2020
T. 30 S., R. 3 W., accepted July 14, 2020
T. 16 S., R. 18 E., accepted July 14, 2020
T. 32 S., R. 5 W., accepted July 14, 2020
T. 32 S., R. 6 W., accepted July 14, 2020
T. 32 S., R. 7 W., accepted July 14, 2020
T. 33 S., R. 6 W., accepted July 14, 2020
Tps 32 & 33 S., R. 2 W., accepted July 14, 2020

Willamette Meridian, Washington

T. 37 N., R. 34 E., accepted July 14, 2020

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief, Cadastral Surveyor of Oregon/ Washington.

[FR Doc. 2020–15881 Filed 7–21–20; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19200000.XX0000PN.LLCA930000 LRORB2027900 20XL]

Public Land Order No. 7897; El Paso Project 8: Modification, Hidalgo County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) withdraws, subject to valid existing rights, 12.74 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period ending September 18, 2022, for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This PLO takes effect on July 15, 2020. This withdrawal will expire on September 18, 2022.

FOR FURTHER INFORMATION CONTACT: Timothy Spisak, State Director Mew Mexico, telephone: 505–954–2000, email: *tspisak@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8939 to contact Mr. Spisak. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

ORDER

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes:

A strip of land of the uniform width of 60 feet lying contiguous to and parallel with the international border between the United States and Mexico, located in the County of Hidalgo, State of New Mexico, and situate in the following described locations:

New Mexico Principal Meridian, New Mexico

T. 34 S, R. 17 W,
Sec. 19;
Sec. 20; W of the N and S centerline of SE1/4.

The areas described above aggregate 12.74 acres of Federal lands in Hidalgo County.

2. This withdrawal will expire on September 18, 2022, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: July 15, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–15898 Filed 7–21–20; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000 18XL5017AR; MO#4500144469]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), California State Office, Sacramento, California, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U. S. Forest Service and the Bureau of Land Management, are necessary for the management of these lands.

DATES: Unless there are protests to this action, the plats described in this notice will be filed on August 21, 2020.

ADDRESSES: You may submit written protests to the BLM California State Office, Cadastral Survey, 2800 Cottage Way, W–1623, Sacramento, CA 95825. A copy of the plats may be obtained from the BLM California State Office, Public Room, 2800 Cottage Way, W–1623, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Jon Kehler, Chief, Branch of Cadastral Survey, Bureau of Land Management, California State Office, 2800 Cottage Way, W–1623, Sacramento, California 95825; 1–916–978–4323; *jkehler@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Mount Diablo Meridian, California

T. 6 N., R. 16 E., dependent resurvey, subdivision and metes-and-bounds survey, for Group No. 1735, accepted February 12, 2020.
T. 15 S., R. 36 E., dependent resurvey, subdivision of sections, and metes-and-bounds survey, for Group No. 1768, accepted March 6, 2020.
T. 2 N., R. 13 E., supplemental plat, accepted April 2, 2020.
T. 6 N., R. 16 E., amended plat, accepted May 12, 2020.
T. 21 N., R. 7 W., metes-and-bounds survey, for Group No. 1763, accepted June 2, 2020.
T. 22 N., R. 4 E., dependent resurvey and subdivision of section 6, for Group No. 1777, accepted June 10, 2020.

San Bernardino Meridian, California

T. 17 S., R. 8 E., dependent resurvey and metes-and-bounds survey, for Group No. 1773, accepted November 14, 2019.

A person or party who wishes to protest one or more plats of survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. Any notice of protest received after the due date will be untimely and will not be considered. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed at the same address within 30 calendar days after the notice of protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available at any time. While you can ask the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C., Chapter 3.

Jon L. Kehler

Chief Cadastral Surveyor.

[FR Doc. 2020–15767 Filed 7–21–20; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19200000.XX0000PN.LLCA930000 LRORB2027900 20XL]

Public Land Order No. 7896; Yuma Project 3: Modification, Yuma County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) withdraws, subject to valid existing rights, approximately 53 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period ending September 18, 2022, for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This PLO takes effect on July 15, 2020. This withdrawal will expire on September 18, 2022.

FOR FURTHER INFORMATION CONTACT: Elena Fink, Deputy State Director—Lands, Minerals, and Energy, Arizona, telephone: 602–417–9200, email: *efink@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Fink. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes:

Strips of land of the uniform width of 60 feet lying contiguous to and parallel to the international border between the United States and Mexico, located in the County of Yuma, State of Arizona, excluding those lands described within PLO 7887, and situate in the following described locations:

Gila & Salt River Meridian, Arizona

T. 14 S, R. 14 W, unsurveyed
Secs. 30 thru 33.
T. 15 S, R. 14 W, unsurveyed
Secs. 3 and 4.
T. 14 S, R. 15 W, unsurveyed
Sec. 20; secs. 25 thru 27; sec. 36.

The areas described above aggregate approximately 53 acres of Federal lands in Yuma County.

2. This withdrawal will expire on September 18, 2022, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: July 15, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–15893 Filed 7–21–20; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081X3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce a public meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG).

DATES: The meeting will be held on Wednesday, August 19, 2020, from 9:30 a.m. (MDT) to approximately 5:00 p.m. (MDT); and Thursday, August 20, 2020, from 9:30 a.m. (MDT) to approximately 4:00 p.m. (MDT).

ADDRESSES: A teleconference may substitute for an in-person meeting depending on local health restrictions. Additional information about the meeting, including the agenda or changes to the meeting's format can be found at the AMWG website: *https://www.usbr.gov/uc/progact/amp/amwg.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Lee Traynham; telephone (801) 524–3752; email at *ltraynham@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act.

Agenda: The AMWG will meet to receive updates on: (1) Current basin hydrology and operations; (2) the draft GCDAMP budget and workplan for fiscal years 2021–2023; (3) planned or ongoing experiments in 2020; and (4) an update from the GCDAMP Tribal Liaison. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://*

www.usbr.gov/uc/progact/amp/amwg.html.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Individuals requiring special accommodations to access the public meeting should contact Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least (5) business days prior to the meeting so appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make extemporaneous and/or formal oral comments. To allow for full consideration of information by the AMWG members, written comments should be provided to Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least five (5) business days prior to the meeting. Written comments will be provided to the AMWG members.

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.

Lee Traynham,

Chief, Adaptive Management Work Group, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2020–15843 Filed 7–21–20; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Mobile Electronic Devices and Laptop Computers, DN 3474;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Maxell, Ltd., Inc. on July 17, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile electronic devices and laptop computers. The complaint names as a respondent: Apple Inc. of Cupertino, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon the alleged infringing asserted patents during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3474'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] 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. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, [2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 17, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–15890 Filed 7–21–20; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–647 and 731–TA–1517–1520 (Preliminary)]

Passenger Vehicle and Light Truck Tires From Korea, Taiwan, Thailand, and Vietnam

DETERMINATIONS

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of passenger vehicle and light truck tires from Korea, Taiwan, Thailand, and Vietnam, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Vietnam.[2]

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 13, 2020, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (''USW''), Pittsburgh, Pennsylvania, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of passenger vehicle and light truck tires from Vietnam and LTFV imports of passenger vehicle and light truck tires from Korea, Taiwan, Thailand, and Vietnam. Accordingly, effective May 13, 2020, the Commission instituted countervailing duty investigation No. 701–TA–647 and antidumping duty investigation Nos. 731–TA–1517–1520 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 19, 2020 (85 FR 29972). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on July 24, 2020. The views of the Commission are contained in USITC Publication 5093 (July 2020), entitled *Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand, and Vietnam: Investigation Nos. 701–TA–647 and 731–TA–1517–1520 (Preliminary).*

By order of the Commission.

Issued: July 17, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–15889 Filed 7–21–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 38850 and 85 FR 38854 (June 29, 2020).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1206]

Certain Percussive Massage Devices; 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 17, 2020 under section 337 of the Tariff Act of 1930, as amended, on behalf of Hyper Ice, Inc. of Irvine, California. A supplement was filed on June 27, 2020. 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 percussive massage devices by reason of infringement of certain claims

of U.S. Patent No. 10,561,574 (''the '574 patent''); U.S. Design Patent No. D855,822 (''the 'D822 patent''); and U.S. Design Patent No. D886,317 (''the 'D317 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 general exclusion order, or in the alternative 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 July 16, 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 1–9, 14, and 15 of the '574 patent; the claim of the 'D822 patent; and the claim of the 'D317 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 ''therapeutic handheld percussive massage devices for applying percussive massage to a person's body'';

(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:

Hyper Ice, Inc., 525 Technology Drive, Suite 100, Irvine, CA 92618

(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:

Addaday LLC, 2500 Broadway, Building F, 125, Santa Monica, CA 90404

Performance Health Systems, LLC, 401 Huehl Rd., Suite 2A, Northbrook, IL 60062

WODFitters, 6281 Corder Ln., Lorton, VA 22079

Massimo Motor Sports, LLC, 3101 W Miller Rd., Garland, TX 75041

Kinghood International Logistics Inc., 16851 Knott Ave., La Mirada, CA 90638

Manybo Ecommerce Ltd., Unit 622, Kwai Shun Ind. Centre, 51–63, Container Port Road, Kwai Chung, N.T., Hong Kong

Shenzhen Let Us Win-Win Technology Co., Ltd., 4F, No.229, Busha Road, Buji, Shenzhen, Guangdong Province, China 518000

Shenzhen Infein Technology Co., Ltd., 12–1, 1st Factory Building, Tian'an Digital Innovation Park, No. 441, Huangge Road, Longcheng Street, Longgang District, Shenzhen, Guangdong, China, 51800

Hong Kong Yongxu Capital Management Co., Ltd., Flat/Rm 1804, Beverly House, 93–107 Lockhart Road, Wanchai, Hong Kong, China 999077

Laiwushiyu Xinuan Trading Company, Chendaxia Village, Laiwu, Shandong District, China 271100

Shenzhen QingYueTang E-commerce Co., Ltd., Rm.1001, 10th Fl., Zhongken Building, No.2002 Bixin Rd., Longgang District, Shenzhen, Guangdong, China 518000

Shenzhen Shiluo Trading Co., Ltd., 37 East 305, Minli Old Village, Minzhi Street, Longhua New District, Shenzhen, Guangdong, China 518000

Kula eCommerce Co., Ltd., NO. 50, Danshui Baiyun Yi Road, Huiyang District, Huizhou City, Guangdong, China 516211

Fu Si, 621 Gongye Road, Longhua District, Shenzhen, Guangdong, China 518000

Shenzhen Qifeng Technology Co., Ltd., 1019, Weidonglong Technology Building, Meilong Boulevard, Longhua Sub-District, Longhua Ne W District Shenzhen, Guangdong, 518015 China

Rechar, Inc., 56157 Oak Ave., Strasburg, CO 80136

Ning Chen, Group 4 Yanyan Village, Luoqiao Town, 71 Hao, Funing, Yancheng, Jiangsu China 224400

Opove, 207 N Aspan Ave, Suite 2, Azusa, CA 91702

Shenzhen Shufang E-Commerce Co., Ltd., 602–2 Building 4, Zhangkeng Youpin, Cultural Creative Park Longhua District, Shenzhen China 518000

(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 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–15814 Filed 7–21–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0017]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms—ATF Form 5300.11

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 21, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5300.11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: The information collected on the Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms—ATF Form 5300.11, is used to compile statistics about the manufacture and exportation of firearms. This collection of information is mandatory under 18 U.S.C. 923(g)(5)(A). The completed ATF Form 5300.11 must be submitted annually by every Type 07 and Type 10 Federal Firearms Licensees (FFLs), even if no firearms were exported or distributed into commerce.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 13,600 respondents will utilize the form annually, and it will take each respondent approximately 20 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 4,533 hours, which is equal to 13,600 (# of respondents) * 1 (total responses per respondents) * .333 (24 minutes).

(7) *An Explanation of the Change in Estimates:* Due to more licensed manufacturers, the total respondents to this IC has increased by 1,600, since the last renewal in 2017. An increase in the total respondents has also contributed in a slight increase in the total burden hours by 533, since 2017.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 16, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–15806 Filed 7–21–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0028]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Inventories: Licensed Explosives Importers, Manufacturers, Dealers, and Permittees

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 21, 2020.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Inventories: Licensed Explosives Importers, Manufacturers, Dealers, and Permittees.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: The information collection entitled Inventories: Licensed Explosives Importers, Manufacturers, Dealers, and Permittees, requires that persons engaged in the explosives industry maintain explosive material inventories. The collected information is used by the government to develop audit trails during the course of a compliance inspection or criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 9,433 respondents will respond to this collection annually, and it will take each respondent approximately 2 hours to provide their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 18, 866 hours, which is equal to 9,433 (# of responses) * 1 (# of responses per respondent) * 2 (total time in hours to respond to this IC).

(7) *An Explanation of the Change in Estimates:* The adjustment associated with this collection is a decrease in the number of respondents by 483 and a decrease in the total burden hours by 8,950, since the last renewal in 2017. The recalculated burden hours for this collection corresponds with the fact that each respondent responds only once, and now take 2 hours, instead of 1 hour to complete their responses.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 16, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–15805 Filed 7–21–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed request for authority to conduct the information collection request (ICR) titled ''Job Corps Hall of Fame and Successful Graduate Nomination.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 21, 2020.

ADDRESSES: You may send comments, identified by docket number ETA2020–0001, by one of the following methods:

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

• *Mail:* Send via U.S. Postal Service to U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW, Room N–4459, Washington, DC 20210.

• *Hand Delivery/Courier:* Send to U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW, Room N–4459, Washington, DC 20210.

Instructions: All submissions received must include the agency name and docket number or the Paperwork Reduction Act Regulatory Information Number (RIN). All comments received will be posted without change to *www.regulation.gov,* including any personal information provided.

For additional information, please see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket for background documents or comments received, go to docket number ETA2020–0001.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 55 years, Job Corps has helped prepare over three million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 121 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSE), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by DOL through the Office of Job Corps and six regional offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations manage and operate 95 Job Corps centers under contractual agreements with DOL. These contract center operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. Two centers are operated under demonstration grant arrangements. The U.S. Department of Agriculture Forest Service via an interagency agreement operates the remaining 24 Job Corps centers, called Civilian Conservation Centers. DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0NEW.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; 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).

Agency: DOL-ETA.

Type of Review: New.

Title of Collection: Job Corps Hall of Fame and Successful Graduate Nomination.

Form: Job Corps Hall of Fame and Successful Graduate Nomination.

OMB Control Number: 1205–0NEW.

Affected Public: Job Corps operators, regional staff and Facebook followers.

Estimated Number of Respondents: 400.

Frequency: Varies.

Total Estimated Annual Responses: 400.

Estimated Average Time per Response: 1.25 hours.

Estimated Total Annual Burden Hours: 500 hours.

Total Estimated Annual Other Cost Burden: $10,806.

Authority: 44 U.S.C. 3506(c) (2)(A).

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–15778 Filed 7–21–20; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of the Homeless Veterans' Reintegration Program (HVRP)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 21, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at (202) 693–0456 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Chief Evaluation Office of the U.S. Department of Labor (DOL) has commissioned an evaluation of the Homeless Veterans' Reintegration Program (HVRP), a competitive grant program administered by DOL's Veterans' Employment and Training Service (VETS). HVRP assists veterans experiencing homelessness find and hold meaningful employment by providing employment services and by developing partnerships with other service providers, The HVRP evaluation offers an opportunity to build knowledge about the implementation and effectiveness of these grants.

This is a new collection request for a grantee survey, key informant interview guide, HVRP veteran interview guide, and non-HVRP veteran interview guide. Site visits and interviews may be done virtually, if in-person visits are not feasible due to the COVID–19 pandemic. This package requests clearance for data collection activities that need to start in August 2020 to provide DOL with information related to how grantees that were operating in program year 2019 and received program year 2020 grants continue to adapt their programs as a result of the COVID–19 pandemic. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 13, 2018 (83 FR 40087).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–CEO.

Title of Collection: Evaluation of the Homeless Veterans' Reintegration Program (HVRP).

OMB Control Number: 1290–0NEW.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 130.

Total Estimated Number of Responses: 130.

Total Estimated Annual Time Burden: 136 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–15822 Filed 7–21–20; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Rehabilitation Plan and Award (OWCP–16)

AGENCY: Office of Workers' Compensation, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Rehabilitation Plan and Award'' (OWCP–16). This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 21, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Background: The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Longshore and Harbor Workers' Compensation Act (LHWCA) and the Federal Employees' Compensation Act (FECA). 33 U.S.C. 939 (LHWCA) and 5 U.S.C. 8104 and 8111 (FECA) authorize OWCP to pay for approved vocational rehabilitation services to eligible workers with work-related disabilities. In order to decide whether to approve a rehabilitation plan, OWCP must receive a copy of the plan, supporting vocational testing materials and the estimated cost to implement the plan, broken down to show the fees, supplies, tuition and worker maintenance payments that are contemplated. OWCP also must receive the signature of the rehabilitation counselor to show that the proposed plan is appropriate. Form OWCP–16 is the standard format for the collection of this information. The regulations implementing these statutes allow for the collection of information needed for OWCP to determine if a rehabilitation plan should be approved and payment of any related expenses should be authorized. This information collection is currently approved for use through December 31, 2020.

DOL authorizes this information collection. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB# 1240–0045.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; 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.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Extension to a currently approved collection.

Title of Collection: Rehabilitation Plan and Award.

Agency Form Number: OWCP–16.

OMB Control Number: 1240–0045.

Affected Public: Individuals or households; businesses or other for-profit.

Estimated Number of Respondents: 3176.

Frequency: On occasion.

Total Estimated Annual Responses: 3176.

Estimated Average Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1588.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A)

Anjanette Suggs,

Agency Clearance Officer, Office if Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2020–15833 Filed 7–21–20; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

60-Day Notice for the "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery"

AGENCY: National Endowment for the Arts.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. Currently, the NEA is soliciting comments concerning the proposed information collection for Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below within 60 days from the date of this publication in the **Federal Register**.

ADDRESSES: Email comments to: Sunil Iyengar, National Endowment for the Arts, at *research@arts.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3135–0130.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered is not used for the purpose of substantially informing influential policy decisions; and
- Information gathered yields qualitative information; the collections are not designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

Estimated Number of Respondents: 7,950.

Average Expected Annual Number of Activities: 4.

Average Number of Respondents per Activity: 883.

Annual Responses: 2,650.

Frequency of Response: Once per request.

Average minutes per response: 16.

Average Expected Annual Burden hours: 726.5.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; 2. The accuracy of the Agency's estimate of the burden of the collection of information; 3. Ways to enhance the quality, utility, and clarity of the information to be collected; 4. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 16, 2020.

Jillian Miller,

Director of Guidelines & Panel Operations, National Endowment for the Arts.

[FR Doc. 2020–15787 Filed 7–21–20; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 18, 2019, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Leidos Innovations Corp., Permit No. 2020–004, November 8, 2019
2. John Kennedy, Permit No. 2020–006, November 9, 2019
3. Robin West, Permit No. 2020–009, November 9, 2019

On September 18, 2019, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Grant Ballard, Permit No. 2020–005, November 9, 2019
2. Peter West, Permit No. 2020–007, November 9, 2019
3. Robert Sanders, Permit No. 2020–008, November 9, 2019

On September 20, 2019, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on the following date:

1. Orla Doherty, Permit No. 2020–012, November 4, 2019

On October 10, 2019, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on the following date:

1. Lee Welhouse, Permit No. 2020–014, November 12, 2019

On October 22, 2019, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on the following date:

1. Ari Friedlaender, Permit No. 2020–016, December 20, 2019

On November 12, 2019, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Heather J. Lynch, Permit No. 2020–010, December 20, 2019
2. Joseph A. Covi, Permit No. 2020–017, December 12, 2019
3. Zicheng Yu, Permit No. 2020–018, January 27, 2020

On November 19, 2019, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Heather J. Lynch, Permit No. 2020–011, December 20, 2019
2. Bob Simpson, Permit No. 2020–019, December 20, 2019
3. Lisa Bolton, Permit No. 2020–020, December 20, 2019

On December 3, 2019, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Nicholas Teets, Permit No. 2020–013, January 2, 2020
2. Daniel P. Zitterbart, Permit No. 2020–021, January 2, 2020

On December 5, 2019, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Chris Eckstrom, Permit No. 2020–022, January 8, 2020
2. David Lloyd, Permit No. 2020–024, January 9, 2020

On December 12, 2019, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on the following date:

1. Red Rock Films, Permit No. 2020–023, January 13, 2020

On December 27, 2019, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on the following date:

1. William Muntean, Permit No. 2020–025, January 27, 2020

On December 30, 2019, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on the following date:

1. Brandon Savory, Permit No. 2020–026, January 30, 2020

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2020–15883 Filed 7–21–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1031, 50–369, and 50–370; NRC–2020–0044]

Duke Energy Carolinas LLC; McGuire Nuclear Station Units 1 and 2; Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an exemption request from Duke Energy Carolinas, LLC (Duke Energy) which would permit Duke Energy to maintain MAGNASTOR® Cask 0FCTKN045 at its McGuire Nuclear Station independent spent fuel storage installation (ISFSI) in a storage condition where the helium density is above the range specified in Certificate of Compliance No. 1031, Amendment No. 7, Technical Specification 3.1.1. The NRC prepared an environmental assessment (EA) documenting its finding that the proposed action would have no significant environmental impact. Accordingly, the NRC staff is issuing a finding of no significant impact (FONSI) associated with the proposed exemption.

DATES: The EA and FONSI referenced in this document are available on July 14, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0044 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–2020–0044. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges Roman; 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.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1018; email: *Yen-Ju.Chen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is reviewing an exemption request from Duke Energy, dated September 12, 2019 (ADAMS Accession No. ML19270E395), and supplemented by a letter dated February 3, 2020 (ADAMS Accession No. ML20052D934), and June 15, 2020 (ADAMS Accession No. ML20178A548). Duke Energy is requesting an exemption from the requirements of title 10 of the *Code of Federal Regulations* (10 CFR) in § 72.212(b)(3), (b)(5)(i), and (b)(11) that require Duke Energy and its MAGNASTOR® Cask 0FCTKN045 to comply with the terms, conditions, and specifications of the Certificate of Compliance (CoC) No. 1031, Amendment No. 7 (ADAMS Accession No. ML17013A481). If approved, Duke Energy's exemption request would accordingly allow Duke Energy to maintain MAGNASTOR® Cask 0FCTKN045 in a storage condition where the helium density is above the range specified in CoC No. 1031, Amendment No. 7, Technical Specification (TS) 3.1.1.

II. Environmental Assessment Summary

Under the requirements of §§ 51.21 and 51.30(a), the NRC staff developed an EA (ADAMS Accession No. ML20192A329) to evaluate the proposed action, which is for the NRC to grant Duke Energy an exemption from the requirements of § 72.212(b)(3), (b)(5)(i), and (b)(11), only as these requirements pertain to MAGNASTOR® Cask 0FCTKN045. The exemption would allow Duke Energy to maintain its MAGNASTOR® Cask 0FCTKN045 at McGuire Nuclear Station ISFSI in its current storage condition. The exemption would therefore not require Duke Energy to restore its MAGNASTOR® Cask 0FCTKN045 to full compliance with the helium density range specified in TS 3.1.1.

The EA defines the NRC's proposed action (*i.e.,* to grant Duke Energy's exemption request per 10 CFR 72.7) and the purpose and need for the proposed action. Evaluations of the potential environmental impacts of the proposed action and alternatives to the proposed action are presented, followed by the NRC's conclusion.

The EA evaluates the potential environmental impacts of granting the exemption. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the EA for the rulemaking to provide for the storage of spent fuel under a general license on July 18, 1990 (55 FR 29181). The EA for using the MAGNASTOR® System, Amendment No. 7 (81 FR 13265) tiers off of the EA for the 1990 final rule.

The NRC staff finds that the higher helium density would not adversely affect thermal performance and the structural integrity of the cask system is maintained, and thus, there would be no release from the canister. Therefore, the proposed action does not change the types or quantities of effluents that may be released offsite, it does not increase occupational or public radiation exposure, and there will be no significant radiological impact to the environment. The proposed action will take place within the site boundary and does not have other environmental impacts. Accordingly, the environmental impacts are bounded by the previous NRC EA for the rulemaking to add the MAGNASTOR® System, Amendment No. 7, to 10 CFR 72.214. Thus, the proposed action will not have a significant effect on the quality of the human environment.

III. Finding of No Significant Impact

The NRC staff has prepared an EA and associated FONSI in support of the proposed action. The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

The NRC provided the North Carolina Department of Health and Human Services with a draft copy of the EA for a 30-day review on June 18, 2020 (ADAMS Accession No. ML20171A452) and received its response on June 23, 2020 (ADAMS Accession No. ML20177A379). The NRC also informed the North Carolina State Historic Preservation Office (SHPO) of its no effects determination on January 7, 2020 (ADAMS Accession No. ML20008D559) and received the SHPO's concurrence on January 14, 2020 (ADAMS Package Accession No. ML20015A314).

The NRC staff has determined that this exemption would have no impact on ecological resources, and therefore no consultations are necessary under Section 7 of the Endangered Species Act of 1973 (16 U.S.C.A. 1536).

Therefore, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate.

Dated: July 16, 2020.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–15768 Filed 7–21–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners Consolidated Interim Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; extension of comment period.

SUMMARY: On May 8, 2020, the U.S. Nuclear Regulatory Commission (NRC) issued for public comment a draft Environmental Impact Statement (EIS)

for Interim Storage Partners' (ISP's) license application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) and Greater-Than Class C (GTCC) waste, along with a small quantity of mixed oxide fuel. The public comment period was originally scheduled to close on September 4, 2020. Given recent events associated with the COVID–19 public health emergency, the NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on May 8, 2020 (85 FR 27447) is extended. Comments should be filed no later than November 3, 2020. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2016–0231. Address questions about NRC Docket IDs 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, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Email comments to: WCS_CISF_EIS@nrc.gov.*

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: James Park, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6954; email: *James.Park@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0231. An electronic copy of the draft EIS has been posted under Docket ID NRC–2016–0231 as supporting material.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft EIS is available in ADAMS under Accession No. ML20122A220.
- *Project web page:* Information related to the ISP CISF project can be accessed on the NRC's ISP CISF web page at *https://www.nrc.gov/waste/spent-fuel-storage/cis/waste-control-specialist.html.*
- *Public Libraries:* A Web link to the electronic copy of the draft EIS has been made available at the following public library websites:
- *Eunice Public Library: https://www.cityofeunice.org/134/Library-Services,* under ''U.S. Nuclear Regulatory Commission Information.''
- *Hobbs Public Library: http://www.hobbspubliclibrary.org/,* under ''News & Updates.''
- *Andrews County Library: https://www.andrews.lib.tx.us/news-events,* under ''News & Events.''

B. Submitting Comments

Please include Docket ID NRC–2016–0231 in your comment submission. Written comments may be submitted during the draft EIS comment period as described in the **ADDRESSES** section of the document.

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

On May 8, 2020, the NRC issued for public comment a draft EIS for ISP's license application to construct and operate a CISF for SNF and GTCC waste, along with a small quantity of mixed oxide fuel. The proposed CISF would be located on an approximately 130-hectare (320-acre) site, within the approximately 5,666-hectare (14,000-acre) Waste Control Specialists site in Andrews County, Texas. The proposed action is the issuance of an NRC license authorizing a CISF to store up to 5,000 metric tons of uranium (MTUs) [5,500 short tons] of SNF for a license period of 40 years. ISP plans to subsequently request amendments to the license to store an additional 5,000 MTU for each of seven expansion phases of the proposed CISF (a total of eight phases), to be completed over the course of 20 years. The proposed facility could eventually store up to 40,000 MTUs [44,000 short tons] of SNF.

The draft EIS for ISP's license application includes the NRC staff's preliminary analysis that evaluates the environmental impacts of the proposed action and the No-Action alternative to the proposed action. After comparing the impacts of the proposed action to those of the No-Action alternative, the NRC staff, in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations,* recommends the proposed action, which is the issuance of an NRC license to ISP to construct and operate a CISF at the proposed location to temporarily store up to 5,000 MTUs [5,500 short tons] of SNF for a licensing period of 40 years. This recommendation is based on (i) the ISP license application, which includes the environmental report and supplemental documents, and ISP's responses to the NRC staff's requests for additional information; (ii) the NRC staff's consultation with Federal, State, Tribal, and local agencies and input from other stakeholders; (iii) the NRC staff's independent review; and (iv) the NRC staff's assessments provided in the EIS.

The public comment period was originally scheduled to close on September 4, 2020. The NRC has decided to extend the public comment until November 3, 2020, to allow more time for members of the public to submit their comments. Comments of Federal, State, and local agencies, Indian Tribes or other interested persons will be made available for public inspection when received.

Dated: July 16, 2020.

For the Nuclear Regulatory Commission.

Jessie M. Quintero,

Acting Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2020–15809 Filed 7–21–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Notice Initiating Docket(s) For Recent Postal Service Negotiated Service Agreement Filings

Issued July 17, 2020.

	Docket No.
Competitive Product Prices, Priority Mail Contracts, Priority Mail Contract 642	MC2020–202
Competitive Product Prices, Priority Mail Contract 642 (MC2020–202), Negotiated Service Agreements	CP2020–229

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

[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).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–202 and CP2020–229; *Filing Title:* USPS Request to Add Priority Mail Contract 642 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 16, 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 24, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–15871 Filed 7–21–20; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–17, OMB Control No. 3235–0018

Submission for OMB Review; Comment Request]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 15b6–1 and Form BDW

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15b6–1 (17 CFR 240.15b6–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. On average, the Commission estimates that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration as required by Rule 15b6–1. The Commission estimates that approximately 317 broker-dealers withdraw from Commission registration annually[1] and, therefore, file a Form BDW via the internet with the Central Registration Depository, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. The 317 broker-dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 317 hours.[2]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom,

[1] This estimate is based on Form BDW data collected over the past three years for fully registered broker-dealers. This estimate is based on the numbers of forms filed; therefore, the number may include multiple forms per broker-dealer if the broker-dealer's initial filing was incomplete. In fiscal year (from 10/1 through 9/30) 2017, 328 broker-dealers withdrew from registration. In fiscal year 2018, 328 broker-dealers withdrew from registration. In fiscal year 2019, 296 broker-dealers withdrew from registration. (328 + 328 + 296) / 3 = 317 (rounded down from 317.33).

[2] (317 × 1 hour) = 317 hours.

Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 16, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15797 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89331; File No. SR–NASDAQ–2019–091]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Withdrawal of Proposed Rule Change To Adopt a New Rule Concerning Nasdaq's Ability To Request Information From a Listed Company Regarding the Number of Unrestricted Publicly Held Shares in Certain Circumstances and Halt Trading in the Company's Security Upon the Request, and in Certain Circumstances Request a Plan To Increase the Number of Unrestricted Publicly Held Shares To an Amount That Is Higher Than the Applicable Publicly Held Shares Requirement

July 16, 2020.

On November 22, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a rule specifying Nasdaq's ability to request information from a listed company regarding the number of unrestricted publicly held shares when Nasdaq observes unusual trading characteristics in a security or a company announces an event that may cause a contracting in the number of unrestricted publicly held shares, halt trading in such company's securities upon such a request, and potentially request a listed company to increase its number of unrestricted publicly held shares.

The proposed rule change was published for comment in the **Federal Register** on December 12, 2019.[3] On January 24, 2020, pursuant to Section 19(b(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 4, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On June 5, 2020, the Commission designated a longer period for Commission action on the proposed rule change.[8] On July 8, 2020, the Exchange withdrew the proposed rule change (SR–NASDAQ–2019–091).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15791 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87677 (December 6, 2019), 84 FR 67974 (December 12, 2019). Comment on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nasdaq-2019-091/srnasdaq2019091.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 88028 (January 24, 2020), 85 FR 5500 (January 30, 2020).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 88315, 85 FR 13954 (March 10, 2020).

[8] *See* Securities Exchange Act Release No. 89206, 85 FR 35687 (June 11, 2020). The Commission designated August 8, 2020, as the date by which it should approve or disapprove the proposed rule change.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89329; File No. SR–BOX–2020–16]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change in Connection With the Proposed Commencement of Operations of Boston Security Token Exchange LLC ("BSTX") as a Facility of the Exchange

July 16, 2020.

On May 21, 2020, BOX Exchange LLC (the ''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 in connection with the proposed commencement of operations of Boston Security Token Exchange LLC as a facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 1, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 16, 2020.

The Commission hereby is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates August 30, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2020–16).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15790 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88949 (May 26, 2020), 85 FR 33258.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89334; File No. SR–NASDAQ–2020–037]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a New "Early Market On Close" Order Type

July 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on July 6, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') 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 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 adopt the ''Early Market On Close'' as a new order type. The Exchange also proposes to amend Rule 4754 and make conforming changes to Rules 4703 and 4756.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4702 to adopt a new Order Type, entitled the ''Early Market on Close'' or ''EMOC'' Order Type. Generally speaking, the Exchange intends for the EMOC to be an additional offering to its Market On Close (''MOC'') Orders, as well as a competitive alternative to the newly-approved Cboe BZX Market-On-Close order type (the ''Cboe Market Close'' or ''CMC'').[3] That is, EMOC would enable market participants that wish to buy or sell Nasdaq-listed securities as part of the Nasdaq closing auction (the ''Nasdaq Closing Cross''), and to obtain matched executions at the Nasdaq Closing Cross price, the ability to do so at a time that is earlier than what is possible with ordinary MOC Orders.[4]

Specifically, an EMOC Order would be an unpriced Order to buy or sell a Nasdaq-listed security that the Exchange would seek to match with other like orders at 3:35 p.m. Eastern Time (''ET''). If so matched, the Exchange would execute the Order as part of the Nasdaq Closing Cross.

If no such match occurs, the Exchange would automatically convert any unmatched shares of EMOC Orders into a regular MOC Order for participation in the Nasdaq Closing Cross, while retaining their original time priority. Once converted, unmatched shares of EMOC Orders would thereafter be handled in the same manner as an ordinary MOC Order. Notably, a participant would be able to cancel or modify a converted EMOC Order for any reason after 3:35 and before 3:50 p.m. ET, just as it would for a MOC Order, and the participant could cancel or modify the converted EMOC Order between 3:50 and prior to 3:58 p.m. ET to correct a legitimate error in the Order, again, just as it could with a MOC Order. Converted shares of EMOC Orders would execute in the Nasdaq Closing Cross in the same manner and with the same priority as does a MOC Order and it would be subject to the same auxiliary, LULD Closing Cross, and contingency procedures as are MOC Orders. Like MOC Orders, converted shares of EMOC Orders that remain unexecuted after the Closing Cross will be canceled.

The Exchange proposes to allow its members to enter, cancel, or modify EMOC Orders beginning at 9:30 a.m. ET [5] and until immediately prior to 3:35 p.m. ET (or 25 minutes prior to the early closing time on a day when Nasdaq closes early). Exchange members would not be able to enter, cancel, or modify EMOC Orders at or after 3:35 p.m. (or at or after 25 minutes prior to the early closing time on a day when Nasdaq closes early).[6]

Pursuant to proposed Rule 4702(b)(16)(B), a Participant would be able to designate the Time-in-Force for an EMOC Order either by designating a Time-in-Force of ''On Close'' or by entering a Time-in-Force of IOC and flagging the Order to participate in the Nasdaq Closing Cross.

When entering short sale EMOC Orders, Exchange members would be required to mark them as ''short'' or ''short exempt'' pursuant to Rule 4702(a). The Exchange's System would reject EMOC Orders marked ''short,'' while it would accept and process EMOC Orders marked ''short exempt'' in accordance with Rule 4763. This will ensure that the Exchange is able to comply with its obligations under Rule 201 of Regulation SHO in the event that a short sale circuit breaker is triggered and the Nasdaq Closing Cross price is not above the national best bid.[7]

At 3:35 p.m. ET (or 25 minutes prior to the early closing time on a day when Nasdaq closes early), the System would match for execution all buy and sell EMOC Orders entered into the System with execution priority determined based on time-received.

The Exchange would communicate information about the size of matched EMOC Orders as part of its Early Order Imbalance Indicator (''EOII'') and Order Imbalance Indicator (''NOII'').[8]

[3] *See* Securities Exchange Act Release No. 34–88008 (January 21, 2020), 85 FR 4726 (January 27, 2020) (SR-BatsBZX–2017–34) (the ''BZX Approval Order'').

[4] Pursuant to Rule 4702(b)(11), a MOC is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. MOC Orders may be entered between 4 a.m. ET and immediately prior to 3:55 p.m. ET. MOC Orders may be cancelled and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:58 p.m. ET, an MOC Order can be cancelled and/or modified only if the Participant requests that Nasdaq correct a legitimate error in the Order (*e.g.,* Side, Size, Symbol, or Price, or duplication of an Order). MOC Orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. An MOC Order shall execute only at the price determined by the Nasdaq Closing Cross.

[5] Nasdaq believes that accepting EMOC orders beginning at 9:30 a.m., is appropriate because it observes that this is approximately the time that its members typically begin to enter regular Market on Close Orders.

[6] The QIX order entry protocol would not be available for the entry of an EMOC because it is used primarily for quoting purposes.

[7] *See* BZX Approval Order, *supra,* 85 FR at 4752.

[8] The NOII is a message that the Exchange disseminates by electronic means, beginning at 3:55 p.m. ET (or 5 minutes prior to the early closing time on a day when Nasdaq closes early), and which contains information about MOC, LOC, IO, and Close Eligible Interest and the price at which those orders would execute at the time of dissemination. *See* Rule 4754(a)(7). The information that the NOII disseminates includes: (i) The ''Current Reference Price'' (discussed below); (ii) the number of shares represented by MOC, LOC, and IO orders that are paired at the Current Reference Price; (iii) the size of any ''Imbalance'' (*i.e.,* the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC, LOC, or IO order shares at a particular price at any given time); (iv) the buy/sell direction of any Imbalance; and (v) indicative prices at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. *See id.*

The EOII is an earlier message that the Exchange disseminates by electronic means, beginning at 3:50 p.m. ET (or 10 minutes prior to the early closing time on a day when Nasdaq closes early), and which contains all of the same categories of information as does the NOII, except that it excludes indicative pricing information. *See* Rule 4754(a)(10).

However, the Exchange would not discretely disclose the number of matched EMOC shares in the EOII and NOII. Instead, the Exchange would fold this information into its disclosure of the aggregate number of shares that have been paired at the then Current Reference Price.[9] In other words, the EOII and NOII would provide an aggregate disclosure of the numbers of paired shares that represent EMOC, regular MOCs, Limit on Close, and Imbalance Only Orders. The disclosure would not specify the particular Order Types that the paired shares represent.[10]

All matched buy and sell EMOC Orders would remain in the System until the Nasdaq Closing Cross occurs. The System would execute all previously matched buy and sell EMOC orders, at the Nasdaq Closing Cross Price, when the Nasdaq Closing Cross occurs.

If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC, IO and Close Eligible Interest would be executed, then Orders will be executed at the Nasdaq Closing Cross price, with previously matched EMOCs executing first in priority, and then the remaining Orders executing pursuant to the existing priority set forth in Rule 4754(b)(3) (as renumbered, (b)(4)). If, due to insufficient trading interest, no Nasdaq Closing Cross occurs in a security on a trading day, then the Exchange would cancel all matched EMOCs in the security.[11]

The Exchange also proposes to amend Rule 4754 to account for EMOC Orders in Nasdaq's auxiliary procedures and Limit-Up-Limit Down (''LULD'') Closing Cross. First, in the event that Nasdaq employs auxiliary procedures due to extraordinary volumes in the Closing Cross,[12] Nasdaq proposes to subject EMOC Orders to the same procedures that would apply to regular MOC Orders.[13] Second, Nasdaq proposes to subject EMOC Orders to the same procedures that would apply to regular MOC Orders in the event that it conducts an LULD Closing Cross in a security.[14]

When Systems disruptions prevent the occurrence of the Nasdaq Closing Cross in a security,[15] such that Nasdaq invokes its contingency procedures, Nasdaq proposes to handle EMOC Orders in the same manner that it handles other open interest designated for the Nasdaq close. That is, Nasdaq proposes to cancel all EMOC orders in the event that an impairment causes it to invoke its contingency procedures because any such impairment would prevent Nasdaq from executing the Closing Cross in the security. Moreover, Nasdaq believes that it would be in the best interest of participants for the Exchange to cancel their matched EMOCs so as to allow participants determine how best to manage their orders given the circumstances that would exist under such a scenario.

Finally, Nasdaq notes that it proposes to make conforming changes to various provisions of the Rules, including Rule 4703(a)(1), (c), and (l), and Rule 4756 (a)(3).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because it is an additional offering to its existing MOC Order type, and it will provide for a competitive alternative to the CMC order type. The proposed rule change would further remove impediments to and perfect the mechanisms of a free and open market and a national market system by promoting competition among national securities exchanges in the execution of market-on-close orders for Nasdaq-listed securities at the Nasdaq Closing Cross price.

Unlike CMCs, which siphon off orders from the primary listing exchanges and thereby threaten to undermine the integrity of the primary listing exchanges' closing auction processes, the EMOC Order Type would have no such effects. Instead, EMOC Orders are designed to help keep market-on-close orders in Nasdaq-listed securities on Nasdaq, which is sensible given that Nasdaq is the primary listing market for these securities and its Closing Cross establishes their official closing prices. The proposal would help to ensure that Nasdaq is able to continue to conduct its industry-leading Closing Cross auction smoothly and efficiently, and without undue complexity, to the benefit of all participants.

Meanwhile, participants that choose to utilize EMOC Orders could take comfort in knowing that Nasdaq, unlike BZX, is already experienced in executing market on close orders in Nasdaq-listed securities and that Nasdaq has a track record of doing so competently and reliably. Moreover, because Nasdaq's Closing Cross process is subject to the Commission's highest regulatory standards for security, integrity, reliability, and resiliency, participants can feel at ease knowing that Nasdaq will treat EMOC Orders with the utmost care, and that the Commission will hold Nasdaq accountable if it fails to do so. The BZX Market on Close process, on the other

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The Exchange proposes to amend the definitions of the terms NOII and EOII so that the Rules state that they will include information about EMOC Orders and the price at which those Orders would execute at the time of dissemination.

Nasdaq also proposes to amend the definition of ''Imbalance'' to include the number of shares of buy or sell EMOC Orders that cannot be matched with other EMOC Order shares at a particular price at any given time. Nasdaq notes that this definitional change will have no practical effect because shares of EMOC Orders that are not matched at 3:35 p.m. would be converted into regular MOC Orders.

[9] As set forth in Rule 4754(a)(7), the term ''Current Reference Price'' means: (i) the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired; or (ii) if more than one such price exists, the price that minimizes any imbalance; or (iii) if more than one such price exists, the entered price at which shares will remain unexecuted in the cross; or (iv) if more than one such price exists, the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination. The Exchange proposes to amend the definition of the term ''Current Reference Price'' so that it also includes shares representing EMOC Orders (even though EMOC Orders would not affect the calculation of the Current Reference Price due to the fact that they would be matched prior to the calculation of the Price). Nasdaq proposes similar conforming changes to include EMOCs in the definitions of the terms ''Far Clearing Price'' and ''Near Clearing Price.''

[10] Nasdaq notes that in proposing to disseminate paired EMOC share information as part of its EOII and NOII, Nasdaq would afford market participants time to absorb that information and to act on it in advance of the Nasdaq Closing Cross. That said, Nasdaq does not believe that market participants would derive any particular benefit from knowing which of the aggregate paired shares reflected in the EOII or NOII are attributable to EMOC Orders; such a disclosure would not contribute to price discovery or otherwise materially impact participants' decisions as to whether or not to participate in the Nasdaq Closing Cross.

[11] If, as of the Closing Cross cut-off time, there are matched EMOCs and a continuous market for a security, but there is no other crossing interest, then Nasdaq would conduct a Closing Cross with a Closing Cross price determined pursuant to 4754(b)(2)(A). This reflects the same procedure that the Exchange would follow in the event that the only closing interest in a security consisted of perfectly paired MOC Orders.

[12] *See* Rule 4754(b)(5).

[13] However, under proposed Rule 4754(b)(6)(A), the auxiliary procedures would provide that Nasdaq may end the order modification and cancellation periods for EMOCs as early as 3:25 p.m., whereas for MOCs, Nasdaq may end those periods as early as 3:40 p.m.

[14] *See* Rule 4754(b)(6). Nasdaq notes that paired EMOC shares participating in an LULD Closing Cross would be executed against each other, and then other Order Types would execute in price/time priority order.

[15] *See* Rule 4754(b)(7).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

hand, is untested and subject to lower regulatory standards.[18]

The Exchange also believes that its proposed design of EMOC is equitable, provides for a free and open market, and is in the interests of investors and the public and a national market system. For example, Nasdaq believes that it is equitable and in the interest of investors to provide for unmatched shares of EMOC Orders to convert to regular MOC Orders at 3:35 p.m. because doing so reduces the operational risk for market participants relative to other alternatives such as CMC as they would not have to take additional action to submit new MOC Orders should they remain interested in participating in the Nasdaq Closing Cross despite the lack of a match. Meanwhile, participants that do not wish to proceed with MOC Orders in this instance would remain free to cancel or modify their orders for at least 15 minutes after conversion.

Additionally, Nasdaq believes that it is equitable and in the interest of investors to cancel EMOC Orders in the event that Nasdaq does not conduct a Closing Cross because to do otherwise would force market participants to execute EMOC Orders at prices that may be stale [19] and which may not reflect the true market price for such securities. Moreover, Nasdaq notes that this proposal is the same as how Nasdaq handles other open cross-only interest when no Closing Cross occurs.

Nasdaq also believes that it is equitable and facilitates a free and open market to handle EMOC Orders similarly to other Order Types in the event of extraordinary volume at the close, insufficient trading interest to conduct an LULD Closing Cross in a security following an LULD trading pause, the occurrence of an LULD Closing Cross in a security, and when the Exchange applies contingency procedures.

Lastly, Nasdaq believes that its proposal facilitates a free and open market incorporating into its EOII and NOII publications the numbers of paired shares of EMOC Orders in advance of the Nasdaq Closing Cross. By including EMOC paired shares information in the EOII and NOII publications, Nasdaq will ensure that market participants are adequately informed about the depth of interest in its Closing Cross at a point in time when they are able to act on that information by choosing whether to participate in the Closing Cross. Nasdaq notes that its proposal is consistent with the interests of investors and the public to simply add EMOC-related paired shares to its aggregate EOII and NOII disclosures of paired shares, rather than to separately identify the number of paired shares that are due to EMOC Orders, because the Exchange does not believe participants would gain any valuable insights from a separate disclosure. Nasdaq notes that it does not separately identify paired shares that are attributable to MOC or Limit on Close Orders.

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 proposal would increase competition among exchanges by offering a competitive alternative to BZX's Market-On-Close process. Indeed, the proposal will offer market participants an option to enter early market on close orders for Nasdaq-listed stocks, while providing the added benefit of executing those orders in a process that is recognized for its reliability and which is more highly-regulated than is the BZX Market Close process. Moreover, unlike other offerings that siphon orders from the price discovery process on the primary market, Nasdaq's proposal will not contribute to the fragmentation of the closing process for Nasdaq-listed securities. Finally, EMOC would offer participants reduced operational risk by automatically converting their unmatched EMOCs to MOCs at 3:35 p.m. and retaining its original time priority, while still affording them the opportunity to cancel converted orders prior to the Closing Cross Cutoff Time.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–037 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–NASDAQ–2020–037. 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

[18] *See* BZX Approval Order, *supra,* at 4734 (''[T]he fact that closing auction systems are subject to the heightened requirements of Regulation SCI for critical SCI systems could encourage market participants to send MOC orders to closing auctions on the primary listing exchanges due to the additional regulatory protections required of such systems.'').

[19] If a disruption prevents the occurrence of Nasdaq Closing Cross, then under contingency procedures described in Rule 4754(b)(7), the Exchange will execute orders at the Nasdaq Official Closing Price, which may be, under certain circumstances, the last consolidated last-sale eligible trade price for a security during regular trading hours or, if there were no such trades on the day in question, the Nasdaq Official Closing Price of the security on the prior trading day.

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–NASDAQ–2020–037, and should be submitted on or before August 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15792 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 17g–1and Form NRSRO SEC File No. 270–563, OMB Control No. 3235–0625

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g-1, Form NRSRO and Instructions to Form NRSRO under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).[1] The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1, Form NRSRO and the Instructions to Form NRSRO contain certain recordkeeping and disclosure requirements for NRSROs. Currently, there are 9 credit rating agencies registered as NRSROs with the Commission. The Commission estimates that the total burden for respondents to comply with Rule 17g-1 and Form NRSRO is 4,160 hours, which includes one-time reporting burdens for new registration applications, registration for additional categories of credit ratings, withdrawals of NRSRO applications, and withdrawals of NRSRO registration.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

Please direct your written comments to: Dave Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F St. NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 16, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15800 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension: Rule 0–2, Form ADV–NR SEC File No. 270–214, OMB Control No. 3235–0240

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 0–2 and Form ADV–NR under the Investment Advisers Act of 1940.'' Rule 0–2 and Form ADV–NR facilitate service of process on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser. Form ADV–NR designates the Secretary of the Commission, among others, as the non-resident general partner's or non-resident managing agent's agent for service of process. The collection of information is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident partners and agents for violations of the federal securities laws and to enable the commencement of legal and/or regulatory actions against investment advisers that are doing business in the United States, but are not residents. The respondents to this information collection would be each non-resident general partner or non-resident managing agent of an SEC-registered investment adviser and each non-resident general partner or non-resident managing agent of an exempt reporting adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR imposes a total burden of approximately 1.0 hour for an adviser. Based on our experience with these filings, we estimate that we will receive 53 Form ADV–NR filings annually. Based on the 1.0 hour per respondent estimate, the Commission staff estimates a total annual burden of 53 hours for this collection of information.

Rule 0–2 and Form ADV–NR do not require recordkeeping or records retention. The collection of information requirements under the rule and form is mandatory. The information collected pursuant to Rule 0–2 and Form ADV–NR is a filing with the Commission. This filing is not kept confidential and must be preserved until at least three years after termination of the enterprise. 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 control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom,

[20] 17 CFR 200.30–3(a)(12).

[1] *See* 17 CFR 240.17g-1 and 17 CFR 249b.300.

Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 16, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15796 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89328; File No. SR–BOX–2020–14]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

July 16, 2020.

On May 21, 2020, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing the listing and trading of equity securities that would be NMS stocks on the Exchange through a facility of the Exchange known as the Boston Security Token Exchange LLC. The proposed rule change was published for comment in the **Federal Register** on June 1, 2020.[3] The Commission has received one comment letter on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 16, 2020.

The Commission hereby is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates August 30, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2020–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15789 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88946 (May 26, 2020), 85 FR 33454.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89330; File No. SR–BX–2020–014]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX's Routing Functionality

July 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), and Rule 19b–4 thereunder, notice is hereby given that on July 2, 2020, Nasdaq BX, Inc. (''BX'' or ''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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 5, Section 4, Order Routing.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 5, Section 4, Order Routing, in connection with a technology migration to an enhanced Nasdaq, Inc. (''Nasdaq'') functionality which results in higher performance, scalability, and more robust architecture. With this system migration, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq Exchanges. Specifically, the Exchange proposes to conform BX Routing to Nasdaq Phlx LLC's (''Phlx'') routing rule at Options 5, Section 4, Order Routing.

Today, BX offers the following order types for routing: DNR Order, SEEK Order and SRCH Order. A DNR Order will never be routed outside of the Exchange regardless of the prices displayed by away markets. A SEEK Order may route during and after an Opening Process. Once the SEEK Order rests on the Order Book, it will not be eligible for routing until the next time the option series is subject to a new Opening Process. A SRCH Order may route during and after an Opening Process. A SRCH Order on the Order Book may be routed to an away market if it is locked or crossed by an away market.

This proposal would amend BX Rules to remove the SEEK routing option and, instead, adopt the FIND Order routing option, which is currently available on Phlx. A FIND Order, similar to a SEEK Order, will only attempt to route once and then post to the Order Book. FIND Orders that are not marketable with the ABBO upon receipt, similar to SEEK Orders, will be treated as DNR for the remainder of the trading day and post to the Order Book, and will not be subject to routing even in the event that there is a new Opening Process after a trading halt. If a FIND Order was marketable with the ABBO upon receipt, it would be eligible for routing the next time the option series is subject to a new Opening Process, which may include a re-opening after a trading halt. FIND Orders may route during and after an Opening Process, similar to SEEK Orders. The Exchange is replacing the ''SEEK'' option with a ''FIND'' option within Options 5, Section 4(a) to account for the change in routing options, which will be described below in greater detail below. Of note, unlike FIND and SEEK Orders, SRCH Orders will continue to route throughout the trading day, provided the SRCH Order is marketable with the ABBO.

Further, this proposal would conform rule text describing DNR Orders and SRCH Orders with Phlx rule text. Proposed amendments to the DNR and SRCH Order rule text are not substantive and do not result in System changes.

DNR Orders

The Exchange proposes to amend Options 5, Section 4(a)(iii)(A), related to DNR Orders, to conform the BX rule text to Phlx rule text. These amendments are intended bring clarity to the rule text. Currently, Options 5, Section 4(a)(iii)(A), relating to DNR Orders, states,

A DNR Order will never be routed outside of BX regardless of the prices displayed by away markets. A DNR Order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR Order will remain in the BX Order Book and be displayed at a price one minimum price variation (''MPV'') inferior to that away best bid/offer. If the DNR Order is locking or crossing the ABBO, the DNR Order shall be entered into the Order Book at the ABBO price and displayed one MPV away from the ABBO. The Exchange shall immediately expose the order at the ABBO to participants, provided the option series has opened for trading. Any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price. Should the best away market change its price to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price, and expose such orders at the ABBO to participants only if the repriced order locks or crosses the ABBO. Once priced at its original limit price, it will remain at that price until executed or cancelled. Should the best away market improve its price such that it locks or crosses the DNR Order limit price, the Exchange will execute the resulting incoming order that is routed from the away market that locked or crossed the DNR Order limit price.

The Exchange proposes non-substantive amendments to Options 5, Section 4(a)(iii)(A), relating to DNR Orders, to align the rule text with Phlx's Rule at Options 5, Section 4(a)(iii)(A). The Exchange proposes to: (1) Add the word ''Order'' after DNR in the fifth sentence of the paragraph; (2) add the word ''already'' before ''displayed'' in the fifth sentence of the paragraph; (3) replace the word ''change'' with ''move'' in the sixth sentence of the paragraph; (4) delete the words ''its price'' in the sixth sentence of the paragraph; (5) use the defined term ''MPV'' instead of ''minimum trading increment'' in the sixth sentence of the paragraph; (6) replace ''away best bid/offer'' with ''ABBO'' in the sixth sentence of the paragraph; and (7) replace ''priced'' with ''booked'' in the seventh sentence of the paragraph. These proposed amendments are non-substantive and intended solely to conform BX's DNR rule text to Phlx's DNR rule text as the functionality is the same on both markets.

The Exchange also proposes to amend the fifth sentence of the paragraph within Options 5, Section 4(a)(iii)(A), which currently states, ''Any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price'' to add more explanation and another scenario. The Exchange proposes to instead provide, ''Any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless (1) the ABBO is improved to a price which crosses the DNR Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price; or (2) the ABBO is improved to a price which locks the DNR Order's displayed price, in which case the incoming order will execute at the DNR Order's displayed price.'' This proposed new text intends to make clear that if the Exchange's System is executing an incoming order against a resting DNR Order, which is displayed, it would not consider an updated ABBO which crossed the already displayed DNR Order. The System would not take into account the away market order or quote that crossed the DNR Order's already displayed price. The Exchange is not trading-through an away market in this scenario, rather an away market is crossing BX's already displayed market and therefore the away market has the obligation not to trade-through BX's displayed price. By way of example, consider the following sequence of events in the System:

9:45:00:00:00—MIAX Quote 0.95 × 1.20
9:45:00:00:10—OPRA updates MIAX BBO 0.95 × 1.20
9:45:00:00:20—BX Local BBO Quote 1.00 × 1.15
9:45:00:00:30—OPRA disseminates BX BBO updates: 1.00 × 1.15
9:45:00:00:35: CBOE Quote 1.00 × 1.12
9:45:00:00:45—OPRA disseminates CBOE BBO 1.00 × 1.12
9:45:00:00:50—DNR Order: Buy 5 @ 1.15 (exposes @ ABBO of 1.12, displays 1 MPV from ABBO @ 1.11)
9:45:00:00:51—OPRA disseminates BX BBO updates: 1.11 × 1.15 (1.11 being the DNR Order displaying 1 MPV from ABBO)
9:45:00:00:60—MIAX Quote updates to 1.00 × 1.10 (1.10 crosses the displayed DNR Order price, violating locked/crossed market rules; henceforth, we need not protect this price)
9:45:00:00:65—OPRA disseminates MIAX BBO 1.00 × 1.10
9:45:00:00:75—BX Market Maker Order to Sell 5 @ 1.09
9:45:00:00:76—Market Maker Order immediately executes against DNR Order 5 contracts @ 1.12 (1.12 being the 'previous' ABBO price disseminated by CBOE before the receipt of the DNR Order that was subsequently and illegally crossed by MIAX's 2nd quote)
9:45:00:00:77—OPRA disseminates BX BBO updates: 1.00 × 1.15 (reverts back to BBO set by BX Local Quote since the DNR Order has executed)

The Exchange proposes to amend the next sentence of that same paragraph, which currently states, ''Should the best away market change its price to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price, and expose such orders at the ABBO to participants only if the repriced order locks or crosses the ABBO.'' In addition to the non-substantive changes noted above, the Exchange proposes to remove the phrase ''to participants only if the repriced order locks or crosses the ABBO.'' The proposed sentence would provide, ''Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original ABBO and display one MPV away from the new ABBO or its original limit price, and expose such orders at the new ABBO.'' The Exchange's proposal is intended to make clear the current System operation. The rewording of this sentence does not result in a System change, rather the new sentence is intended to bring greater clarity to the current System operation.

FIND Order

The Exchange proposes to adopt a new routing options at Options 5, Section 4(a)(iii)(B), FIND Orders. As noted above, a FIND Order is an order that is: (i) Routable at the conclusion of an Opening Process; and (ii) routable upon receipt during regular trading, after an option series is open. FIND Orders that are not marketable with the ABBO upon receipt will be treated as DNR for the remainder of the trading day, and will not be subject to routing even in the event that there is a new Opening Process after a trading halt. This text is similar to Phlx Options 5, Section 4(a)(iii)(B). BX would treat FIND Orders upon receipt in the same manner as Phlx. BX proposes to add rule text to the end of Options 5, Section 4(a)(iii)(B) which states, ''and post to the Order book, even in the event that there is a new Opening Process after a trading halt'' to make clear that the FIND Order would post to the Order Book and not route again, even if there were a new Opening Process. This happens today on Phlx as well.

The Exchange proposes to provide at BX proposed Options 5, Section 4(a)(iii)(B)(1), ''At the end of an Opening Process, any FIND Order that is priced through the Opening Price, pursuant to Options 3, Section 8(a)(iii), will be cancelled, and any FIND Order that is at or inferior to the Opening Price will execute or book pursuant to Options 3, Section 8(k).'' BX will permit all market participants to route. The Exchange proposes not to adopt the Phlx rule text at Options 5, section 4(a)(iii)(B)(1) which provides, ''Such FIND Order will not be eligible for routing until the next time the option series is subject to a new Opening Process.'' The Opening Process describes the manner in which orders route at the end of that process and the sentence is not necessary within this rule. FIND Orders that are not marketable with the ABBO upon receipt will be treated as DNR for the remainder of the trading day, and will not be subject to routing even in the event that there is a new Opening Process after a trading halt.

In order to more efficiently display the various potential scenarios, without repeating certain rule text several times throughout the rule, the Exchange proposes to adopt proposed Options 5, Section 4(a)(iii)(B)(2). The proposed paragraph provides,

Generally, a FIND Order will be included in the displayed BBO at its limit price, unless the FIND Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the FIND Order is entered onto the Order Book, the FIND Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If during a Route Timer, ABBO markets move such that the FIND Order is no longer marketable against the ABBO nor marketable against the BBO, the FIND Order will post at its limit price. If the FIND Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. If the ABBO worsens but remains better than the BBO, the FIND Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer. If, during the Route Timer, any new interest arrives opposite the FIND Order that is equal to or better than the ABBO price, the FIND Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the FIND Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price.

This paragraph utilizes the term ''generally'' because it always applies to FIND Orders. The Exchange proposes to state that a FIND Order will be included in the displayed BBO at its limit price, unless the FIND Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. This statement will provide context to the FIND Order and would apply consistently to FIND Orders. The Exchange further proposes to provide that if there exists a locked ABBO when the FIND Order is entered onto the Order Book, the FIND Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. The Exchange further proposes to describe the possible scenarios that may occurring during a Route Timer, when ABBO markets move such that the FIND Order is no longer marketable against the ABBO nor marketable against the BBO, the FIND Order will always post at its limit price. If the FIND Order is locked or crossed by away quotes, it will route each time at the completion of the Route Timer. In the situation where an ABBO worsens, but remains better than the BBO, the FIND Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer, each time. If, during the Route Timer, any new interest arrives opposite the FIND Order that is equal to or better than the ABBO price, the FIND Order will trade always against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the FIND Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. The Exchange believes that describing these scenarios in this introductory paragraph will provide a basis to understand certain FIND Order behaviors in certain circumstances and eliminate the need to have these circumstances repeated throughout the rule. The sentences in this paragraph are currently located within the Phlx FIND Rule at Options 5, Section 4(a)(iii)(B). The Exchange notes below where the sentences within proposed BX Options 5, Section 4(a)(iii)(B)(2) are located within the current Phlx rule.

Phlx Options 5, Section 4(a)(iii)(B)(2) provides,

With respect to an Opening Process, if during a route timer at the conclusion of an Opening Process pursuant to Options 3, Section 8(k) markets move such that the FIND Order is executable against Exchange interest, the FIND Order will immediately execute. If during a route timer, ABBO markets move such that the FIND Order is no longer marketable against the ABBO nor marketable against the PBBO, the FIND Order will post at its limit price. If the FIND Order is locked or crossed by away quotes, it will route at the completion of the route timer. If the ABBO worsens but remains better than the PBBO, the FIND Order will reprice and be reexposed at the new price(s) without interrupting the route timer.

The first sentence of Phlx Options 5, Section 4(a)(iii)(B)(2) is not being adopted because it is covered within Options 3, Section 8(k), which describes the Opening Process. The remainder of the Phlx rule text is the same as that within BX proposed Options 5, Section 4(a)(iii)(B)(2), however it is arranged in a different order. Similar to SRCH Orders, the Exchange proposes various scenarios if markets move.

Proposed BX Options 5, Section 4(a)(iii)(B)(3) provides, ''A FIND Order received after an Opening Process that is not marketable against the BBO or the ABBO will be entered into the Order Book at its limit price. The FIND Order will be treated as DNR for the remainder of the trading day, even in the event that there is a new Opening Process after a trading halt.'' This text is similar to Phlx Options 5, Section 4(a)(iii)(B)(3). BX would treat FIND Orders received after an Opening Process that are not marketable against the BBO or the ABBO in the same manner as Phlx. BX is adding rule text to make clear that the FIND Order will not route, even if there is a new Opening Process. The Exchange will not allow a non-marketable order to route.

Proposed BX Options 5, Section 4(a)(iii)(B)(4) provides,

A FIND Order received after an Opening Process that is marketable against the BBO when the ABBO is inferior to the BBO will be traded on the Exchange at or better than the BBO price. If the FIND Order has size remaining after exhausting the BBO, it may: (1) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, (2) be entered into the Order Book at its limit price, or (3) if locking or crossing the ABBO, be entered into the Order Book at the ABBO price and displayed one MPV away from the ABBO. The FIND Order will be treated as DNR for the remainder of the trading day, even in the event that there is a new Opening Process after a trading halt.

This rule text is similar to Phlx Options 5, Section 4(a)(iii)(B)(4), except that Phlx has references to an ''internal PBBO'' because it has All-or-None Orders which are non-displayed orders, and BX is adding rule text to make clear that the FIND Order will not route, even if there is a new Opening Process. As explained above, BX's All-or-None Orders execute immediately or cancel and do not rest on the Order Book. This paragraph describes scenarios where the FIND Order is marketable against the BBO, when the ABBO is inferior to the BBO. In this case, the FIND Order will be traded at the Exchange at or better than the BBO price. If the FIND Order has size remaining after exhausting the BBO, there are various possible scenarios: the FIND Order may (1) trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, (2) be entered into the Order Book at its limit price, or (3) if locking or crossing the ABBO, be entered into the Order Book at the ABBO price and displayed one MPV away from the ABBO. BX handles FIND Orders similar to Phlx with respect to not routing for the remainder of the trading day, even if there is a new Opening Process.

Proposed BX Options 5, Section 4(a)(iii)(B)(5) provides,

A FIND Order received after an Opening Process that is marketable against the BBO when the ABBO is equal to the BBO will be traded on the Exchange at the BBO. If the FIND Order has size remaining after exhausting the BBO, it will initiate a Route Timer, and expose the FIND Order at the ABBO to allow market participants an opportunity to interact with the remainder of the FIND Order. During the Route Timer, the FIND Order will be included in the BBO at a price one MPV away from the ABBO. If during the Route Timer, the ABBO markets move such that the FIND Order is no longer marketable against the ABBO, it may: (i) Trade at the next BBO price (or prices) if the FIND Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO.

This rule text is identical to Phlx Options 5, Section 4(a)(iii)(B)(5), except that Phlx has references to an ''internal PBBO'' because it has All-or-None Orders as described above. Also, a sentence that is within this paragraph in the Phlx Rule is now captured within proposed BX Options 5, Section 4(a)(iii)(B)(2) and does not need to be repeated in this paragraph.

Proposed BX Options 5, Section 4(a)(iii)(B)(5) explains that if a FIND Order is received after an Opening Process that is marketable against the BBO, when the ABBO is equal to the BBO, the FIND Order will be traded at the Exchange at the BBO. Further, if the FIND Order has size remaining after exhausting the BBO, it will initiate a Route Timer, and expose the FIND Order at the ABBO to allow market participants an opportunity to interact with the remainder of the FIND Order. During a Route Timer, the FIND Order will be included in the BBO at a price one MPV away from the ABBO. The Exchange also accounts for scenarios during a Route Timer. The first scenario describes a situation during the Route Timer, if ABBO markets move such that the FIND Order is no longer marketable against the ABBO. In this scenario, various events could occur, the FIND Order may: (i) Trade at the next BBO price (or prices) if the FIND Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO. The remainder of the text in Phlx Options 5, Section 4(a)(iii)(B)(5) is not included as it is repetitive of text within proposed BX Options 5, Section 4(a)(iii)(B)(2).

Proposed BX Options 5, Section 4(a)(iii)(B)(6) provides,

If, at the end of the Route Timer pursuant to subparagraph (5) above, the FIND Order is still marketable with the ABBO, the FIND Order will route to an away market up to a size equal to the lesser of either: (1) An away market's size or (2) the remaining size of the FIND Order. If the FIND Order still has remaining size after routing, it will (i) trade at the next BBO price or better, subject to the order's limit price, and, if contracts still remain unexecuted, the remaining size will be routed to away markets disseminating the same price as the BBO, or (ii) be entered into the Order Book and posted either at its limit price or re-priced one MPV away if the order would otherwise lock or cross the ABBO. If size still remains, the FIND Order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

The Exchange's proposed rule text is the same as Phlx Options 5, Section 4(a)(iii)(B)(6). At the end of a Route Timer, if a FIND Order is still marketable with the ABBO, the FIND Order will route to an away market up to a size equal to the lesser of either (1) an away market's size or (2) the remaining size of the FIND Order. If the FIND Order still has remaining size after routing, it will (i) trade at the next BBO price or better, subject to the order's limit price, and, if contracts still remain unexecuted, the remaining size will be routed to away markets disseminating the same price as the BBO, or (ii) be entered into the Order Book and posted either at its limit price or re-priced one MPV away if the order would otherwise lock or cross the ABBO. A FIND Order will only route once. BX Options 5, Section 4(a)(iii)(B)(6)(i) describes a scenario where interest has routed and size remains, which size would be routed again without posting to the Order Book. Once the FIND Order posts to the Order Book, it will not route again until the options series is subject to a new Opening Process. If size still remains, the FIND Order will not be eligible for routing until the next time the option series is subject to a new Opening Process. An Opening Process would occur intra-day if there was a trading halt. After a trading halt, BX would reopen with an Opening Process.

Proposed BX Options 5, Section 4(a)(iii)(B)(7) provides, A FIND Order received after an Opening Process that is marketable against the ABBO when the ABBO is better than the BBO will initiate a Route Timer, and expose the FIND Order at the ABBO to allow participants and other market participants an opportunity to interact with the FIND Order.

The Exchange's proposed rule text is similar to Phlx Options 5, Section 4(a)(iii)(B)(6), however, part of the rule text within Phlx Options 5, Section 4(a)(iii)(B)(6) is contained with proposed BX Options 5, Section 4(a)(iii)(B)(2), which applies to FIND Orders generally.

Proposed BX Options 5, Section 4(a)(iii)(B)(8) provides,

If, at the end of the Route Timer pursuant to subparagraph (7) above, the ABBO is still the best price and is marketable with the FIND Order, the order will route to the away market(s) whose disseminated price(s) is better than the BBO, up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the FIND Order. If the FIND Order still has remaining size after such routing, it will (i) trade at the BBO price or better, subject to the order's limit price, and, if contracts still remain unexecuted, the remaining size will be routed to away markets disseminating the same price as the BBO, or (ii) be entered into the Order Book and posted either at its limit price or re-priced one MPV away if the order would otherwise lock or cross the ABBO. If size remains, the FIND Order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

The Exchange's proposed rule text the same as Phlx Options 5, Section 4(a)(iii)(B)(6). As stated herein, BX will route all market participant orders. During the Route Timer, the FIND Order will be included in the BBO at a price that is the better of one MPV away from the ABBO or the BBO. In this scenario, if during that Route Timer new interest arrives opposite the FIND Order, and that interest is equal to or better than the ABBO price, the FIND Order will trade against such new interest at the ABBO price. If, at the end of that Route Timer the ABBO is still the best price, and is marketable with the FIND Order, the order will route to the away market(s) whose disseminated price(s) is better than the BBO, up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the FIND Order. If the FIND Order still has remaining size after such routing, it will (i) trade at the BBO price or better, subject to the order's limit price, and, if contracts still remain unexecuted, the remaining size will be routed to away markets disseminating the same price as the BBO, or (ii) be entered into the Order Book and posted either at its limit price or re-priced one MPV away if the order would otherwise lock or cross the ABBO. If size remains, the FIND Order will not be eligible for routing until the next time the option series is subject to a new Opening Process, which may be intra-day if a trading halt occurs.

Finally, proposed BX Options 5, Section 4(a)(iii)(B)(9) is identical to Phlx Options 5, Section 4(a)(iii)(B)(9) and provides that a FIND Order that is routed to an away market(s) will be marked as an Intermarket Sweep Order ''ISO'' and designated as an IOC order.

As mentioned above, All-or-None Orders are handled differently in the System by Phlx and BX. Phlx All-or-None Orders are permitted to rest on the Order Book. BX All-or-None Orders must be executed in its entirety or not at all and do not rest on the Order Book.

SEEK Orders

The Exchange proposes to remove the rule text for SEEK Orders as the Exchange will no longer offer this routing option. The Exchange believes that adopting the FIND Order routing option, similar to Phlx, will provide its market participants with ample choice as to the method in which they may route. As is the case today, an order may also be marked as ''DNR'' and therefore would not be subject to routing. With this proposal, any market participant may choose to route, as is the case today. The Exchange proposes to replace references to ''SEEK'' within Options 5, Section 4(a) with ''FIND'' references.

SRCH Orders

The Exchange proposes to retain the SRCH Order functionality. The Exchange's current SRCH Order functionality is identical to SRCH Order functionality on Phlx with the exception that BX's All-or-None Orders must be executed in its entirety or not at all and do not rest on the Order Book. Also, BX permits routing for all market participants. A SRCH Order is routable at any time.

The Exchange proposes to remove the first sentence of BX Options 5, Section 4(a)(iii)(C). The Exchange notes that the information in that first sentence of Options 5, Section 4(a)(iii)(C) is available within BX Options 5, Section 4(a) and applies to SRCH Orders. Current BX Options 5, Section 4(a)(iii)(C)(1) provides that if a SRCH Order is received during an Opening Process it may route as part of the Opening Cross pursuant to Options 3, Section 8(b)(7). The Exchange proposes to replace this rule text with the following proposed rule text within new Options 5, Section 4(a)(iii)(C), ''A SRCH Order on the Order Book during an Opening Process (including a re-opening following a trading halt), whether it is received prior to an Opening Process or it is a GTC SRCH Order from a prior day, may be routed as part of an Opening Process.'' The second sentence ''Orders initiate their own Route Timers and are routed in the order in which their Route Timers end'' is being retained. This proposed rule text for SRCH Orders is identical to Phlx's rule text within Options 5, Section 4(a)(iii)(C), except for the limitation on Phlx that only Public Customers and Professionals may route SRCH Orders. BX will permit any market participant to route SRCH Orders.

Next, the Exchange proposes to insert a new Options 5, Section 4(a)(iii)(C)(1) which states, ''At the end of an Opening Process, any SRCH Order that is priced through the Opening Price pursuant to Options 3, Section 8(a)(iii), will be cancelled, and any SRCH Order that is at or inferior to the Opening Price will execute or book pursuant to Options 3, Section 8(k).'' The information concerning the Opening Process is specified within Options 3, Section 8 and is being reiterated within this rule to describe routing during the Opening Process. The Exchange notes that Options 3, Section 8 provides a process whereby BX arrives at an Opening Price. The System cancels any order or quote priced through the Opening Price which was not able to be satisfied either by routing to an away destination or trading in full as part of the opening trade. Specifically, the Exchange notes that ''priced through the Opening Price'' means buying interest with a price higher than the Opening Price and selling interest with a price lower than the Opening Price. This rule text is similar to Phlx's rule text within Options 5, Section 4(a)(iii)(C)(1), except that the BX rule adds a citation to the Opening Process rule at Options 3, Section 8(a)(iii). Further, BX is establishing a sentence within Options 5, Section 4(a)(iii)(C)(2), similar to FIND Orders, to include rule text concerning SRCH Orders which applies generally. Phlx's rule text at Options 5, Section 4(a)(iii)(C)(1) is not being included within BX Options 5, Section 4(a)(iii)(C)(1), rather that rule text will be included within proposed BX Options 5, Section 4(a)(iii)(C)(2). The Exchange notes that the first sentence of current BX Options 5, Section 4(a)(iii)(C)(1) is reworded within proposed BX Options 5, Section 4(a)(iii)(C)(1).

Similar to the FIND Order proposal, the Exchange proposes to add a paragraph at proposed BX Options 5, Section 4(a)(iii)(C)(2) which provides general guidelines for the behavior of SRCH Orders which apply consistently. This proposed paragraph will allow the Exchange to more efficiently display the various potential scenarios without repeating certain rule text several times. The Exchange believes that describing these scenarios in this introductory paragraph will provide a basis to understand certain SRCH Order behaviors in certain circumstances and eliminate the need to have these circumstances repeated throughout the rule. Proposed BX Options 5, Section 4(a)(iii)(C)(2) provides,

Generally, a SRCH Order will be included in the displayed BBO at its limit price, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. Once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market. If during a Route Timer, ABBO markets move such that the SRCH Order is no longer marketable against the ABBO nor marketable against the BBO, the SRCH Order will book at its limit price. If, during the Route Timer, any new interest arrives opposite the SRCH Order that is equal to or better than the ABBO price, the SRCH Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. If the ABBO worsens but remains better than the BBO, the SRCH Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer. If an ABBO locks or crosses the SRCH Order during a new Route Timer, which would subsequently initiate at the conclusion of any Route Timer if interest remains, the SRCH Order may route to the away market at the ABBO at the conclusion of such Route Timer. If the SRCH Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. The System will route and execute contracts contemporaneously at the end of the Route Timer.

Generally a SRCH Order will be included in the displayed BBO at its limit price, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO, similar to other routing order types. Also, if there is a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO to avoid locking the away market. The Exchange proposes to generally state, ''Once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market.'' This provision is always true of SRCH Orders.

Next, the Exchange provides scenarios that generally may occur during a Route Timer. The first scenario is if during a Route Timer, ABBO markets move such that the SRCH Order is no longer marketable against the ABBO nor marketable against the BBO. In this case, the SRCH Order will book at its limit price. The next scenario is whether during the Route Timer, any new interest arrives opposite the SRCH Order that is equal to or better than the ABBO price, the SRCH Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. If new interest arrives that is that is equal to or better than the ABBO price, the SRCH Order will trade at the ABBO price. If new interest arrives that is marketable against the SRCH Order it will trade at the ABBO price unless the ABBO is improved to a price which crosses the SRCH Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. This last sentence within proposed BX Options 5, Section 4(a)(iii)(C)(4) makes clear that the SRCH Order would execute at the previous ABBO price as the away market crossed a displayed price. Better priced incoming interest will execute against the SRCH Order, unless the ABBO crosses the SRCH Order, in which case any new interest will execute at the SRCH Order price. In this scenario, BX's price was already displayed when an away market subsequently crossed BX's displayed price. If the ABBO worsens but remains better than the BBO, the SRCH Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer. Also, if an ABBO locks or crosses the SRCH Order during a new Route Timer, which would subsequently initiate at the conclusion of any Route Timer if interest remains, the SRCH Order may route to the away market at the ABBO at the conclusion of such Route Timer, each time. Finally, if the SRCH Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. The Exchange notes that the System will route and execute contracts contemporaneously at the end of the Route Timer. The last two sentences of this proposed rule are similar to the current last sentence of BX Options 5, Section 4(a)(iii)(C)(4). The sentences in this paragraph are currently within the Phlx SRCH Rule at Options 5, Section 4(a)(iii)(C). The Exchange notes below where the sentences within proposed BX Options 5, Section 4(a)(iii)(C)(2) are located within the current Phlx rule.

The Exchange proposes to provide rule text at proposed BX Options 5, Section 4(a)(iii)(C)(3) which is similar to Phlx Options 5, Section 4(a)(iii)(C)(2). This paragraph explains what happens to a SRCH Order that is not marketable against the BBO or the ABBO. The SRCH Order would be entered into the Order Book. BX proposes to state that the SRCH Order is entered at its limit price to provide greater detail. This detail is not currently within the Phlx rule text, but applies to Phlx as well. Once on the Order Book, the SRCH Order may route if it is locked or crossed by an away market.

Proposed BX Options 5, Section 4(a)(iii)(C)(4) provides,

A SRCH Order received after an Opening Process that is marketable against the BBO when the ABBO is inferior to the BBO will be traded on the Exchange at or better than the BBO price. If the SRCH Order has size remaining after exhausting the BBO, it may: (1) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, and/or (2) be routed, subject to a Route Timer, to away markets if all BX interest at better or equal prices has been exhausted, and/or (3) be entered into the Order Book at its limit price if not locking or crossing the BBO or the ABBO.

This proposed rule text represents a scenario where the SRCH Order is received after an Opening Process and is marketable against the BBO when the ABBO is inferior to the BBO. In this case the SRCH Order would be traded at or better than the BBO price. If size remains, the Exchange describes the various potential scenarios, the SRCH Order may: (1) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the price equal to the ABBO price, and/or (2) be routed, subject to a Route Timer, to away markets if all BX interest at better or equal prices has been exhausted, and/or (3) be entered into the Order Book at its limit price if not locking or crossing the BBO or the ABBO. These scenarios are not currently contained in the BX rule text and will bring greater transparency to the rule. This rule text is similar to Phlx Options 5, Section 4(a)(iii)(C)(3), except that Phlx has references to All-or-None Orders, which are non-displayed orders on Phlx and different than BX's All-or-None Orders, which execute immediately or cancel. Also, the final sentence from Phlx Options 5, Section 4(a)(iii)(C)(3), ''Once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market,'' appears in proposed BX Options 5, Section 4(a)(iii)(C)(2), which generally describes SRCH Orders.

Proposed BX Options 5, Section 4(a)(iii)(C)(5) provides,

A SRCH Order received after an Opening Process that is marketable against the BBO when the ABBO is equal to the BBO will be traded on the Exchange at the BBO. If the SRCH Order has size remaining after exhausting the BBO, it will initiate a Route Timer and expose the SRCH Order at the ABBO to allow participants and other market participants an opportunity to interact with the remainder of the SRCH Order. During the Route Timer, the SRCH Order will be included in the BBO at a price one MPV away from the ABBO.

This proposed paragraph describes a scenario that is currently not provided for within BX's rule. This scenario explains when a SRCH Order, received after the Opening Process, is marketable against the BBO when the ABBO is equal to the BBO. In this case the SRCH Order will be traded at the BBO price. If size remains, it will start a Route Timer and expose the SRCH Order at the ABBO and display the SRCH Order one MPV away from the ABBO so as not to lock the away market. During the Route Timer the SRCH Order will be included in the BBO at a price one MPV away from the ABBO. The proposed paragraph is similar to Phlx Options 5, Section 4(a)(iii)(C)(4). The Exchange notes that the sentences which provided, ''If, during the Route Timer, any new interest arrives opposite the SRCH Order that is equal to or better than the ABBO price, the SRCH Order will trade against such new interest at the ABBO price'' is contained within proposed BX Options 5, Section 4(a)(iii)(C)(2), which generally describes SRCH Orders.

Proposed BX Options 5, Section 4(a)(iii)(C)(6) provides,

If, at the end of the Route Timer pursuant to subparagraph (5) above, the SRCH Order is still marketable with the ABBO, the SRCH Order will route to an away market up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the SRCH Order. If the SRCH Order still has remaining size after routing, it may: (i) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO or the ABBO.

The Exchange proposes to note what occurs at the end of the Route Timer in paragraph (5) within proposed BX Options 5, Section 4(a)(iii)(C)(6). If the SRCH Order is still marketable with the ABBO, the SRCH Order will route up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the SRCH Order. If the SRCH Order still has remaining size after such routing, it may: (i) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO or the ABBO. As mentioned also during the Opening Process, once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market. The Exchange believes that noting each potential scenario within the SRCH Order rule text will provide market participants with clarity as to the expected System handling. This rule text is similar to Phlx Options 5, Section 4(a)(iii)(C)(4). Three sentences within the Phlx rule were copied to proposed BX Options 5, Section 4(a)(iii)(C)(2) and are therefore applicable to this paragraph. Also, BX and Phlx All-or None Order types differ.

The Exchange proposes to delete current Options 5, Section 4(a)(iii)(C)(2) and (3) and replace that language with similar text within proposed BX Options 5, Section 4(a)(iii)(C)(7) which provides,

A SRCH Order received after an Opening Process that is marketable against the ABBO when the ABBO is better than the BBO will initiate a Route Timer, and expose the SRCH Order at the ABBO to allow participants and other market participants an opportunity to interact with the SRCH Order. If during the Route Timer, the ABBO markets move such that the SRCH Order is no longer marketable against the ABBO, it may: (i) Trade at the next BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO.

The first sentence of this proposed rule is the same as the last sentence of current BX Options 5, Section 4(a)(iii)(C)(1). In this scenario, the SRCH Order is received after the Opening Process and is marketable against the ABBO when the ABBO is better than the BBO. A Route Timer will initiate and expose the SRCH Order at the ABBO to provide an opportunity to trade with the SRCH Order. If during the Route Timer, the ABBO markets move such that the SRCH Order is no longer marketable against the ABBO a few scenarios are possible: The SRCH Order may: (i) Trade at the next BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO. This rule text is identical to Phlx Options 5, Section 4(a)(iii)(C)(6). The remainder of the rule text within Phlx Options 5, Section 4(a)(iii)(C)(6) appears in proposed BX Options 5, Section 4(a)(iii)(C)(2), which generally describes SRCH Orders.

Proposed BX Options 5, Section 4(a)(iii)(C)(8) provides,

If, at the end of the Route Timer pursuant to subparagraph (7) above, the ABBO is still the best price and is marketable with the SRCH Order, the order will route to the away market(s) whose disseminated price(s) is better than the BBO, up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the SRCH Order. If the SRCH Order still has remaining size after such routing, it may: (i) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO or the ABBO.

This scenario considers what is possible at the end of the Route Timer within proposed BX Options 5, Section 4(a)(iii)(C)(7). If the ABBO is still at the best price and is marketable with the SRCH Order, the order will route to the away market with a price that is better than the BBO, up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the SRCH Order. If the SRCH Order still has remaining size after such routing, there are various possibilities, the SRCH Order may: (i) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the BBO or the ABBO. As is the case with SRCH Orders, once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market. This rule text is the same as Phlx Options 5, Section 4(a)(iii)(C)(7), except for the final sentence which states, ''Once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market'' and the mention of All-or-None Orders.

The Exchange does not propose to replicate Phlx Options 5, Section 4(a)(iii)(C)(8) because the paragraph is repetitive of the first sentence of proposed BX Options 5, Section 4(a)(iii)(C)(8) and the last sentence of proposed BX Options 5, Section 4(a)(iii)(C)(4). Notwithstanding the foregoing, the Exchange does propose to relocate a sentence from Phlx Options 5, Section 4(a)(iii)(C)(8) into BX Options 5, Section 4(a)(iii)(C)(2) which provides, ''If an ABBO locks or crosses the SRCH Order during a new Route Timer, which would subsequently initiate at the conclusion of any Route Timer if interest remains, the SRCH Order may route to the away market at the ABBO at the conclusion of such Route Timer.'' The Exchange does not propose to replicate Phlx Options 5, Section 4(a)(iii)(C)(9) because this paragraph replicates proposed BX Options 5, Section 4(a)(iii)(C)(7).

Proposed BX Options 5, Section 4(a)(iii)(C)(9) provides, ''A SRCH Order that is routed to an away market(s) will be marked as an ISO and designated as an IOC Order.'' This sentence is identical to Phlx Options 5, Section 4(a)(iii)(C)(10). This paragraph, which is currently not contained in BX's rule, represents existing System functionality. Describing the manner in which an IOC Order will be marked will provide greater transparency to the Exchange's current rule.

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to October 30, 2020. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange's proposal to adopt a routing strategy similar to Phlx with respect to FIND Orders and remove SEEK Orders will provide BX Participants the same flexibility for routing orders that is afforded to Phlx members today.

With respect to the SRCH feature, the Exchange is adding more detail to its routing rule to provide market participants with greater transparency. The Exchange believes the added scenarios will provide more context to routing in general and for the specific routing strategies for the benefit of investors and the public interest. The Exchange continues to offer various choices to its market participants with respect to routing. A Participant may elect either (1) to not route their orders and mark those orders ''DNR''; or (2) to route their orders. If a Participant elects to route their orders, then a Participant may select to mark their orders as ''FIND'' or ''SRCH'' Orders, as proposed herein. A FIND Order, similar to a SEEK Order, is not eligible for routing until the next time the option series is subject to a new Opening Process. The FIND Order would route once and then post to the Order Book. A SRCH Order may route during and after an Opening Process. A SRCH Order on the Order Book may be routed to an away market if it is locked or crossed by an away market. With respect to the addition of FIND Orders, the Exchange proposes various scenarios related to FIND Orders to account for various routing scenarios, as is the case today with respect to SEEK Orders. Various scenarios are also proposed to explain System functionality in locked and crossed markets. The Exchange also accounts for scenarios both during and after the Opening Process. The Exchange notes that it is consistent with the Act to account for the behavior of FIND Orders with respect to locked and crossed markets. The Exchange will not trade-through an away market's price. This behavior is consistent with the protection of investors and the general public because it affords Participants the ability to obtain the best price offered among the various options markets.

There are two distinctions in the Phlx rules which BX is not adopting. First, All-or-None Orders are handled differently in the System by Phlx and BX. Phlx All-or-None Orders are permitted to rest on the Order Book while BX All-or-None Orders must be executed in its entirety or not at all and do not rest on the Order Book. Because BX's All-or-None Orders do not rest on the Order Book, the treatment of such orders would be different on the two markets (Phlx and BX) and therefore it is consistent with the Act for BX to align its treatment of order types within the routing rule with its treatment of those orders pursuant to BX Options 3, Section 7. Second, the Exchange is not adopting the distinction on Phlx which permits routing for Public Customer and Professional SRCH Orders. The Exchange believes it is consistent with the Act to not limit routing for any market participant. BX's proposal would allow all market participants to route. Participants would have the ability to elect to route orders to away markets to obtain the best price, while also accessing Phlx's Order Book. The Exchange believes that offering Participants the ability to route enables a Participant to obtain an execution on any market, provided the order is marketable, without the need to cancel the order and submit it anew.

DNR Orders

The Exchange's proposal to amend Options 5, Section 4(a)(iii)(A), related to DNR Orders, to conform the text within BX to that of Phlx is consistent with the Act and should bring greater clarity to the rule text. The Exchange's proposed amendments to Options 5, Section 4(a)(iii)(A), relating to DNR Orders, align the rule text with Phlx's Rule. The proposed rule text does not result in a System change, rather the text is intended to bring greater clarity to the current System operation.

The Exchange's proposal to amend the sentence within Options 5, Section 4(a)(iii)(A), related to DNR Orders which provides, ''Any incoming order interacting with such a resting DNR order will execute at the ABBO price, unless the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price,'' is consistent with the Act. The Exchange proposes to amend this rule text to clarify the current rule text and add another scenario that is not currently within the rule text. The Exchange proposes to state, ''Any incoming order interacting with such a resting DNR order will execute at the ABBO price, unless (1), the ABBO is improved to a price which crosses the DNR Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price; or (2) the ABBO is improved to a price which locks the DNR Order's displayed price, in which case the incoming order will execute at the DNR Order's displayed price.'' The System would not take into account the away market order or quote which crossed the DNR's displayed price. The Exchange is not trading-through an away market in this scenario, rather an away market is crossing BX's displayed market and therefore that market has the obligation not to trade-through BX's displayed price. The Exchange is also adding a scenario where the ABBO is improved to a price which locks the DNR's displayed price. In this added scenario, the incoming order will execute at the DNR's displayed price. The Exchange notes that this scenario is not contained in the current rule text. Adding this scenario is consistent with the Act because it will bring greater transparency to the routing rule and inform members about this potential outcome if a member elects to mark their order as DNR.

Additionally, amending a sentence, within Options 5, Section 4(a)(iii)(A), to provide, ''Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original ABBO and display one MPV away from the new ABBO or its original limit price, and expose such orders at the new ABBO only if the repriced order locks or crosses the new ABBO'' is consistent with the Act because the additional language expands on the current re-pricing that exists today. The Exchange believes that this language provides more context to the manner in which a DNR Order will be handled by the Exchange's System. The Exchange believes that this additional rule text is consistent with the Act as the DNR Order would re-price again from its one MPV inferior to the original ABBO because the best away market moved to an inferior price level. The DNR Order would display one MPV away from the new ABBO price or its original limit price. Also, the DNR Order would expose such orders at the new ABBO. Once booked at its original limit price, it will remain on the Order Book at that price until executed or cancelled. Providing this additional transparency will assist members in determining if they want their orders routed.

The remaining rule text amendments are non-substantive and makes technical changes.

SRCH Orders

The Exchange's proposal to add more scenarios for SRCH Order functionality on BX is consistent with the Act. Today, BX's current SRCH Order functionality is identical to SRCH Order functionality on Phlx, with the exception that All-or-None Orders must be executed in its entirety or not at all and do not rest on the Order Book. BX permits routing for all market participants, unlike Phlx which limits routing to Public Customers and Professionals. The Exchange's proposal to include all potential scenarios will bring greater transparency to the Exchange's Rules. Within this rule, the Exchange accounts for various scenarios to explain System functionality in locked and crossed markets, particularly during a Route Timer. The Exchange also accounts for scenarios both during and after the Opening Process. The Exchange notes that it is consistent with the Act to account for the behavior of SRCH Orders with respect to locked and crossed markets. The Exchange will not trade-through an away market's price. This behavior is consistent with the protection of investors and the general public because it affords Participants the ability to obtain the best price offered among the various options markets.

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's proposal to adopt a routing strategy, similar to Phlx, with respect to FIND Orders and remove SEEK Orders does not impose an undue burden on intermarket competition. This proposal will provide BX Participants the same choices with respect to routing that is afforded to Phlx members today. Also, the proposed routing rules apply to all market participants including routing during an Opening Process.

The Exchange believes that adding greater detail to its rules does not impose an undue burden on intramarket competition, rather it provides greater transparency as to the potential outcomes when utilizing different routing strategies with respect to SRCH Orders. The substitution of FIND Orders for SEEK Orders allows Participants to continue to have choices as to the manner in which they route orders, if they elect to route, as Phlx. Market participants may elect not to route their orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–BX–2020–014 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–BX–2020–014. 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–BX–2020–014 and should be submitted on or before August 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15845 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension: Rule 17g–2 SEC File No. 270–564, OMB Control No. 3235–0628

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g–2 (17 CFR 240.17g–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17g–2, ''Records to be made and retained by nationally recognized statistical rating organizations,'' implements the Commission's recordkeeping rulemaking authority under Section 17(a) of the Exchange Act.[1] The rule requires a Nationally Recognized Statistical Rating Organization (''NRSRO'') to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained. There are 9 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the record keeping policies and procedures required by Rule 17g–2. Based on staff experience, NRSROs are estimated to spend a total industry-wide burden of 2,390 annual hours to make and retain the appropriate records.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid 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.

Please direct your written comments to: Dave Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F St. NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 16, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15794 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78q.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–664, OMB Control No. 3235–0740]

Submission for OMB Review: Comment Request

Upon Written Request Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Joint Standards for Assessing Diversity Policies and Practices

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

In accordance with the requirements of Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5452), the Commission joined with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Bureau of Consumer Financial Protection, and the National Credit Union Administration (Agencies) to develop Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Joint Standards), which were issued through an interagency policy statement published in the **Federal Register** on June 15, 2015 (80 FR 33016). To facilitate the collection of information envisioned by the Joint Standards, the Commission developed a form entitled the ''Diversity Assessment Report for Entities Regulated by the SEC'' (Diversity Assessment Report).

The Diversity Assessment Report (1) asks for general information about the respondent; (2) includes a checklist and questions relating to the policies and practices set forth in the Joint Standards; (3) requests data related to workforce diversity and supplier diversity; and (4) provides respondents with the opportunity to describe their successful policies and practices for promoting diversity and inclusion.

The information collection is voluntary. The Commission may use information submitted to monitor progress and trends in the financial services industry regarding diversity and inclusion and to identify and highlight diversity and inclusion policies and practices that have been successful. In addition, the Commission may publish information submitted, such as leading practices, in a form that does not identify a particular entity or disclose confidential business information. Further, the Commission may share information with other Agencies, when appropriate, to support coordination of efforts and to avoid duplication.

Title of Collection: Joint Standards for Assessing Diversity Policies and Practices.[1]

Type of Review: Extension of currently approved collection.

Frequency of Response: Biennially.

Estimated Number of Respondents: 260.

Estimated Burden Hours per Respondent: 10 hours; 5 hours annualized.

Estimated Total Annual Burden Hours: 2,600; 1,300 annualized.

Since the last approval of this information collection, we have adjusted the estimated number of respondents, from 1,500 to 260 respondents, based on the actual response rate to the requests for Diversity Assessment Reports made two years ago and the anticipated increase in that response rate as a result of ongoing outreach to regulated entities to encourage them to submit Diversity Assessment Reports. This reduction in the number of respondents has resulted in a 6,200-hour reduction in the estimated total burden hours (annualized).

On March 30, 2020, the Commission published a notice in the **Federal Register** (85 FR 17608) of its intention to request an extension of this currently approved collection of information, and allowed the public 60 days to submit comments. The Commission received no comments.

Written comments continue to be invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 16, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15798 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

[1] The title of the currently approved collection—Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies— has been shortened.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549

Extension: Investor Form SEC File No. 270–485, OMB Control No. 3235–0547

Notice is hereby given pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) that the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Each year the Commission receives several thousand contacts from investors who have complaints or questions on a wide range of investment-related issues. To make it easier for the public to contact the agency electronically, the Commission's Office of Investor Education and Advocacy (''OIEA'') created an electronic form (the Investor Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also provide the investor with automated information about their issue. The Investor Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken. Use of the Investor Form is voluntary. Absent the forms, the public still has several ways to contact the agency, including telephone, facsimile, letters, and email. Investors can access the Investor Form through the consolidated Investor Complaint and Question web page.

OIEA receives approximately 20,000 contacts each year through the Investor Form. Investors who choose not to use the Investor Form receive the same level of service as those who do. The dual purpose of the form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to further streamline the workflow of Commission staff that record, process, and respond to investor contacts.

The Commission uses the information that investors supply on the Investor Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends. Use of the Investor Form is voluntary. The Investor Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken.

The staff of the Commission estimates that the total reporting burden for using the Investor Form is 5,000 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 20,000 respondents × 15 minutes = 5,000 burden hours.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F St. NE, Washington DC, 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 16, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15795 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension: Rule 22d–1 SEC File No. 270–275, OMB Control No. 3235–0310

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Paperwork Reduction Act'') (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 22d–1 under the Investment Company Act of 1940 (the ''1940 Act'') (17 CFR 270.22d–1) provides registered investment companies that issue redeemable securities (''funds'') an exemption from section 22(d) of the 1940 Act (15 U.S.C. 80a–22(d)) to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 4,098 series of funds that might rely on the rule is estimated to be 1024.5 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is based on communications with industry representatives, and is not derived from a comprehensive or even a representative survey or study. Responses will not be kept confidential. 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 public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 16, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15799 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89335; File No. SR–NYSEAMER–2020–54]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule

July 16, 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 July 10, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') to offer a new rebate for initiating a Complex Customer Best Execution Auction. The Exchange proposes to implement the fee change effective July 10, 2020.[4] 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 and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to offer a new rebate for initiating a Complex Customer Best Execution (''CUBE'') auction, provided the ATP Holder meets the minimum volume requirements as discussed below.

The Exchange proposes to implement the rule changes on July 10, 2020.

Background

The Exchange has established various pricing incentives designed to encourage increased Electronic volume executed on the Exchange, including (but not limited to) the American Customer Engagement (''ACE'') Program and the Professional Step-Up Incentive Program. The Exchange also offers an ACE Initiating Participant Rebate to participants in the ACE Program that initiate Single-Leg or Complex CUBE Auctions as well as an alternative to the ACE Initiating Participant Rebate—the Alternative Initiating Participant Rebate—that enables non-ACE Program participants to qualify for a rebate on

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on July 1, 2020 (SR–NYSEAMER–2020–51) and withdrew such filing on July 10, 2020.

certain initiating Single-Leg CUBE Orders provided they meet certain Professional volume requirements and increase their initiating CUBE volume. The Exchange is proposing to similarly offer an Alternative Initiating Rebate for certain initiating Complex CUBE transactions to encourage ATP Holders to submit initiating Complex CUBE Orders and to increase their initiating Single-Leg CUBE Orders and Electronic volume in the ''Professional'' range.[5] To the extent that this incentive succeeds, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Proposed Rule Change

CUBE Auction Fees & Credits: Alternative Initiating Participant Rebate

Section I.G. of the Fee Schedule sets forth the rates for per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions.[6] To encourage participants to utilize CUBE Auctions, the Exchange offers rebates on certain initiating CUBE volume, including an Alternative Initiating Participant Rebate, which applies to the each of the first 5,000 contracts per Singe-Leg CUBE Order for those participants that do not qualify for the ACE Initiating Participant Rebate.[7]

The Exchange proposes to similarly offer an Alternative Initiating Participant Rebate to Complex CUBE transactions. As proposed, a ($0.10) per contract Alternative Initiating Participant Rebate may be applied to each of the first 1,000 contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction, provided an ATP Holder executes a minimum of 10,000 contracts ADV in the Professional range and increases their Initiating CUBE Orders by the greater of 20% over their August 2019 volume or 10,000 contracts ADV.[8] An ATP Holder that qualifies for both the ACE Initiating Participant Rebate and the Alternative Initiating Participant Rebate is entitled only to the greater of the two rebates,[9] however both of these Initiating Participant Rebates are available in addition to other CUBE Auction-related credits set forth in the Fee Schedule.[10]

This proposed change is designed to encourage ATP Holders to submit initiating Complex CUBE Orders and to increase their initiating Single-Leg CUBE Orders and Electronic volume in the Professional range. The proposed Alternative Initiating Participant Rebate would provide ATP Holders that initiate Complex CUBE Auctions another means of achieving a rebate based on Single-Leg CUBE and Professional volume, which should provide additional incentive to direct such order flow to the Exchange.[11] The Exchange cannot predict with certainty whether any ATP Holders would attempt to qualify for the proposed Complex CUBE Alternative Initiating Participant Rebate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow—particularly to other exchanges offering similar incentives, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees.[17] Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed Alternative Initiating Participant Rebate for initiating Complex CUBE volume is reasonable because it may encourage ATP Holders

[5] For purposes of this filing, ''Professional'' Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm (the ''Professional volume'').

[6] *See* Section I.G. of the Fee Schedule, CUBE Auction Fees & Credits.

[7] *See id.,* Singe-Leg CUBE Auction, note 2 (providing that an ATP Holder may qualify for the ($0.10) per contract Alternative Initiating Participant Rebate provided an ATP Holder executes a minimum of 10,000 contracts ADV in the Professional range and increase their Initiating CUBE Orders by the greater of 20% over their August 2019 volume or 10,000 contracts ADV).

[8] *See* proposed Section I.G. of the Fee Schedule, CUBE Auction Fees & Credits, Complex CUBE Auction, note 2. For additional clarity, the Exchange proposes to specify that the qualifying Initiating CUBE Order volume applies to Single-Leg CUBE Auctions (*see id.*), but notes that, by definition, a ''CUBE Order'' is ''an agency order that is guaranteed an execution in the Single-Leg CUBE Auction by a Contra Order.'' *See* Fee Schedule, KEY TERMS and DEFINITIONS.

[9] *See id.* The Exchange acknowledges that the two rebates are currently the same amount—*i.e.,* ($0.10) per contract, but the ATP Holder would nonetheless only be entitled to one of the rebates.

[10] *See* proposed Section I.G. of the Fee Schedule, CUBE Auction Fees & Credits, Complex CUBE Auction, note 2.

[11] *See, e.g.,* Fee Schedule, Section I. H, Professional Step-up Incentive (offering discounted rates on monthly Professional volume for ATP Holders that achieve Tier A, B or C as a result of increasing their Professional volume by specified percentages of TCADV over their August 2019 volume—or, for new ATP Holders that increase such volume by a specified percentages of TCADV above 10,000 contracts ADV).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[16] Based on OCC data, *see id.,* the Exchange's market share in equity-based options increased slightly from 8.20% for the month of June 2019 to 8.32% for the month of June 2020.

[17] *See e.g.,* Cboe Exchange Inc. (''Cboe''), Fee Schedule, Volume Incentive Program (VIP), *available here, https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing per contract credits for volume executed in Cboe's complex price improvement auction). *See also* MIAX Options fee schedule, Section 1.a.iv, Professional Rebate Program, *available here, https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_04012019.pdf* (setting forth per contract credits on volume submitted for the account of Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker Dealers, and Firms (collectively, Professional for purposes of MIAX program), provided the Member achieves certain Professional volume increase percentage thresholds (set forth in the schedule) in the month relative to the fourth quarter of 2015).

that choose to participate in the CUBE to direct order flow, including initiating Complex CUBE volume and Professional volume, to the Exchange. The proposed Rebate may encourage greater use of Single-Leg and Complex CUBE Auctions, which may lead to greater opportunities to trade—and for price improvement—for all participants. In addition, the proposed Rebate, which is based on Professional order flow would provide ATP Holders an additional incentive (to the Professional Step-Up Incentive Program) to direct such order flow to the Exchange.[18]

The Exchange notes that all market participants stand to benefit from increased transaction volume, as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants that do not participate in (or qualify for) the Professional Step-Up Incentive Program. As with the Single-Leg Alternative Initiating Participant Rebate, the Exchange believes that the baseline of 10,000 ADV Professional volumes for ATP Holders is reasonable because these volumes are comparable to trading volumes in August 2019 for those firms that were active on the Exchange and eligible to increase their Single-Leg CUBE initiating volume by 20% to qualify for the proposed Alternative Initiating Participant Rebate. Moreover, the proposed Rebate provides another avenue (outside of the ACE Program) for participants to avail themselves of a rebate for initiating CUBE Auctions. The Exchange cannot predict with certainty whether any ATP Holders would attempt to qualify for the Complex CUBE Alternative Initiating Participant Rebate.

Finally, to the extent the proposal attracts greater volume and liquidity, the Exchange believes this would, in turn, improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed rule changes are designed to incent ATP Holders to direct liquidity to the Exchange in Electronic executions, similar to other exchange programs with competitive pricing programs, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.[19]

The Proposed Rule Change Is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and rebates. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of these incentives or not. Moreover, the proposals are designed to encourage ATP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed changes attract more initiating CUBE Auction (and Professional) volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis. ATP Holders would have increased opportunity to qualify for rebates based on their Professional volume with the Alternative Initiating Participant Rebate. The Alternative Initiating Participant Rebate also offers participants that choose to participate in the Complex CUBE, but do not qualify for the ACE Initiating Participant Rebate to be eligible to receive a rebate on initiating Complex CUBE volume. The Exchange believes that this proposal should incent ATP Holders to direct Electronic volume to the Exchange, which would increase liquidity on the Exchange to the benefit of all market participants, which may lead to greater opportunities to trade.

This proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve the incentive pricing option. Rather, the proposal is designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed changes attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [20]

Intramarket Competition. The proposed change is designed to continue to attract order flow to the Exchange by offering competitive rates and rebates (via the Complex CUBE Alternative Initiating Rebate) based on increased volumes on the Exchange, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved

[18] *See supra* note 11 (regarding discounted rates offered via the Professional Step-up Incentive).

[19] *See, e.g., supra* note 17 (regarding Cboe rebate on VIP and MIAX Professional Rebate Program).

[20] *See* Reg NMS Adopting Release, *supra* note 14, at 37499.

market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[21] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[22]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and rebates in a manner designed to encourage ATP Holders to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution.

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.

[21] *See supra* note 15.

[22] Based on OCC data, *supra* note 16, the Exchange's market share in equity-based options was 8.20% for the month of June 2019 and 8.32% for the month of June 2020.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[23] of the Act and subparagraph (f)(2) of Rule 19b-4[24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2020–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–54, and should be submitted on or before August 12, 2020.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b-4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15793 Filed 7–21–20; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0036]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0036].

SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 21, 2020. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127. Individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) payments, but whose resources exceed the allowable limit may receive conditional payments if they agree to dispose of the excess non-liquid resources and make repayments. SSA uses Form SSA–8060–U3 to document this agreement, and to ensure the individuals understand their obligations. Respondents are applicants for and recipients of SSI payments who will be disposing of excess non-liquid resources.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8060–U3	20,000	1	10	3,333	* 25.72	** 24	*** 291,485

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: July 16, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–15766 Filed 7–21–20; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2021 Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative is providing notice of country-by-country allocations of the Fiscal Year (FY) 2021 (October 1, 2020 through September 30, 2021) in-quota quantity of the tariff-rate quotas (TRQs) for imported raw cane sugar, certain sugars, syrups and molasses (also known as refined sugar), specialty sugar, and sugar-containing products.

DATES: The changes made by this notice are applicable as of July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419, or *Erin.H.Nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains TRQs for imports of raw cane sugar and refined sugar. Pursuant to Additional U.S. Note 8 to Chapter 17 of the HTSUS, the United States maintains a TRQ for imports of sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On July 9, 2020, the Secretary of Agriculture (Secretary) announced the sugar program provisions for FY2021. The Secretary announced an in-quota quantity of the TRQ for raw cane sugar for FY2021 of 1,117,195 metric tons raw value (MTRV) (conversion factor: 1 metric ton raw value = 1.10231125 short tons raw value), which is the minimum amount the United States is committed to under the World Trade Organization (WTO) Uruguay Round Agreements. The U.S. Trade Representative is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

Country	FY2021 raw cane sugar allocations (MTRV)
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,584
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo (Brazzaville)	7,258
Costa Rica	15,796
Cote d'Ivoire	7,258
Dominican Republic	185,335
Ecuador	11,584
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,584
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad & Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical shipments to the

United States. The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin, and certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

On July 9, 2020, the Secretary also announced the establishment of the in-quota quantity of the FY2021 refined sugar TRQ at 162,000 MTRV for which the sucrose content, by weight in the dry state, must have a polarimeter reading of 99.5 degrees or more. This amount includes the minimum level to which the United States is committed under the WTO Uruguay Round Agreements (22,000 MTRV of which 1,656 MTRV is reserved for specialty sugar) and an additional 140,000 MTRV for specialty sugars. The U.S. Trade Representative is allocating the refined sugar TRQ as follows: 10,300 MTRV of refined sugar to Canada, 2,954 MTRV to Mexico, and 7,090 MTRV to be administered on a first-come, first-served basis.

Imports of all specialty sugar will be administered on a first-come, first-served basis in five tranches. The Secretary has announced that the total in-quota quantity of specialty sugar will be the 1,656 MTRV included in the WTO minimum plus an additional 140,000 MTRV. The first tranche of 1,656 MTRV will open on October 1, 2020. All types of specialty sugars are eligible for entry under this tranche. The second tranche of 40,000 MTRV will open on October 8, 2020. The third tranche of 40,000 MTRV will open on January 21, 2021. The fourth tranche of 30,000 MTRV will open on April 15, 2021. The fifth tranche of 30,000 MTRV will open on July 15, 2021. The second, third, fourth, and fifth tranches are reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

With respect to the in-quota quantity of 64,709 metric tons (MT) of the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to chapter 17 of the HTSUS, the U.S. Trade Representative is allocating 59,250 MT to Canada. The remainder of the in-quota quantity, 5,459 MT is available for other countries on a first-come, first-served basis.

Raw cane sugar, refined and specialty sugar and sugar-containing products for FY2021 TRQs may enter the United States as of October 1, 2020.

Gregory Doud,

Chief Agricultural Negotiator, Office of the United States Trade Representative.

[FR Doc. 2020–15813 Filed 7–21–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0010]

Hearings Regarding Trade Distorting Policies That May Be Affecting Seasonal and Perishable Products in U.S. Commerce

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) and the Departments of Commerce and Agriculture will convene virtual public hearings to hear firsthand from interested persons on trade distorting policies that may be causing harm to U.S. seasonal and perishable producers (namely, of fresh fruits and vegetables) and contributing to unfair pricing in the U.S. market, and to solicit feedback on how the Administration can better support these producers and redress any unfair harm.

DATES:

Virtual hearing dates

August 13, 2020 at 9:00 a.m. EST.

August 20, 2020 at 9:00 a.m. EST.

Submission deadlines

July 27, 2020 at 11:59 p.m. EST: Deadline for submission of requests to provide virtual testimony during either hearing.

August 3, 2020 at 11:59 p.m. EST: Deadline for submission of hearing statements and written comments.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking portal: *http://www.regulations.gov* (Regulations.gov). Follow the instructions for submission in section II below. The docket number is USTR–2020–0010. For alternatives to online submissions, please contact Trey Forsyth in advance of the submission deadline at (202) 395–8583.

FOR FURTHER INFORMATION CONTACT: Contact Trey Forsyth at (202) 395–8583 or *Trey.M.Forsyth@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

USTR and the Departments of Commerce and Agriculture will convene public hearings to hear firsthand from interested persons regarding trade-distorting policies that may be affecting seasonal and perishable products in U.S. commerce. The public hearings will be viewable online and USTR will provide information about viewing the hearings before the hearing dates. USTR invites all interested persons to participate in the hearings, but slots to participate may be limited due to time constraints and the number of requests. Unless circumstances warrant otherwise, USTR will process requests to participate and provide testimony at the hearing on a first come, first served basis. Instructions on how to submit a request to participate at the hearing are in section II below.

USTR invites comments and supporting documentation from interested persons on the following issues:

- Trade distorting policies that may be contributing to unfair pricing in the U.S. market and causing harm to U.S. seasonal and perishable producers in U.S. commerce.
- How the Administration can better support these producers and redress unfair harm.

II. Hearing Participation—Submission Requirements

The instructions for submitting requests to participate at the hearings and to make written submissions are the same as those included in the March 10, 2020 **Federal Register** notice (85 FR 13973) (March FRN) announcing hearing dates that were postponed due to COVID–19. Those instructions are included below with new deadlines. Please note the following:

- To ensure that USTR has a correct count of requests to testify, everyone who wants to participate in the virtual hearings in August must submit a request to testify by the July 27, 2020, 11:59 p.m. EST deadline. This applies to those who submitted a request to participate pursuant to the March FRN. If you submitted a request to testify pursuant to the March FRN but do not want to testify virtually at an August hearing, you do not need to take any further action.
- You do not have to resubmit written submissions that you submitted in response to the March FRN. You can update or supplement a prior submission, by following the instructions for written statements below.
- All parties who would like to provide testimony during either hearing

must submit a request to do so by the July 27, 2020, 11:59 p.m. EST deadline.

• All parties who wish to testify also must submit the statement they intend to present at the hearing by the August 3, 2020, 11:59 p.m. EST deadline. Remarks at the hearing will be limited to five minutes, and might be further limited if circumstances warrant, to allow adequate time for questions from the panel.

• As noted above, USTR will process requests to participate and provide testimony at the hearing on a first come, first served basis unless circumstances warrant otherwise. If you submit a request to participate by the July 27, 2020 deadline, USTR will notify you as soon as practicable whether or not you have been selected to participate in the virtual hearings. If selected, USTR will provide further details and instructions on procedures for participating virtually. USTR will consider all written statements submitted by the August 3, 2020 deadline.

• Interested parties who do not want to testify virtually at either hearing may still submit written comments for consideration by the August 3, 2020 deadline.

To submit a request to provide testimony virtually, go to *www.regulations.gov.* To make a submission via *Regulations.gov*, enter docket number USTR–2020–0010 in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.' In the ''comment'' field on the next page, identify the hearing at which you would like to testify and provide the full name, address, email address, and telephone number of the person who wishes to present the testimony. Parties who submit requests to testify without identifying a preferred date will be assigned a date to the extent there is availability and unless circumstances warrant otherwise.

To submit a written statement, the *Regulations.gov* website allows users to provide comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. USTR prefers that you provide submissions in an attached document. The file name should include the name of the person who will be presenting the testimony, or if not testifying, the name of the person submitting the statement. The name of the presenter also should be clear in the content of the file itself. All submissions must be in English and be prepared in (or be compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. Include any data attachments to the submission in the same file as the submission itself, and not as separate files.

For additional information on using the *Regulations.gov* website, please consult the resources provided on the website by clicking on 'how to use this site' on the left side of the home page.

You must clearly designate business confidential information (BCI) by marking the submission 'BUSINESS CONFIDENTIAL' at the top and bottom of the cover page and each succeeding page, and indicating, via brackets, the specific information that is confidential. A submitter requesting that USTR treat information in a submission as BCI must certify that the information is business confidential and would not customarily be released to the public by the submitter. You must include 'business confidential' in the 'type comment' field, and must add 'business confidential' to the end of your file name for any attachments. For any submission containing BCI, you also must attach a separate non-confidential version (*i.e.,* not as part of the same submission with the BCI version), indicating where confidential information has been redacted. USTR will place the non-confidential version in the docket and it will be available for public inspection. USTR may not accept BCI submissions that do not have the required markings, or are not accompanied by a properly marked non-confidential version, and may consider the submission to be a public document.

Submissions responding to this notice, except for information granted BCI status, will be available for public viewing at *Regulations.gov* upon completion of processing. You can view submissions by entering docket number USTR–2020–0010 in the search field at *Regulations.gov*.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–15891 Filed 7–21–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0046]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), Department of 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 a previously approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 15, 2020. The collection involves gathering minimal required information to register an aircraft. The information to be collected will be used to register aircraft and record security interests in aircraft.

DATES: Written comments should be submitted by August 21, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Bonnie Lefko by email at: *bonnie.lefko@faa.gov;* phone: 405–954–7461.

SUPPLEMENTARY INFORMATION: *Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0042.

Title: Aircraft Registration.

Form Numbers: AC Forms 8050–1, 8050–1B, 8050–2, 8050–4, 8050–88, 8050–88A, 8050–98 and 8050–117.

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 January 15, 2020 (85 FR 2481). Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is required by any party wishing to register an aircraft and once registered record a security interest in that aircraft.

Respondents: Approximately 162,176 registrants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 135,457 hours.

Issued in Oklahoma City, OK on July 13, 2020.

Bonnie Lefko,

Program Analyst, Civil Aviation Registry, Aircraft Registration Branch, AFB–710.

[FR Doc. 2020–15427 Filed 7–21–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0157]

Hours of Service of Drivers: Pipe Line Contractors Association (PLCA); Application for Exemption

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the Pipe Line Contractors Association (PLCA) for an exemption from certain hours-of-service (HOS) regulations for drivers of a variety of commercial motor vehicles (CMVs) employed by its member pipeline contractors. PLCA specifically seeks an exemption from: (1) The requirement of the short-haul exception that drivers return to the work reporting location from which they started the day; (2) the requirement that drivers use electronic logging devices (ELDs) if they must complete a record of duty status (RODS) on more than 8 days in any 30-day period; and (3) the prohibition on driving after having been on duty for 70 hours in 8 consecutive days. The PLCA also requested that drivers of CMVs used exclusively in the construction and servicing of pipelines be allowed the same HOS exceptions currently available to oilfield operations. FMCSA requests public comment on PLCA's application for exemption.

DATES: August 21, 2020.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2020–0157 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Deliver comments to Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, 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.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Docket Operations, Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0157), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, "FMCSA–2020–0157" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

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–2020–0157" in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR

381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. PLCA Application for Exemption

The PLCA is a trade association of unionized pipeline contractors specializing in the construction and maintenance of oil and gas transmission pipelines. PLCA members are committed to completing every job with the highest level of attention to safety, quality, and environmental compliance. Pipeline jobs range from construction of major interstate and intrastate pipelines to maintenance and repair work for utilities, and these projects vary in duration, from a few weeks to six months or more on a major construction project. Their members typically hire workers on a project-by-project basis who will work on multiple jobs each year, typically traveling all over the United States to do so. Pipeline construction companies operate a fleet of CMVs, most of which are operated by holders of commercial driver's licenses (CDLs). PLCA believes that the current HOS regulations are ill-suited to address the needs and safety concerns of pipeline industry drivers. Pipeline contractors are skilled tradesman and driving is ancillary to their primary role as construction workers, as they typically spend only a few hours a day operating CMVs on public roads.

PLCA requests exemption from the following HOS provisions:

(1) The short-haul exception [49 CFR 395.1(e)(1)] recently amended by the final rule adopted on June 1,2020, with an effective date of Sept. 29, 2020 (85 FR 33396) retains the requirement that drivers return to the work reporting location from which they were dispatched in the morning. PLCA requests that drivers for its member companies who otherwise meet the requirements of the short-haul exception be allowed to return to a different location than the one where they started their workday.

(2) Drivers subject to the Agency's HOS regulations are required to use ELDs if they must complete RODS on more than 8 days in any 30-day period [49 CFR 395.8(a)(1)(iii)(A)(*1*)]. PLCA requests that drivers for its member companies be allowed to use paper RODS unless RODS are required on more than 16 days in any 30-day period.

(3) Drivers are prohibited from driving CMVs after having been on duty for 70 hours in a period of 8 consecutive days [49 CFR 395.3(b)(2)]. PLCA requests that drivers for its member companies be prohibited from driving only after having been on duty for 80 hours in 8 days. The PLCA also requested that drivers of CMVs used exclusively in the construction and servicing of pipelines be allowed the same HOS exceptions currently available to oilfield operations [49 CFR 395.1(d)].

IV. Method To Ensure an Equivalent or Greater Level of Safety

PLCA asserts that granting the exemptions sought will not negatively impact safety. Drivers working for PLCA member companies involved in pipeline construction and maintenance are not engaged in continuous driving. Conversely, they work on the pipeline right-of-way often operating different construction vehicles. Because of the different jobs, they normally perform and minimal driving they do, they are less susceptible to fatigue. The applicant adds that as pipeline workers spend most their day working on the pipeline right-of-way and typically only drive on public roads at the start and end of the workday; drivers would not be on public roads any longer by virtue of the longer workday. Pipeline drivers very rarely, if ever, utilize their entire 11 hours allowable daily driving time. PLCA develops and administers, in conjunction with the labor unions robust training programs for union pipeline contractor employees, including CMV drivers focused on safe operations. PLCA member contractors and their drivers have excellent safety records and the applicant does not anticipate any additional reduction in safety attributable to the granting of the exemptions sought.

A copy of the exemption application is available for review in the docket for this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on PLCA's application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the ''Addresses'' section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–15815 Filed 7–21–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–15]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before September 21, 2020.

ADDRESSES: Submit comments and recommendations for the proposed ICR to Ms. Hodan Wells, Information Collection Clearance Officer at email: *hodan.wells@dot.gov* or telephone: (202) 493–0440. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Reflectorization of Freight Rolling Stock.

OMB Control Number: 2130–0566.

Abstract: FRA issued this regulation to mandate the reflectorization of freight rolling stock (using retroreflective material on freight cars and locomotives) to enhance the visibility of trains to reduce the number and severity of accidents at highway-rail grade crossings where visibility was a contributing factor.[1] FRA uses the information collected to verify that the person responsible for the car reporting mark is notified after the required visual inspection when the freight equipment has less than 80 percent of the required retroreflective sheeting present, undamaged, or unobscured. Further, FRA uses the information collected to verify that the required locomotive records of retroreflective sheeting defects found after inspection are kept in the locomotive cab or in a railroad accessible electronic database FRA can access upon request. Finally, FRA uses the information collected to confirm that railroads/car owners meet the prescribed standards for the inspection and maintenance of the required retroreflective material.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 746 railroads/ car owners.

Frequency of Submission: On occasion/monthly.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent[2]
224.7—Waivers	746 railroads and freight car owners.	10 petitions	8 hours	80	$6,160
224.15(b)—Special approval procedures—Petitions for special approval of alternative standard.	2 manufacturers	2 petitions	40 hours	80	6,160
224.109(a)—Inspection, repair, and replacement—Railroad freight cars—Railroads notification to person responsible for reporting mark after visual inspection for presence and condition when freight car on either side has less than 80% of its retroreflective sheeting not damaged, obscured, or missing.	AAR/300 car shops	33,380 notifications of defect and restriction.	5 minutes	2,782	161,356
—(b) Locomotive record of freight retroreflective sheeting defects found after inspection kept in locomotive cab or in railroad accessible electronic database that FRA can access upon request..	746 railroads and freight car owners.	2,609 records of defect and restriction.	5 minutes	217	12,586
Total	746 railroads	36,001 responses	N/A	3,159	180,102

Total Estimated Annual Responses: 36,001.

Total Estimated Annual Burden: 3,159 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $180,102.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–15838 Filed 7–21–20; 8:45 am]

BILLING CODE 4910–06–P

[1] See 70 FR 144, Jan. 3, 2005.

[2] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–13]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information collections and their expected burdens. On April 22, 2020, FRA published a notice providing a 60-day period for public comment on the ICRs.

DATES: Interested persons are invited to submit comments on or before August 21, 2020.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, telephone (202) 493–0440, email: *Hodan.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On April 22, 2020, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which it is now seeking OMB approval. *See* 85 FR 22512. FRA received two anonymous comments in response to this notice. One commenter expressed support for this ICR, indicating that updates to the PRA information positively impacts crews and passengers; the other did not address FRA's information collection activities.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Locomotive Cab Sanitation.

OMB Control Number: 2130–0552.

Abstract: FRA's locomotive cab sanitation standards, 49 CFR 229.137 and 229.139, prescribe minimum standards for the locomotive cab sanitation compartment, including the toilet facility. FRA uses the information collection associated with these provisions to promote rail safety and locomotive crew member health by ensuring crew member access to a functioning and sanitary toilet facility and that railroads timely remediate defective and unsanitary conditions in the sanitation compartment.

Type of Request: Extension without change of a currently approved information collection.

Affected Public: Businesses (railroads).

Form(s): N/A.

Respondent Universe: 746 railroads.

Frequency of Submission: One-time.

Total Estimated Annual Responses: 113,256.

Total Estimated Annual Burden: 1,272 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $96,672.

Title: Locomotive Crashworthiness.

OMB Control Number: 2130–0564.

Abstract: Under 49 CFR part 229, subpart D, FRA prescribes minimum crashworthiness standards for locomotives. These crashworthiness standards are intended to help protect locomotive cab occupants in the event of a train collision or derailment. FRA uses this collection of information to ensure railroads operate locomotives that meet the prescribed minimum performance standards and design load requirements for newly manufactured and re-manufactured locomotives.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses/Public/Interested Parties.

Form(s): N/A.

Respondent Universe: 746 railroads/4 locomotive manufacturers.

Frequency of Submission: On occasion; one-time.

Total Estimated Annual Responses: 546.

Total Estimated Annual Burden: 507 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $38,532.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–15837 Filed 7–21–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–16]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before

submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before September 21, 2020.

ADDRESSES: Submit comments and recommendations for the proposed ICR to Ms. Hodan Wells, Information Collection Clearance Officer at email: *hodan.wells@dot.gov* or telephone: (202) 493–0440. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Safety Appliance Standards Guidance Checklist Forms.

OMB Control Number: 2130–0565.

Abstract: Title 49 Code of Federal Regulations (CFR) part 231, *Railroad Safety Appliance Standards,* was supplemented and expanded in 2013 to include the industry standard established by the Association of American Railroads (AAR), *Standard 2044 or S–2044,* which prescribed safety appliance arrangements for 11 new types of cars. As a result of the inclusion, FRA developed Forms FRA F6180.161(a)–(k) as guidance checklist forms to facilitate railroad, rail car owner, and rail equipment manufacturer compliance with S–2044 and 49 CFR part 231.

AAR has since updated S–2044 to include seven new types of cars. In response, FRA is proposing adding seven new forms, Forms FRA F6180.161(l)–(r), to the safety appliance standards guidance checklists to cover these new types of cars.

Additionally, FRA is updating the existing 11 forms to reflect editorial changes that were made to S–2044.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses.

Form(s): 11 forms (FRA F6180.161(a)–(k)), plus seven new forms (FRA F 6180.161(l)–(r)).

Respondent Universe: Car manufacturers/state inspectors.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses (minutes)	Total annual burden hours	Total cost equivalent [1]
Form FRA F 6180.161a ..	Car manufacturers/State Inspectors	20 forms	60	20	$1,224
Form FRA F 6180.161b ..	Car manufacturers/State Inspectors	7 forms	60	7	428
Form FRA F 6180.161c ..	Car manufacturers/State Inspectors	15 forms	60	15	918
Form FRA F 6180.161d ..	Car manufacturers/State Inspectors	15 forms	60	15	918
Form FRA F 6180.161e ..	Car manufacturers/State Inspectors	15 forms	60	15	918
Form FRA F 6180.161f ...	Car manufacturers/State Inspectors	10 forms	60	10	612
Form FRA F 6180.161g ..	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161h ..	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161i ...	Car manufacturers/State Inspectors	20 forms	60	20	1,224
Form FRA F 6180.161j ...	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161k ..	Car manufacturers/State Inspectors	10 forms	60	10	612
Form FRA F 6180.161l (new form).	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161m (new form).	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161n (new form).	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161o (new form).	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161p (new form).	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161q (new form).	Car manufacturers/State Inspectors	3 forms	60	3	184
Form FRA F 6180.161r (new form).	Car manufacturers/State Inspectors	3 forms	60	3	184

CFR section	Respondent universe	Total annual responses	Average time per responses (minutes)	Total annual burden hours	Total cost equivalent [1]
Total	N/A	142 responses ...	N/A	142	8,694

[1] The hourly wage rate to calculate the dollar cost equivalent for customers and state employees amounts to $61.20 per hour, which includes an hourly wage rate of $42.84 plus an hourly benefit of $18.34. FRA obtained this information from the Department of Labor, Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES) 11–3011, classified within NAICS 999200, State Government—excluding schools and hospitals. See *https://www.bls.gov/oes/current/naics4_999200.htm.*

Total Estimated Annual Responses: 142.

Total Estimated Annual Burden: 142 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $8,694.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–15839 Filed 7–21–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

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

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise and extend the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051) and Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), which are currently approved collections of information. The FFIEC has also approved the Board's publication for public comment, on behalf of the agencies, of a proposal to revise and extend the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which also are currently approved collections of information. The agencies are requesting comment on revisions to the Call Reports, FFIEC 101, and FFIEC 002 related to interim final rules and a final rule issued in response to disruptions related to the Coronavirus Disease 2019 (COVID–19) that revise the agencies' capital rule, the Board's regulations on reserve requirements and insider loans, and the FDIC's assessments regulations as well as certain sections of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for which the agencies received emergency approvals from OMB. In addition, the agencies are proposing changes to the Call Report and the FFIEC 002 related to U.S. generally accepted accounting principles (GAAP). Further, the agencies are proposing revisions to the Call Report to reflect the expiration of the temporary exception for estimated disclosures on international remittance transfers and certain amendments to the Remittance Rule recently finalized by the Consumer Financial Protection Bureau (Bureau), which is a member of the FFIEC.

DATES: Comments must be submitted on or before September 21, 2020.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''Call Report, FFIEC 101, and FFIEC 002 Revisions,'' will be shared among the agencies.

OCC: You may submit comments, which should refer to ''Call Report, FFIEC 101, and FFIEC 002 Revisions,'' by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0081 and 1557–0239, 400 7th Street, SW, suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''1557–0081 and 1557–0239'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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 information collection beginning on the date of publication of the second notice for this collection by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0081'' or ''1557–0239.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

Board: You may submit comments, which should refer to ''Call Report, FFIEC 101, and FFIEC 002 Revisions,'' by any of the following methods:

• *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include ''Call Report, FFIEC 101, and FFIEC 002 Revisions'' 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 on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments, which should refer to ''Call Report, FFIEC 101, and FFIEC 002 Revisions,'' by any of the following methods:

• *Agency website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.

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

• *Email: comments@FDIC.gov.* Include ''Call Report, FFIEC 101, and FFIEC 002 Revisions'' in the subject line of the message.

• *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officers for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the Call Reports, FFIEC 101, FFIEC 002, and FFIEC 002S can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490, or for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Affected Reports

The proposed changes discussed below affect the Call Reports, FFIEC 101, and FFIEC 002.

A. Call Reports

The agencies propose to extend for three years, with revision, the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031 (Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices), FFIEC 041 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only), and FFIEC 051 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

OCC:

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,136 national banks and federal savings associations.

Estimated Average Burden per Response: 42.56 burden hours per quarter to file.

Estimated Total Annual Burden: 193,393 burden hours to file.

Board:

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 756 state member banks.

Estimated Average Burden per Response: 45.43 burden hours per quarter to file.

Estimated Total Annual Burden: 137,380 burden hours to file.

FDIC:

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,335 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 40.62 burden hours per quarter to file.

Estimated Total Annual Burden: 541,871 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 051, the FFIEC 041, and the FFIEC 031 reports for each agency. In the agencies' most recently published **Federal Register** notice for the submission of Call Report revisions for OMB review, the estimated burden hours per quarter for each agency for the Call Report information collection (based on the data reported by the institutions under each agency's supervision as of September 30, 2019) were 41.24 hours for the OCC, 44.45 hours for the Board, and 39.43 hours for the FDIC.[1] In connection with the agencies' emergency clearance requests that were submitted to, and approved by, OMB in the second quarter of 2020

[1] 85 FR 4780 (January 27, 2020).

for the COVID–19-related Call Report revisions outlined in Sections II.A and II.B, below, these estimates were adjusted based on Call Report data reported as of December 31, 2019, before estimating that these revisions would produce an increase of approximately 0.92 burden hours per quarter for each of the three versions of the Call Report. The estimated burden hours per quarter by agency for the Call Report as currently approved by OMB, *i.e.,* in response to the agencies' emergency clearance requests, are 42.20 hours for the OCC, 45.07 hours for the Board, and 40.26 hours for the FDIC. The Call Report revisions proposed in this notice related to U.S. GAAP and international remittance transfers would represent a further increase in estimated average burden hours per quarter by agency of 0.36 hours.

When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 37.98 (FFIEC 051), 51.39 (FFIEC 041), and 96.68 (FFIEC 031). The estimated burden hours for the currently approved reports are 37.62 (FFIEC 051), 51.02 (FFIEC 041), and 96.30 (FFIEC 031), so the revisions proposed in this notice related to U.S. GAAP and international remittance transfers would represent an increase in estimated average burden hours per quarter by type of report of 0.36 (FFIEC 051), 0.37 (FFIEC 041), and 0.38 (FFIEC 031).

The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension and revision of currently approved collections.

Legal Basis and Need for Collections

The Call Report information collections are mandatory: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting national and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance assessments and national banks' and federal savings associations' semiannual assessment fees.

B. FFIEC 101

The agencies propose to extend for three years, with revision, the FFIEC 101 report.

Report Title: Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Control No.: 1557–0239.

Estimated Number of Respondents: 5 national banks and federal savings associations.

Estimated Time per Response: 674 burden hours per quarter to file for banks and federal savings associations.

Estimated Total Annual Burden: 13,480 burden hours to file.

Board:

OMB Control No.: 7100–0319.

Estimated Number of Respondents: 4 state member banks; 5 bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only; 9 other bank holding companies and savings and loan holding companies; and 6 intermediate holding companies.

Estimated Time per Response: 674 burden hours per quarter to file for state member banks; 3 burden hours per quarter to file for bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only; 677 burden hours per quarter to file for other bank holding companies and savings and loan holding companies; and 3 burden hours per quarter to file for intermediate holding companies.

Estimated Total Annual Burden: 10,784 burden hours for state member banks to file; 60 burden hours for bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only to file; 24,372 burden hours for other bank holding companies and savings and loan holding companies to file; and 72 burden hours for intermediate holding companies to file.

FDIC:

OMB Control No.: 3064–0159.

Estimated Number of Respondents: 1 insured state nonmember bank and state savings association.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 2,696 burden hours to file.

Type of Review: Extension and revision of currently approved collections.

Legal Basis and Need for Collections

Each advanced approaches institution [2] is required to report quarterly regulatory capital data on the FFIEC 101. Each top-tier advanced approaches institution and top-tier Category III institution [3] is required to report supplementary leverage ratio information on the FFIEC 101. The FFIEC 101 information collections are mandatory for advanced approaches and top-tier Category III institutions: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (federal and state savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies). Certain data items in this information collection are given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

The agencies use data reported in the FFIEC 101 to assess and monitor the levels and components of each reporting entity's applicable capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy

[2] 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); 12 CFR 324.100(b) (FDIC).

[3] 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

Framework [4] and the supplementary leverage ratio,[5] as applicable; to evaluate the impact of the Advanced Capital Adequacy Framework and the supplementary leverage ratio, as applicable, on individual reporting entities and on an industry-wide basis and its competitive implications; and to supplement on-site examination processes. The reporting schedules also assist advanced approaches institutions and top-tier Category III institutions in understanding expectations relating to the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework and the supplementary leverage ratio, as applicable. Submitted data that are released publicly will also provide other interested parties with additional information about advanced approaches institutions' and top-tier Category III institutions' regulatory capital.

C. FFIEC 002 and 002S

The Board proposes to extend for three years, with revision, the FFIEC 002 and FFIEC 002S reports.

Report Titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank

Form Numbers: FFIEC 002; FFIEC 002S.

OMB control number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All state-chartered or federally-licensed U.S. branches and agencies of foreign banking organizations, and all non-U.S. branches managed or controlled by a U.S. branch or agency of a foreign banking organization.

Estimated Number of Respondents: FFIEC 002—209; FFIEC 002S–38.

Estimated Average Burden per Response: FFIEC 002—24.87 hours; FFIEC 002S—6.0 hours.

Estimated Total Annual Burden: FFEIC 002—20,791 hours; FFIEC 002S—912 hours.

Type of Review: Revision of currently approved collections.

Legal Basis and Need for Collection

On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. A non-U.S. branch is managed or controlled by a U.S. branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. These information collections are mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment (5 U.S.C. 552(b)(4) and (8)). The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

II. Current Actions

A. Regulation-Related Revisions

From March through June 2020, in response to the impact on the financial markets and the strains on the U.S. economy as a result of COVID–19, the agencies published in the **Federal Register** numerous interim final rules to make certain changes to their regulatory capital and liquidity rules to support prudent lending by banking organizations and facilitate banking organizations' use of the Board's emergency facilities. These revisions primarily affect the instructions for the calculation of certain amounts reported on Schedule RC–R, Regulatory Capital, and apply to the three versions of the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) and for the calculation of certain amounts reported on Schedule A, Advanced Approaches Regulatory Capital, on the FFIEC 101. Certain revisions also involve the addition of new data items to Call Report Schedule RC–M, Memoranda. In addition, the Board made revisions to its Regulation D (12 CFR 204) that affect the reporting of deposit liabilities on Call Report Schedule RC–E, Deposit Liabilities, and FFIEC 002, Schedule E, Deposit Liabilities and Credit Balances, and issued an interim final rule that provides a certain exception to the reporting of extensions of credit to insiders on Call Report Schedule RC–M, required by section 22(h) of the Federal Reserve Act and the corresponding provisions of the Board's Regulation O (12 CFR 215). The FDIC proposed and subsequently adopted revisions to its deposit insurance assessment rules that require the collection of new data items on Call Report Schedule RC–M and FFIEC 002 Schedule O, Other Data for Deposit Insurance Assessments.

The agencies requested and received emergency approvals on April 3, 2020, from OMB to implement revisions to the Call Report and FFIEC 101 that took effect beginning with the March 31, 2020, report date. Subsequently, the agencies requested and received emergency approvals on May 27, 2020, from OMB to implement revisions to the Call Report, FFIEC 101, and FFIEC 002 that take effect beginning with the June 30, 2020, report date. The Board requested and received emergency approvals on June 8, 2020, and July 8, 2020, from OMB to implement further revisions to the FFIEC 002 that take effect beginning with the June 30, 2020, and September 30, 2020, report dates, respectively. The agencies are requesting comment on whether there should be any further changes to the items or instructions developed by the agencies to implement the revisions for which emergency approvals were received from OMB, and in regard to the Board Regulation D amendments, on whether to adopt proposed revisions to the Call Report and the FFIEC 002 to remove a reporting option that was implemented by the emergency approvals and could result in the collection of ambiguous data.

Further, the agencies have requested comment in connection with each of the interim final rules described below. If modifications are made to the associated final rules, the agencies would modify the information collection revisions in

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

[5] 12 CFR 3.10(c)(4) (OCC); 12 CFR 217.10(c)(4) (Board); 12 CFR 324.10(c)(4) (FDIC).

this proposal to incorporate such changes.

1. Definition of Eligible Retained Income

Under the capital rule, a banking organization must maintain a minimum amount of regulatory capital. In addition, a banking organization must maintain a buffer of regulatory capital above its minimum capital requirements to avoid restrictions on capital distributions and discretionary bonus payments. The agencies intend for the buffer requirements to limit the ability of banking organizations to distribute capital in the form of dividends and discretionary bonus payments and therefore strengthen the ability of banking organizations to continue lending and conducting other financial intermediation activities during stress periods. The agencies are concerned, however, that the existing calculation method could lead to sudden and severe distribution limits if such banking organizations were to experience even a modest reduction in their capital ratios.

Therefore, the agencies adopted an interim final rule [6] on March 20, 2020, that revises the definition of eligible retained income (ERI). By modifying the definition of ERI and thereby allowing banking organizations to more freely use their capital buffers, this interim final rule should help to promote lending activity and other financial intermediation activities by banking organizations and avoid compounding disruptions due to COVID–19.

Call Report Revisions

The instructions for Schedule RC–R, Part I, item 53, ''Eligible retained income,'' have been revised to incorporate the revisions reflected in the ERI interim final rule. Beginning with the March 31, 2020, report date, institutions that are required to report amounts in item 53 should report the greater of (1) an institution's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) the average of an institution's net income over the four preceding calendar quarters.

2. Money Market Mutual Fund Liquidity Facility

To enhance the liquidity and functioning of money markets, the Federal Reserve Bank of Boston (FRBB) launched the Money Market Mutual Fund Liquidity Facility, or MMLF, on March 18, 2020.[7] On March 23, 2020, the agencies published an interim final rule, which permits banking organizations to exclude from regulatory capital requirements exposures related to the MMLF (MMLF interim final rule).[8]

The MMLF interim final rule modifies the agencies' capital rule to allow banking organizations to neutralize the effects of purchasing assets from money market mutual funds under the MMLF on their risk-based and leverage capital ratios. This treatment extends to the community bank leverage ratio. Specifically, a banking organization may exclude from its total leverage exposure, average total consolidated assets, standardized total risk-weighted assets, and advanced approaches total risk-weighted assets, as applicable, any exposure acquired from an eligible money market mutual fund pursuant to a non-recourse loan under the MMLF and pledged to the FRBB. The MMLF interim final rule applies only to activities under the MMLF. The facility is scheduled to terminate on September 30, 2020, unless the facility is extended by the Board.

Consistent with U.S. GAAP, the agencies would expect banking organizations to report assets purchased from money market mutual funds under the MMLF on their balance sheets. To be eligible collateral for pledging to the FRBB, assets must be purchased from an eligible money market mutual fund at either the seller's amortized cost or fair value. Thereafter, banking organizations would subsequently measure the assets at amortized cost or fair value depending on the asset category in which the assets are reported on their balance sheets. The non-recourse nature of the transaction through the MMLF would impact the valuation of the liability to the FRBB. After reflecting any appropriate discounts on the assets purchased and the associated liabilities, organizations are not expected to report any material net gains or losses (if any) at the time of purchase. Any discounts generally would be accreted over time into income and expense.

On May 12, 2020, the FDIC approved a proposed rule modifying its deposit insurance assessment rules to mitigate the effects of participation in the MMLF on insured depository institutions (IDIs).[9] The proposed changes would remove the effect of participation in the MMLF program on certain adjustments to an IDI's assessment rate, provide an offset to an IDI's assessment for the increase to its assessment base attributable to participation in the MMLF, and remove the effect of participation in the MMLF program when classifying IDIs as small, large, or highly complex for assessment purposes. On June 26, 2020, the FDIC published a final rule that mitigates the deposit insurance assessment effects of participating in the MMLF program on IDIs as proposed.[10]

Call Report Revisions

Starting with the March 31, 2020, report date, banking organizations that file Call Reports would include their holdings of assets purchased from money market mutual funds under the MMLF in the appropriate asset category on Schedule RC, Balance Sheet, and Schedule RC–R, Regulatory Capital. On Schedule RC, banking organizations would report negotiable certificates of deposit not held for trading in item 1.b, held-to-maturity securities in item 2.a, available-for-sale (AFS) securities in item 2.b, and negotiable certificates of deposit and securities held for trading in item 5, as appropriate.[11] For regulatory capital reporting purposes, the balance sheet amounts of assets purchased through the MMLF would be reported in both Column A (Totals From Schedule RC) and Column C (0% risk-weight category) of the corresponding balance sheet asset categories of Schedule RC–R, Part II (*i.e.,* in items 1, 2.a, 2.b, and 7, respectively).[12]

If a consolidated broker-dealer subsidiary of an institution that files Call Reports has purchased assets from money market mutual funds under the MMLF that the institution reports as ''Other assets'' on its consolidated balance sheet for financial reporting purposes, the institution should also

[6] 85 FR 15909 (March 20, 2020).

[7] See *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200318a.htm.*

[8] 85 FR 16232.

[9] 85 FR 30649 (May 20, 2020). As discussed in Section II.A.5 below, the FDIC's proposed rule also would modify its deposit insurance assessment rules to mitigate the effects of participation in the Paycheck Protection Program and the Paycheck Protection Program Liquidity Facility on IDIs.

[10] 85 FR 38282 (June 26, 2020). See also Section II.A.5 below.

[11] In addition, held-to-maturity and available-for-sale securities would be reported by securities category in Schedule RC–B, Securities, and as pledged securities in Memorandum item 1 of this schedule on all three versions of the Call Report. Negotiable certificates of deposit and securities held for trading would be reported by asset category in Schedule RC–D, Trading Assets and Liabilities, by institutions required to complete this schedule on the FFIEC 031 and the FFIEC 041. Securities held for trading also would be reported as pledged securities in Schedule RC–D, Memorandum item 4.a, on the FFIEC 031.

[12] Reporting in Schedule RC–R, Part II, applies only to institutions that do not have a community bank leverage ratio framework election in effect as of the quarter-end report date, as reported in Schedule RC–R, Part I, item 31.a.

report these assets in Schedule RC, Balance Sheet, item 11, ''Other assets.'' Further, for risk-based capital reporting purposes, if applicable, the parent institution of the broker-dealer should report these assets in Column A (Totals From Schedule RC) and Column C (0% risk-weight category) of Schedule RC–R, Part II, item 8, ''All other assets.''

The quarterly average of an institution's holdings of assets purchased from money market mutual funds under the MMLF, including those purchased by a consolidated broker-dealer subsidiary of the institution, would be included as a deduction in Schedule RC–R, Part I, item 29, ''LESS: Other deductions from (additions to) assets for leverage ratio purposes,'' and thus excluded from Schedule RC–R, Part I, item 30, ''Total assets for the leverage ratio.''

Borrowings from the FRBB would be included in Schedule RC, item 16, ''Other borrowed money,'' and included in Schedule RC–M, items 5.b.(1)(a), Other borrowings with a remaining maturity or next repricing date of ''One year or less,'' 5.b.(2), ''Other borrowings with a remaining maturity of one year or less,'' and 10.b, ''Amount of 'Other borrowings' that are secured.''

Starting with the June 30, 2020, report date, banking organizations that file Call Reports would report the outstanding balance of assets purchased under the MMLF program in new item 18.a on Schedule RC–M and the quarterly average amount outstanding of assets purchased under the MMLF that were excluded from Schedule RC–R, Part I, item 30, ''Total assets for the leverage ratio,'' in new item 18.b on Schedule RC–M. The amounts reported in these items would include assets purchased by a consolidated broker-dealer subsidiary. These new items would enable the agencies to monitor the impact of the MMLF interim final rule on a banking organization's leverage ratio and, if applicable, its risk-weighted assets. In addition, the FDIC would use these new items to implement the modifications to its deposit insurance assessment rules to mitigate the effects of participation in the MMLF on IDIs.

The collection of the two new Schedule RC–M data items related to the MMLF program is expected to be time-limited. The agencies plan to propose to discontinue the collection of each item once the aggregate industry activity has diminished to a point where individual institution information is of limited practical utility and is no longer needed for deposit insurance assessment purposes, where applicable.[13]

Institutions subject to the supplementary leverage ratio requirement would report their adjusted ''Total leverage exposure'' and ''Supplementary leverage ratio'' in Schedule RC–R, Part I, items 55.a and 55.b, respectively. These institutions would adjust their existing calculations of ''Total leverage exposure'' by excluding assets purchased from money market funds under the MMLF. The instructions for item 55.a would be revised to state that institutions should measure their total leverage exposure in accordance with section 10(c)(4) of the regulatory capital rules and section 302 of these rules for exposures related to the MMLF.

FFIEC 101 Revisions

Starting with the March 31, 2020, report date, advanced approaches banking organizations should not include assets purchased from money market funds under the MMLF in the ''Total risk-weighted assets'' reported in the FFIEC 101, Schedule A, item 60, or, for advanced approaches banking organizations that file Call Reports, in Schedule RC–R, Part I, item 48.b. For banking organizations subject to the supplementary leverage ratio requirement that file the FFIEC 101, assets purchased from money market funds under the MMLF would receive similar treatment as under the ''leverage ratio'' and should be reported in the FFIEC 101, Schedule A, SLR Tables. The outstanding balance of these assets would continue to be reported in SLR Table 1, item 1.1, ''Total consolidated assets as reported in published financial statements,'' and Table 2, item 2.1, ''The balance sheet carrying value of all on-balance sheet assets.'' The average amount of these assets calculated as of each day of the reporting quarter also would be reported in SLR Table 1, item 1.7.c, ''Adjustments for deductions of qualifying central bank deposits for custodial banking organizations,'' and in SLR Table 2, item 2.2.b, ''Deductions of qualifying central bank deposits from total on-balance sheet exposures for custodial banking organizations,'' even if a banking organization is not a custodial banking organization. Banking organizations subject to the supplementary leverage ratio requirement that file Call Reports would report their adjusted ''Total leverage exposure'' and ''Supplementary leverage ratio'' in Schedule RC–R, Part I, items 55.a and 55.b.

FFIEC 002 Revisions

In connection with the FDIC's deposit insurance assessments final rule, starting with the FFIEC 002 report as of June 30, 2020, FDIC-insured branches would be required to separately report in Schedule O, Memorandum item 7, the quarterly average amount outstanding of assets purchased from money market funds under the MMLF with the collection of this item expected to be time-limited. The agencies plan to propose to discontinue the collection of this item once individual institution information is no longer needed for deposit insurance assessment purposes.[14]

3. 5-Year 2020 CECL Transition Provision

The instructions for certain items in Call Report Schedule RC–R, Parts I and II, and the FFIEC 101 have been revised effective as of the March 31, 2020, report date to incorporate revisions reflected in the interim final rule, *Regulatory Capital Rule: Revised Transition for the Current Expected Credit Losses Methodology for Allowances,* published in the **Federal Register** on March 27, 2020 (CECL interim final rule).[15] This interim final rule provides institutions that were required to adopt the current expected credit losses methodology (CECL) for accounting purposes during the 2020 calendar year with the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay (*i.e.,* a five-year transition, in total). The CECL interim final rule does not replace the current CECL transition option in the agencies' capital rule, which was adopted in 2019 and allows banking organizations to phase in over a three-year period the day-one effects on regulatory capital that may result from the adoption of CECL (2019 CECL rule).[16] This transition option remains available to institutions that adopt CECL. Thus, institutions required to adopt CECL in 2020, including those

[13] These new items will be reviewed in connection with the statutorily mandated review of the Call Report that the agencies must complete by year-end 2022. Per Section 604 of the Financial Services Regulatory Relief Act of 2006, the agencies must conduct a review of the information and schedules collected on the Call Report every five years with the purpose of reducing or eliminating requirements that are no longer necessary or appropriate.

[14] Findings from the statutorily mandated review of the Call Report will also be used for evaluating the FFIEC 002 new items. See footnote 13.

[15] 85 FR 17723. The agencies published a correcting amendment in the **Federal Register** on May 19, 2020 (85 FR 29839).

[16] 84 FR 4222 (February 14, 2019).

that began reporting in accordance with CECL in their first quarter 2020 regulatory reports, have the option to elect the three-year transition option contained in the 2019 CECL rule or the five-year CECL transition option contained in the CECL interim final rule, beginning with the Call Report and, if applicable, the FFIEC 101 for the March 31, 2020, report date or such later report date in 2020 as of which institutions first report in accordance with CECL. *Call Report Revisions*

The agencies have revised the Call Report Schedule RC–R instructions for the following items in Part I of the schedule to enable institutions that elect the five-year CECL transition option to report their regulatory capital data in accordance with the CECL interim final rule:

- Item 2, ''Retained earnings,''
- Item 15 on the FFIEC 041 and FFIEC 051 and items 15.a and 15.b on the FFIEC 031, for certain deferred tax assets arising from temporary differences that exceed an institution's applicable common equity tier 1 capital deduction threshold,
- Item 27, ''Average total consolidated assets,''
- Item 42 on the FFIEC 041 and FFIEC 051 and item 42.a on the FFIEC 031, for the amount of adjusted allowances for credit losses includable in tier 2 capital,
- Item 42.b on the FFIEC 31, ''Eligible credit reserves includable in tier 2 capital,'' and
- Item 55.a on the FFIEC 031 and FFIEC 041, ''Total leverage exposure.''

The instructions for Schedule RC–R, Part II, item 8, ''All other assets,'' also have been revised to account for the five-year CECL transition option.

In addition, beginning with the June 30, 2020, Call Report, Schedule RC–R, Part I, item 2.a, ''Does your institution have a CECL transition election in effect as of the quarter-end report date? (enter ''1'' for Yes; enter ''0'' for No.),'' will be revised to allow institutions that have adopted CECL to choose from among three entries rather than the current two entries. An institution that has adopted CECL will choose from the following CECL transition election entries: ''0'' for adopted CECL with no transition election; ''1'' for a 3-year CECL transition election; and ''2'' for a 5-year 2020 CECL transition election. An institution that has not adopted CECL will continue to leave item 2.a blank.

FFIEC 101 Revisions

The agencies have revised the FFIEC 101 instructions for the following items in Schedule A to enable advanced approaches institutions and top-tier Category III institutions that elect the five-year CECL transition option to report their regulatory capital data in accordance with the CECL interim final rule:

- Item 2, ''Retained earnings,''
- Item 21, ''DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs, that exceed the 10 percent common equity tier 1 capital deduction threshold,''
- Item 50, ''Eligible credit reserves includable in Tier 2 capital,'' and
- SLR Table 1, Item 1.8, and Table 2, Item 2.21, ''Total leverage exposure.''

4. Community Bank Leverage Ratio

Section 4012 of the CARES Act required the agencies to reduce the community bank leverage ratio (CBLR) requirement to 8 percent and provide a qualifying community banking organization whose leverage ratio falls below this community bank leverage ratio requirement a reasonable grace period to satisfy this requirement. Section 4012 also required that these CBLR changes be effective for a temporary period ending on the earlier of the termination date of the national emergency concerning the COVID–19 outbreak declared by the President on March 13, 2020, under the National Emergencies Act (National Emergency) or December 31, 2020. The agencies implemented the requirements of Section 4012 through an interim final rule.[17] To provide further clarity around the possible end date of the statutory relief, the agencies also issued an interim final rule extending relief for the 8 percent leverage ratio for the remainder of 2020, providing relief through an 8.5 percent leverage ratio in 2021, and resuming the previous 9 percent leverage ratio in 2022.[18] Neither interim final rule changed the methodology for calculating the CBLR, merely the qualifying ratio for an institution to report as a CBLR bank.

There are no substantive Call Report revisions associated with the revised CBLR ratio. However, it is possible that some additional institutions that are now eligible CBLR banks under the lower ratio may choose to use the less burdensome regulatory capital reporting for CBLR banks on Schedule RC–R. At this time, the agencies cannot reliably estimate the number of institutions that might use the CBLR framework for regulatory capital reporting in the second quarter of 2020 under the reduced ratio. However, the agencies plan to revise the burden estimates after more data are available on institutions' use of the CBLR framework.

5. Paycheck Protection Program (PPP) Loans and Liquidity Facility (PPPLF)

Section 1102 of the CARES Act allows banking organizations to make loans under the PPP of the U.S. Small Business Administration (SBA) in connection with COVID–19 disruptions to small businesses. Although the PPP loans are funded by lenders, the loans receive a guarantee from the SBA. The statute specified that these PPP loans should receive a zero percent risk weight for regulatory capital purposes. The Board subsequently established a liquidity facility, the PPPLF, to extend non-recourse loans to eligible financial institutions to fund PPP loans pledged to the PPPLF and thereby provide additional liquidity to these institutions.[19]

On April 13, 2020, the agencies published an interim final rule with an immediate effective date, which permits banking organizations to exclude from regulatory capital requirements PPP loans pledged to the PPPLF.[20] This interim final rule modifies the agencies' capital rule to allow banking organizations to neutralize the effects on their risk-based capital and leverage ratios of making PPP loans that are pledged under the Board's liquidity facility. Specifically, a banking organization may exclude from its total leverage exposure, average total consolidated assets, standardized total risk-weighted assets, and advanced approaches total risk-weighted assets, as applicable, any exposure from a PPP loan pledged to the Board's liquidity facility. The interim final rule also codified the statutory zero percent risk weight for PPP loans.

On May 12, 2020, the FDIC approved a proposed rule modifying its deposit insurance assessment rules to mitigate the effects of participation in the PPP and the PPPLF on IDIs.[21] The proposed changes would remove the effect of participation in the PPP and PPPLF on various risk measures used to calculate an IDI's assessment rate, remove the effect of participation in the PPPLF program on certain adjustments to an IDI's assessment rate, provide an offset

[17] 85 FR 22924 (April 23, 2020).

[18] 85 FR 22930 (April 23, 2020).

[19] See *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200406a.htm* and *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200416a.htm.*

[20] 80 FR 20387 (April 13, 2020).

[21] 85 FR 30649 (May 20, 2020). As discussed in Section II.A.2 above, the FDIC's proposed rule also would modify its deposit insurance assessment rules to mitigate the effects of participation in the MMLF on IDIs.

to an IDI's assessment for the increase to its assessment base attributable to participation in the PPPLF, and remove the effect of participation in the PPPLF program when classifying IDIs as small, large, or highly complex for assessment purposes.

On June 26, 2020, the FDIC published a final rule modifying its deposit insurance assessments rule to mitigate the effects of participation in the PPP and the PPPLF on IDIs.[22] After the FDIC considered the comments on the proposed rule, the final rule provides an offset to an IDI's assessment amount for the increase to its assessment base attributable to participation in the PPP rather than to participation in the PPPLF as had been proposed.

Call Report Revisions

Starting with the June 30, 2020, report date, institutions would report the outstanding balances of their PPP loans held for investment or held for sale in the appropriate loan category in Schedule RC–C, Part I, and, as applicable, in other Call Report schedules in which loan data are reported. The outstanding balance of such PPP loans pledged to the Board's liquidity facility would be included in Schedule RC–C, Part I, Memorandum item 14, ''Pledged loans and leases.'' Any PPP loans held for trading would be reported by all institutions on the Call Report balance sheet in Schedule RC, item 5, with the fair value and amortized cost of such loans reported by loan category in Schedule RC–D, Trading Assets and Liabilities, by institutions required to complete this schedule on the FFIEC 031 and the FFIEC 041. The outstanding balance of PPP loans held for trading that are pledged to the Board's liquidity facility would be included in Schedule RC–D, Memorandum item 4.b, ''Pledged loans,'' on the FFIEC 031.

For regulatory capital reporting purposes, the balance sheet amounts of PPP loans should be reported in both Column A (Totals From Schedule RC) and Column C (0% risk-weight category) of the corresponding balance sheet asset categories of Schedule RC–R, Part II, (*i.e.,* in items 4, 5, and 7, as appropriate).[23] The quarterly average amount of PPP loans pledged to the Board's liquidity facility would be included as a deduction in Schedule RC–R, Part I, item 29, ''LESS: Other deductions from (additions to) assets for leverage ratio purposes,'' and thus excluded from Schedule RC–R, Part I, item 30, ''Total assets for the leverage ratio.''

Borrowings from Federal Reserve Banks under the PPPLF would be included in Schedule RC, item 16, ''Other borrowed money;'' the appropriate subitems of Schedule RC–M, item 5.b, ''Other borrowings,'' based on their remaining maturity; and Schedule RC–M, item 10.b, ''Amount of 'Other borrowings' that are secured.''

In addition, to implement the modifications to its deposit insurance assessment rules, the FDIC would remove the quarter-end balance sheet amount of PPP loans from an IDI's total assets and average total consolidated assets in certain risk measures and adjustments used to calculate the IDI's assessment rate. Furthermore, the FDIC would remove PPP loans from an IDI's loan portfolio in measures used to calculate its assessment rate.

Since PPP loans, regardless of whether they are pledged to the liquidity facility, receive a zero percent risk weight, the reporting treatment described above for PPP loans effectively means that these loans are not included in the standardized total risk-weighted assets reported in Schedule RC–R. Similarly, advanced approaches banking organizations would not reflect PPP loans in ''total risk-weighted assets'' reported in Schedule RC–R, Part I, item 48.b.

Institutions subject to the supplementary leverage ratio requirement would report their adjusted ''Total leverage exposure'' and ''Supplementary leverage ratio'' in Schedule RC–R, Part I, items 55.a and 55.b, respectively. These institutions would adjust their existing calculations of ''Total leverage exposure'' by excluding PPP loans pledged to the Board's liquidity facility. The instructions for item 55.a would be revised to state that institutions should measure their total leverage exposure in accordance with section 10(c)(4) of the regulatory capital rules and section 305 of these rules for exposures related to the Board's liquidity facility.

In addition, in connection with their missions to supervise institutions, the agencies need to understand the number and total balance of PPP loans, as well as the amount and quarterly average of PPP loans pledged under the Board's liquidity facility. Therefore, the agencies requested and received emergency approvals from OMB to add four new data items to the Call Report to collect this information.

Accordingly, starting with the June 30, 2020, report date, institutions will begin to report the total number of PPP loans outstanding; the total outstanding balance of PPP loans; the total outstanding balance of PPP loans pledged to the Board's liquidity facility; and the quarterly average amount of PPP loans pledged to the Board's liquidity facility and excluded from average total assets in the calculation of the leverage ratio in Schedule RC–R, Part I. These items have been added to Schedule RC–M as items 17.a, 17.b, 17.c, and 17.e.

In addition, in connection with the FDIC's final rule to mitigate the deposit insurance assessment effects of participation in the PPP and the PPPLF on IDIs, the FDIC needs to collect information on outstanding borrowings under the PPPLF. Starting with the June 30, 2020, reporting period, the outstanding balance of borrowings from Federal Reserve Banks under the PPPLF with a remaining maturity of one year or less and the outstanding balance of borrowings from the Federal Reserve Banks under the PPPLF with a remaining maturity of more than one year would be reported in new items 17.d.(1) and 17.d.(2) of Schedule RC–M, respectively.

The collection of the six data items related to PPP loans and the PPPLF is expected to be time-limited. The agencies plan to propose to discontinue the collection of each item once the aggregate industry activity has diminished to a point where individual institution information is of limited practical utility and is no longer needed for assessment purposes, where applicable.[24]

FFIEC 101 Revisions

Starting with the June 30, 2020, report date, advanced approaches banking organizations would not include PPP loans in ''total risk-weight assets'' under the advanced approaches reported in the FFIEC 101, Schedule A, item 60. Since these loans already receive a zero percent risk weight, PPP loans are effectively excluded from advanced approaches total risk-weighted assets under the current capital rule.

For banking organizations subject to the supplementary leverage ratio requirement that file the FFIEC 101, PPP loans pledged to the Board's liquidity facility would be deducted as part of the calculation of total leverage exposure for the supplementary leverage ratio. The outstanding balance of PPP loans would continue to be reported in SLR Table 1, item 1.1, ''Total consolidated assets as reported in published financial

[22] 85 FR 38282 (June 26, 2020).

[23] Reporting in Schedule RC–R, Part II, applies only to institutions that do not have a community bank leverage ratio framework election in effect as of the quarter-end report date, as reported in Schedule RC–R, Part I, item 31.a.

[24] These new items will be reviewed in connection with the statutorily mandated review of the Call Report. See footnote 13.

statements,'' and Table 2, item 2.1, ''The balance sheet carrying value of all on-balance sheet assets.'' A banking organization calculating its supplementary leverage ratio also would include the average amount of PPP loans pledged to the PPPLF as of each day of the reporting quarter in SLR Table 1, item 1.7.c, ''Adjustments for deductions of qualifying central bank deposits for custodial banking organizations,'' and in SLR Table 2, item 2.2.b, ''Deductions of qualifying central bank deposits from total on-balance sheet exposures for custodial banking organizations,'' even if a banking organization is not a custodial banking organization.

FFIEC 002 Revisions

In connection with the FDIC's deposit insurance assessments proposed rule, the Board requested and received emergency approval from OMB for FDIC-insured branches to separately report in Schedule O, Other Data for Deposit Insurance Assessments, Memorandum item 6, the quarterly average amount of PPP loans pledged to the PPPLF starting with the FFIEC 002 report as of the June 30, 2020, report date.

In connection with the FDIC's deposit insurance assessments final rule, the Board requested and received emergency approval from OMB to change the information separately reported by FDIC-insured branches in Schedule O, Other Data for Deposit Insurance Assessments, Memorandum item 6, from the quarterly average of PPP loans pledged to the PPPLF to the quarter-end amount of PPP loans starting with the FFIEC 002 report as of the September 30, 2020, report date. The collection of this item would be time-limited. The agencies would expect to propose to discontinue the collection of this item once individual institution information is no longer needed for deposit insurance assessment purposes.[25]

6. Board Regulation D Amendments

The Board published in the **Federal Register** on April 28, 2020, an interim final rule that amends the Board's Regulation D (Reserve Requirements of Depository Institutions).[26] The interim final rule amends the ''savings deposit'' definition in Regulation D by deleting the six-transfer-limit provisions in this definition that require depository institutions either to prevent transfers and withdrawals in excess of the limit or to monitor savings deposits ex post for violations of the limit. The interim final rule also makes conforming changes to other definitions in Regulation D that refer to ''savings deposit'' as necessary.

The interim final rule permits, but does not require, depository institutions to immediately suspend enforcement of the six-transfer limit and allow their customers to make an unlimited number of convenient transfers and withdrawals from their savings deposits. The interim final rule also does not require any changes to the deposit reporting practices of depository institutions.

To implement the interim final rule, the agencies temporarily revised the instructions to the Call Reports and the FFIEC 002 via emergency approvals from OMB to reflect the revised definition of ''savings deposits'' in Regulation D, beginning with reports for the June 30, 2020, report date. Specifically, the agencies published supplemental instructions to the Call Reports[27] and the FFIEC 002,[28] which include temporary revisions to the General Instructions for Call Report Schedule RC–E and FFIEC 002 Schedule E, as well as the Glossary entries for ''Deposits'' in the Call Report and the FFIEC 002 instructions, to remove references to the six-transfer limit. In addition, the supplemental instructions temporarily revised the General Instructions for Call Report Schedule RC–E and FFIEC 002 Schedule E to state that if a depository institution chooses to suspend enforcement of the six-transfer limit on a ''savings deposit,'' the depository institution may continue to report that account as a ''savings deposit'' or may instead choose to report that account as a ''transaction account'' based on an assessment of certain characteristics of the account.

Call Reports and FFIEC 002 Revisions

The agencies are revising the instructions to the Call Reports and the FFIEC 002 to reflect the revised definition of ''savings deposits'' in accordance with the amendments to Regulation D in the interim final rule, starting with the June 30, 2020, report date. Specifically, the agencies are revising the General Instructions for Call Report Schedule RC–E and FFIEC 002 Schedule E, as well as the Glossary entries for ''Deposits'' in the Call Report and FFIEC 002 instructions, to remove references to the six-transfer limit from descriptions of ''savings deposits.''

In the interim final rule, the Board amended the ''savings deposit'' definition in Regulation D to allow customers to be able to access savings deposits more easily. However, the agencies recognize that the corresponding temporary revisions to the instructions for the Call Reports and the FFIEC 002 created a reporting option that could result in the collection of ambiguous data by allowing a depository institution to report a savings deposit as either a ''savings deposit'' or a ''transaction account'' if the institution suspends enforcement of the six-transfer limit. To resolve this potential issue, the agencies propose to remove the reporting option and require instead that a depository institution report each account as a ''savings deposit'' or a ''transaction account'' based on the institution's assessment of account characteristics. Specifically, the agencies propose to revise the General Instructions for Call Report Schedule RC–E and FFIEC 002 Schedule E, effective for reporting beginning in the first quarter of 2021, to state that where the reporting institution has suspended the enforcement of the six-transfer limit rule on an account that otherwise meets the definition of a savings deposit, the institution must report such deposits as a ''savings deposit'' (and as a ''nontransaction account'') or a ''transaction account'' based on an assessment of the following characteristics:

(i) If the reporting institution does not retain the reservation of right to require at least seven days' written notice before an intended withdrawal, the account must be reported as a demand deposit (and as a ''transaction account'').

(ii) If the reporting institution retains the reservation of right to require at least seven days' written notice before an intended withdrawal and the depositor is eligible to hold a NOW account, the account must be reported as an ATS account, NOW account, or a telephone and preauthorized transfer account (and as a ''transaction account'').

(iii) If the reporting institution retains the reservation of right to require at least seven days' written notice before an intended withdrawal and the depositor is ineligible to hold a NOW account, the account must be reported as a savings deposit (and as a ''nontransaction account'').

The agencies anticipate that there will be no measurable increase in burden associated with these proposed revisions. The agencies may consider

[25] Findings from the statutorily mandated review of the Call Report will also be used for evaluating the FFIEC 002 new items. See footnote 13.

[26] 85 FR 23445.

[27] 2Q2020 COVID–19 Related Supplemental Instructions (Call Report), *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_COVID_202006.pdf.*

[28] 2Q2020 COVID–19 Related Supplemental Instructions (FFIEC 002), *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC002_suppinst_COVID_202006.pdf.*

further modifying the treatment of ''savings deposits'' and ''transaction accounts'' in the instructions for the Call Report and the FFIEC 002 after a review of the reported data. Any such changes would be proposed by the agencies through a separate **Federal Register** notice pursuant to the PRA.

7. Loans to Executive Officers, Directors, and Principal Shareholders

Under section 22(h) of the Federal Reserve Act and the Board's Regulation O (12 CFR 215), extensions of credit to insiders [29] are subject to quantitative limits, prior approval requirements by an institution's board, and qualitative requirements concerning loan terms.[30] On April 22, 2020, the Board issued an interim final rule that excepts certain loans that are guaranteed under the SBA's PPP from the requirements of section 22(h) of the Federal Reserve Act and the corresponding provisions of the Board's Regulation O.[31] The interim final rule states that the Board has determined that PPP loans pose minimal risk because the SBA guarantees PPP loans at 100 percent of principal and interest and that PPP loans have fixed terms prescribed by the SBA. Accordingly, the interim final rule states that PPP loans will not be subject to section 22(h) or the corresponding provisions of Regulation O provided they are not prohibited by SBA lending restrictions.

The agencies currently collect data on the number and outstanding balance of all ''extensions of credit'' to the reporting institution's executive officers, directors, principal shareholders, and their related interests that meet the definition of this term in Regulation O. This information is collected in Call Report Schedule RC–M, items 1.a and 1.b. Call Report instructions refer to Regulation O for guidance in reporting extensions of credit to insiders in these items. In response to the changes to Regulation O, the agencies have revised the Call Report instructions effective as of the June 30, 2020, report date to note the PPP loan exception that has been added to Regulation O and clarify that PPP loans should not be reported in items 1.a and 1.b of Schedule RC–M. PPP loans did not exist in the first quarter of 2020, so the current reporting on Call Report Schedule RC–M does not include these loans. Therefore, the agencies do not believe that revising the instructions for this exception would change burden, as institutions would not need to revise the existing amounts reported in Schedule RC–M, items 1.a and 1.b, in response to this change to Regulation O.

8. Temporary Exclusions From the Supplementary Leverage Ratio

On April 14, 2020, the Board published in the **Federal Register** an interim final rule to temporarily exclude U.S. Treasury Securities (Treasuries) and deposits in their accounts at Federal Reserve Banks (deposits at Federal Reserve Banks) from total leverage exposure for bank holding companies, savings and loan holding companies, and intermediate holding companies subject to the supplementary leverage ratio through March 31, 2021.[32]

On June 1, 2020, the agencies published in the **Federal Register** an interim final rule (Depository Institution SLR IFR) to provide depository institutions subject to the supplementary leverage ratio the ability to temporarily exclude Treasuries and deposits at Federal Reserve Banks from total leverage exposure.[33] An electing depository institution must notify its primary Federal banking regulator of its election within 30 days after the interim final rule is effective. The interim final rule will terminate after March 31, 2021.

Call Report Revisions

Depository institutions subject to the supplementary leverage ratio report Treasuries not held for trading in Schedule RC–B, item 1, ''U.S. Treasury securities,'' and those held for trading in Schedule RC, item 5, ''Trading assets'' (and, if applicable, in Schedule RC–D, item 1, ''U.S. Treasury securities''). Such depository institutions report deposits at Federal Reserve Banks in Schedule RC–A, item 4, ''Balances due from Federal Reserve Banks.''

Starting as of the June 30, 2020, report date, advanced approaches and Category III depository institutions that elect to opt into these temporary exclusions would exclude Treasuries and deposits at Federal Reserve Banks reported in the items identified above from Schedule RC–R, Part I, item 55.a, ''Total leverage exposure.'' Custodial banking organizations will also be able to deduct from total leverage exposure deposits with qualifying foreign central banks reported as part of Schedule RC–A, item 3, ''Balances due from banks in foreign countries and foreign central banks,'' subject to the limits in the Section 402 rule,[34] in addition to the deductions under this interim final rule. For purposes of reporting the supplementary leverage ratio as of June 30, 2020, electing depository institutions may reflect the exclusion of Treasuries and deposits at Federal Reserve Banks from total leverage exposure as if this interim final rule had been in effect for the entire second quarter of 2020. The instructions for item 55.a would be revised to state that institutions should measure their total leverage exposure in accordance with section 10(c)(4) of the regulatory capital rules and, for electing advanced approaches and Category III depository institutions, the applicable section of these rules for Treasuries and deposits at Federal Reserve Banks (section 303 for institutions supervised by the Board; section 304 for institutions supervised by the OCC or the FDIC). The temporary exclusions from total leverage exposure are available through the March 31, 2021, report date.

FFIEC 101 Revisions

For top-tier advanced approaches and Category III bank holding companies, savings and loan holding companies, and intermediate holding companies (and top-tier advanced approaches and Category III depository institutions that elect to opt into these temporary exclusions), Treasuries and deposits at Federal Reserve Banks would continue to be reported in the FFIEC 101, Schedule A, SLR Table 1, item 1.1, ''Total consolidated assets as reported in published financial statements,'' and Table 2, item 2.1, ''The balance sheet carrying value of all on-balance sheet assets.'' Starting as of the June 30, 2020, report date, the average amount of Treasuries and deposits at Federal Reserve Banks calculated as of each day of the reporting quarter also would be reported in SLR Table 1, item 1.7.c, ''Adjustments for deductions of qualifying central bank deposits for custodial banking organizations,'' and in SLR Table 2, item 2.2.b, ''Deductions of qualifying central bank deposits from total on-balance sheet exposures for custodial banking organizations,'' even if a holding company or an electing depository institution is not a custodial banking organization.[35] For purposes of

[29] ''*Insider* means an executive officer, director, or principal shareholder, and includes any related interest of such a person.'' 12 CFR 215.2(h).

[30] 12 CFR 215.4.

[31] 85 FR 22345 (April 22, 2020).

[32] 85 FR 20578.

[33] 85 FR 32980 (June 1, 2020).

[34] The agencies recently issued a final rule, effective April 1, 2020, which implements section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act by amending the capital rule to allow a banking organization that qualifies as a custodial banking organization to exclude from total leverage exposure deposits at qualifying central banks, subject to limits (Section 402 rule). 85 FR 4569 (January 27, 2020).

[35] A holding company or electing depository institution may not deduct on-balance Treasuries in

reporting the supplementary leverage ratio as of June 30, 2020, holding companies and electing depository institutions would be permitted the exclusion of Treasuries and deposits at Federal Reserve Banks from total leverage exposure as if these interim final rules had been in effect for the entire second quarter of 2020. The temporary exclusions from total leverage exposure would be available through the March 31, 2021, report date.

Custodial banking organizations would also be able to deduct from total leverage exposure deposits with qualifying foreign central banks, subject to the limits in the Section 402 rule, in addition to the deductions of Treasuries and deposits at Federal Reserve Banks under these interim final rules.

B. Revisions Related to Section 4013 of the CARES Act

As provided for under the CARES Act, a financial institution may account for an eligible loan modification either under Section 4013 or in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Subtopic 310–40, Receivables—Troubled Debt Restructurings by Creditors. If a loan modification is not eligible under Section 4013, or if the institution elects not to account for the loan modification under Section 4013, the financial institution should evaluate whether the modified loan is a troubled debt restructuring (TDR) under ASC Subtopic 310–40.

To be an eligible loan under Section 4013 (Section 4013 loan), a loan modification must be (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 or (B) December 31, 2020.

Financial institutions 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. Financial institutions do not have to report Section 4013 loans as TDRs in regulatory reports.

Call Report and FFIEC 002 Revisions

Consistent with Section 4013, the agencies requested and received emergency approvals from OMB to add two new data items for Section 4013 loans to the Call Report and FFIEC 002, which would be collected quarterly beginning with the June 30, 2020, report date, with the collection of these items expected to be time-limited. These new items, Memorandum item 17.a, ''Number of Section 4013 loans outstanding,'' and Memorandum item 17.b, ''Outstanding balance of Section 4013 loans,'' would be added to Call Report Schedule RC–C, Part I, Loans and Leases, and Memorandum item 5.a, ''Number of Section 4013 loans outstanding,'' and Memorandum item 5.b, ''Outstanding balance of Section 4013 loans,'' would be added to FFIEC 002 Schedule C, Part I, Loans and Leases. These items would enable the agencies to monitor individual institutions' and the industry's use of the temporary relief provided by Section 4013 as well as the volume of loans modified in accordance with Section 4013. The agencies plan to propose to discontinue the collection of these specific items once the aggregate industry activity has diminished to a point where individual institution information is of limited practical utility.[36]

The agencies will collect institution-level and branch-and-agency-level Section 4013 loan information in the Call Report and the FFIEC 002 on a confidential basis. While the agencies generally make institution-level Call Report and branch-and-agency-level FFIEC 002 data publicly available, the agencies are collecting Section 4013 loan information as part of condition reports for the impacted entities and the agencies believe disclosure of these items at the institution level would not be in the public interest.[37] Such information is permitted to be collected on a confidential basis, consistent with 5 U.S.C. 552(b)(8).[38]

The public disclosure of supervisory information on Section 4013 loans could have a detrimental impact on financial institutions offering modifications under this provision to borrowers that need relief due to COVID–19. Financial institutions may be reluctant to offer modifications under Section 4013 if information on these modifications made by each institution is publicly available, as analysts, investors, and other users of public Call Report and FFIEC 002 information may penalize an institution for using the relief provided by the CARES Act. The agencies have encouraged financial institutions to work with their borrowers during the National Emergency related to COVID–19, including use of the relief under Section 4013.[39]

The agencies may disclose Section 4013 loan data on an aggregated basis, consistent with confidentiality.

C. Revisions Related to U.S. GAAP

1. Provisions for Credit Losses on Off-Balance-Sheet Credit Exposures

On June 16, 2016, the FASB issued Accounting Standards Update No. 2016–13, Topic 326, *Financial Instruments—Credit Losses* (ASU 2016–13). Within Topic 326, paragraph 326–20–30–11 states, ''An entity shall report in net income (as a credit loss expense) the amount necessary to adjust the liability for credit losses for management's current estimate of expected credit losses on off-balance-sheet credit exposures.'' Off-balance-sheet credit exposures include unfunded loan commitments, financial standby letters of credit, and financial guarantees not accounted for as insurance, and other similar instruments except for those within the scope of ASC Topic 815 on derivatives and hedging.

Throughout Topic 326, the FASB refers to provisions for credit losses as ''credit loss expense.'' For example, paragraph 326–20–30–1 states, ''An entity shall report in net income (as a credit loss expense) the amount necessary to adjust the allowance for credit losses for management's current estimate of expected credit losses on financial assets(s).'' Thus, Topic 326 does not prohibit recording the adjustment to the liability for expected credit losses on off-balance-sheet credit exposures within the provisions for credit losses reported in the income statement.

The Call Report income statement instructions currently direct institutions that have adopted Topic 326 to report provisions for expected credit losses on off-balance-sheet credit exposures in Schedule RI, item 7.d, ''Other noninterest expense,'' and prohibit its inclusion in Schedule RI, item 4,

SLR Table 2, item 2.12, ''Gross assets for repo-style transactions, with no recognition of netting,'' if it already reports such on-balance sheet Treasuries in SLR Table 2, item 2.2.b.

[36] These new Call Report items will be reviewed in connection with the statutorily mandated review of the Call Report. Findings from the statutorily mandated Call Report review will also be used for evaluating the FFIEC 002 new items. See footnote 13.

[37] 12 U.S.C. 1464(v)(2).

[38] 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.''

[39] 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.*

''Provision for loan and lease losses.'' [40] Therefore, to align regulatory reporting to the guidance within Topic 326, the agencies propose to change the Call Report instructions to direct institutions that have adopted Topic 326 to report provisions for expected credit losses on off-balance-sheet credit exposures as part of the total amount of institutions' provisions for credit losses in Schedule RI, item 4.[41] This Schedule RI instructional change would carry over to Schedule RI–D, Income from Foreign Offices, on the FFIEC 031.[42] These instructional changes would apply only to institutions that have adopted Topic 326.

The inclusion of provisions for expected credit losses on off-balance-sheet credit exposures in the provisions for credit losses presented in item 4 of the Call Report income statement will cause a loss of transparency within the overall reported amount of provisions for credit losses between provisions attributable to on- and off-balance-sheet credit exposures. To enhance transparency and differentiate these provisions, the agencies propose adding a new Memorandum item 7, ''Provisions for credit losses on off-balance-sheet credit exposures,'' to Schedule RI–B, Part II, Changes in Allowances for Credit Losses, which will identify the portion of the overall amount of the provisions for credit losses reported in Schedule RI, item 4, attributable to the provisions for expected credit losses on off-balance-sheet credit exposures. Adding the new memorandum item to Schedule RI–B, Part II, will enable the agencies to monitor the underlying components of the total amount of an institution's provisions for credit losses (*i.e.,* the separate provisions for expected credit losses attributable to loans and leases held for investment, held-to-maturity debt securities, AFS debt securities, other financial assets measured at amortized cost, and off-balance-sheet credit exposures) and how these components change over time in relation to the amounts of the various categories of financial assets and off-balance-sheet credit exposures within the scope of ASC Topic 326.

In addition, footnote 5 on Schedule RI–B, Part II, item 5, ''Provisions for credit losses,'' will be updated to reflect ''For institutions that have adopted ASU 2016–13, the sum of item 5, Column A through Column C, plus Schedule RI–B, Part II, Memorandum items 5 and 7, below, must equal Schedule RI, item 4.''

2. Expected Recoveries of Amounts Previously Charged Off Included within the Allowances for Credit Losses

As noted above, the FASB issued ASU 2016–13 on June 16, 2016, which has been amended by subsequent FASB ASUs. Within Topic 326, paragraph 326–20–30–1 states, ''The allowance for credit losses is a valuation account that is deducted from, or added to, the amortized cost basis of the financial asset(s) to present the net amount expected to be collected on the financial asset. Expected recoveries of amounts previously written off and expected to be written off shall be included in the valuation account and shall not exceed the aggregate of amounts previously written off and expected to be written off by an entity.'' The terms ''written off'' as used in Topic 326 and ''charged off'' as used in Call Report instructions are used interchangeably in this discussion.

Under GAAP before an institution's adoption of Topic 326, expected recoveries of amounts previously written off would not be included in the measurement of the allowance for loan and lease losses; recoveries would be recorded only when received. Under Topic 326, including expected recoveries of amounts previously written off within allowances for credit losses reduces the overall amount of these allowances. Amounts related to an individual asset are written off or charged off when deemed uncollectible. However, under ASC Topic 326, institutions could, in some circumstances, reduce the amount of the allowance for credit losses that would otherwise be calculated for a pool of assets with similar risk characteristics that includes charged-off assets on the same day the charge-offs were taken by the estimated amount of expected recoveries of amounts written off on these assets. Reducing the allowance for credit losses by amounts of expected recoveries prior to collection effectively ''reverses'' a charge-off. Therefore, to provide transparency for amounts with inherently higher risk that, before an institution's adoption of ASC Topic 326, were not allowed to be recorded until they were received, the agencies propose to add new Memorandum item 8 to Schedule RI–B, Part II, Changes in Allowances for Credit Losses, to capture the ''Estimated amount of expected recoveries of amounts previously written off included within the allowance for credit losses on loans and leases held for investment (included in item 7, column A, 'Balance end of current period,' above).'' This new item would be applicable to institutions only after they have adopted Topic 326.

Not including the proposed memorandum item for expected recoveries of amounts previously written off within the allowance for credit losses on loans and leases will cause a loss of transparency within the reported amount of this allowance between the portions of the allowance attributable to (1) expected credit losses on the amortized cost basis of loans and leases held for investment net of expected recoveries of amounts expected to be charged off in the future and (2) expected recoveries of loan and lease amounts previously charged off. Proposed new Memorandum item 8 will enhance transparency and differentiate these amounts within the period-end balance of the allowance for credit losses on loans and leases by separately identifying the estimated amount within this allowance attributable to expected recoveries of amounts previously written off. This proposed new memorandum item will enable the agencies, including their examiners, and other Call Report users to better understand key components underlying institutions' allowance for credit losses on loans and leases (*i.e.,* amounts for expected credit losses on the amortized cost basis of loans and leases held for investment and amounts for expected recoveries of amounts previously written off on such loans and leases) and how these components change over time. This information will assist the agencies and other users in monitoring amounts with inherently higher credit risk, and changes therein, that contribute to reductions in the overall amount of the allowance for credit losses on loans and leases. This proposed new memorandum item will apply to loans and leases held for investment because this is the Call Report category of financial assets that is expected to have the greatest amount of estimated expected recoveries of amounts previously written off.

3. Nonaccrual Treatment of Purchased Credit-Deteriorated Assets

ASU 2016–13 introduced the concept of purchased credit-deteriorated (PCD) assets. PCD assets are acquired financial assets that, at acquisition, have experienced more-than-insignificant deterioration in credit quality since origination. When recording the acquisition of PCD assets, the amount of expected credit losses as of the acquisition date is recorded as an

[40] A footnote to Schedule RI, item 4, on the Call Report forms currently states, ''Institutions that have adopted ASU 2016–13 should report in item 4 the provisions for credit losses on all financial assets that fall within the scope of the standard.''

[41] The existing footnote to Schedule RI, item 4, also would be revised in the same manner.

[42] The existing footnote to Schedule RI–D, item 3, would be revised in the same manner as the footnote to Schedule RI, item 4.

allowance and added to the purchase price of the assets rather than recording these acquisition date expected credit losses through provisions for credit losses. The sum of the purchase price and the initial allowance for credit losses (ACL) establishes the amortized cost basis of the PCD assets at acquisition. Any difference between the unpaid principal balance of the PCD assets and the amortized cost basis of the assets as of the acquisition date is a noncredit discount or premium. The initial ACL and any noncredit discount or premium determined on a collective basis at the acquisition date are allocated to the individual PCD assets.

After acquisition, any noncredit discount or premium is accreted or amortized into interest income, as appropriate, over the remaining lives of the PCD assets on a level-yield basis. However, if a PCD asset is placed in nonaccrual status, institutions must cease accreting the noncredit discount or amortizing the noncredit premium into interest income consistent with the guidance in ASC paragraph 310–20–35–17.

The current instructions for Call Report Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, provide an exception to the general rule for placing financial assets in nonaccrual status set forth in the Call Report Glossary entry for ''Nonaccrual status'' for purchased credit-impaired (PCI) assets. The instructions for FFIEC 002 Schedule N, Past Due, Nonaccrual, and Restructured Loans, include a similar exception for PCI assets. Topic 326 replaces the concept of PCI assets in previous GAAP with the concept of PCD assets.[43] Although there is some similarity between the concepts of PCI and PCD assets, these two concepts are not identical. Nevertheless, ASU 2016–13 provides that, upon adoption of Topic 326, all PCI assets will be deemed to be, and accounted for prospectively as, PCD assets. However, the Schedule RC–N instructions indicate that the nonaccrual exception for PCI assets was not extended to PCD assets by stating that ''For purchased credit-deteriorated loans, debt securities, and other financial assets that fall within the scope of ASU 2016–13, nonaccrual status should be determined and subsequent nonaccrual treatment, if appropriate, should be applied in the same manner as for other financial assets held by an institution.''

As described in the Call Report Supplemental Instructions for March 2020, if an institution has adopted ASU 2016–13 and has a PCD asset, including a PCD asset that was previously a PCI asset or part of a pool of PCI assets, that would otherwise be required to be placed in nonaccrual status (see the Glossary entry for ''Nonaccrual status''), the institution may elect to continue accruing interest income and not report the PCD asset as being in nonaccrual status if the following criteria are met:

(1) The institution reasonably estimates the timing and amounts of cash flows expected to be collected, and

(2) the institution did not acquire the asset primarily for the rewards of ownership of the underlying collateral, such as use of collateral in operations of the institution or improving the collateral for resale.

Additionally, these Call Report Supplemental Instructions state that when a PCD asset that meets the criteria above is not placed in nonaccrual status, the asset should be subject to other alternative methods of evaluation to ensure that the institution's net income is not materially overstated. Further, an institution is not permitted to accrete the credit-related discount embedded in the purchase price of a PCD asset that is attributable to the acquirer's assessment of expected credit losses as of the date of acquisition (*i.e.,* the contractual cash flows the acquirer did not expect to collect at acquisition). Interest income should no longer be recognized on a PCD asset to the extent that the net investment in the asset would increase to an amount greater than the payoff amount. If an institution is required or has elected to carry a PCD asset in nonaccrual status, the asset must be reported as a nonaccrual asset at its amortized cost basis in Call Report Schedule RC–N, column C.[44]

For PCD assets for which the institution has made a policy election to maintain a previously existing pool of PCI assets as a unit of account for accounting purposes upon adoption of ASU 2016–13, the determination of nonaccrual or accrual status should be made at the pool level, not at the individual asset level.

For a PCD asset that is not reported in nonaccrual status, the delinquency status of the PCD asset should be determined in accordance with its contractual repayment terms for purposes of reporting the amortized cost basis of the asset as past due in Schedule RC–N, column A or B, and in FFIEC 002 Schedule N, column A or B, as appropriate. If the PCD asset that is not reported in nonaccrual status consists of a pool of loans that were previously PCI assets that is being maintained as a unit of account after the adoption of ASU 2016–13, delinquency status should be determined individually for each loan in the pool in accordance with the individual loan's contractual repayment terms.

The agencies are proposing to update the Call Report and FFIEC 002 instructions to revise the nonaccrual treatment for PCD assets to provide institutions the option to not report PCD assets in nonaccrual status if they meet the criteria described above. The instructions also would incorporate the other reporting guidance for PCD assets in the Call Report Supplemental Instructions for March 2020 described above.

4. Last-of-Layer Hedging

In ASU No. 2017–12, Derivatives and Hedging (Topic 815)–Targeted Improvements to Accounting for Hedging Activities, the FASB added the last-of-layer method to its hedge accounting standards to lessen the difficulties institutions encountered under existing accounting rules when seeking to enter into a fair value hedge of the interest rate risk of a closed portfolio of prepayable financial assets or one or more beneficial interests secured by a portfolio of prepayable financial instruments. Typically, prepayable financial assets would be loans and AFS debt securities.[45] Under ASU 2017–12, there are no limitations on the types of qualifying assets that could be grouped together in a last-of-layer hedge other than meeting the following two criteria: (1) They must be prepayable financial assets that have a contractual maturity date beyond the period being hedged and (2) they must be eligible for fair value hedge accounting of interest rate risk (for example, fixed-rate instruments). For example, fixed-rate residential mortgages, auto loans, and collateralized mortgage obligations could all be grouped and hedged together in a single last-of-layer closed portfolio. For a last-of-layer hedge, ASC paragraph 815–10–50–5B states that an institution may need to allocate the related fair value hedge basis adjustment (FVHBA) ''to meet the objectives of disclosure requirements in other Topics.'' This ASC paragraph then explains that the

[43] According to ASC paragraph 310–30–15–2, PCI assets, in general, are loans and debt securities with evidence of deterioration of credit quality since origination acquired by completion of a transfer for which it is probable, at acquisition, that the investor will be unable to collect all contractually required payments receivable.

[44] Similarly, in the FFIEC 002, any PCD loans in nonaccrual status would be reported in Schedule N, column C.

[45] Prepayable held-to-maturity debt securities do not qualify for last-of-layer hedging.

institution ''may allocate the basis adjustment on an individual asset basis or on a portfolio basis using a systematic and rational method.'' Due to the aggregation of assets in a last-of-layer closed portfolio, institutions may find it challenging to allocate the related FVHBA to the individual loan or AFS debt security level when necessary for financial reporting purposes.

In March 2018, the FASB added a project to its agenda to expand last-of-layer hedging to multiple layers, thereby providing more flexibility to entities when applying hedge accounting to a closed portfolio of prepayable assets. In connection with this project, the FASB anticipated that there would be diversity in practice if entities were required to allocate portfolio-level, last-of-layer FVHBAs to more granular levels, which in turn could potentially hamper data quality and comparability. In addition, the allocation would increase operational burden on institutions with little, if any, added value to risk management or to users of the financial statements. As such, for financial reporting purposes, the FASB Board has tentatively decided that it would require these FVHBAs to be presented as a reconciling item, *i.e.,* in the aggregate for loans and AFS debt securities, in disclosures required by other areas of GAAP.[46]

Call Report Revisions

For regulatory reporting purposes, the agencies are proposing similar treatment for last-of-layer FVHBAs on Call Report Schedule RC–C, Part I, Loans and Leases, and Schedule RC–B, Securities. As such, following the FASB's adoption of a final last-of-layer hedge accounting standard, the instructions for Schedule RC–C, Part I, item 11, ''LESS: Any unearned income on loans reflected in items 1–9 above,'' would be revised to explicitly state that last-of-layer FVHBAs associated with the loans reported in Schedule RC–C, Part I, should be included in this item.

In addition, the agencies are proposing on Schedule RC–B, Securities, to rename existing item 7, ''Investments in mutual funds and other equity securities with readily determinable fair values,'' as ''Unallocated last-of-layer fair value hedge basis adjustments.'' Institutions would report amounts for last-of-layer FVHBAs on AFS debt securities only in item 7, column C, ''Available-for-sale: Amortized Cost.'' To note, only a small number of institutions that have not have yet adopted ASU 2016–01, which includes provisions governing the accounting for investments in equity securities, continue to report amounts in item 7. Because all institutions are required to adopt ASU 2016–01 for Call Report purposes by the December 31, 2020, report date, the agencies had previously determined that existing item 7 in Schedule RC–B would no longer be applicable to institutions for reporting purposes and could be removed as of that report date.[47] Thus, the need for a new item in Schedule RC–B for reporting unallocated FVHBAs applicable to AFS debt securities following the FASB's adoption of a final last-of-layer hedge accounting standard can be readily accommodated through the redesignation of existing item 7, column C, for this purpose.

FFIEC 002 Revisions

The agencies are also proposing similar treatment for last-of-layer FVHBAs on FFIEC 002 Schedule C, Part I, Loans, and Schedule RAL, Assets and Liabilities, Memorandum item 3.b, ''Amortized cost of available-for-sale securities,'' following the FASB's adoption of a final last-of-layer hedge accounting standard. The instructions for Schedule C, Part I, item 10, ''LESS: Any unearned income on loans reflected in items 1–8 above,'' would be revised to explicitly state that last-of-layer FVHBAs associated with the loans reported in Schedule C, Part I, should be included in this item.

In addition, the agencies are proposing to revise the FFIEC 002 instructions to state that institutions should report amounts for last-of-layer FVHBAs applicable to available-for-sale debt securities in Schedule RAL, Memorandum item 3.b, ''Amortized cost of available-for-sale securities.''

D. Revisions Related to International Remittance Transfers

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[48] amended the Electronic Fund Transfer Act (EFTA)[49] to create comprehensive consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. The Bureau implemented these EFTA amendments through the Remittance Rule (12 CFR 1005.30 *et seq.*). EFTA and the Remittance Rule include a requirement that remittance transfer providers generally must disclose (both prior to and at the time the consumer pays for the transfer) the exact exchange rate that applies to a remittance transfer and the amount to be received by the designated recipient of the transfer. The Remittance Rule also requires remittance transfer providers to disclose certain fees and other information, among several other requirements.

A person that provides remittance transfers in the normal course of its business is a remittance transfer provider subject to the Remittance Rule's requirements. Generally, whether a person provides remittance transfers in the normal course of its business depends on the facts and circumstances, such as the number and frequency of the remittance transfers the person provides. However, the Remittance Rule as originally adopted contained a safe harbor whereby a person that provided 100 or fewer remittance transfers in each of the previous and current calendar years was deemed not to be providing remittance transfers in the normal course of its business, and therefore was outside of the Remittance Rule's coverage.

The EFTA and the Remittance Rule also contain exceptions that permit some remittance transfer providers to estimate certain information in the required disclosures in certain circumstances. Of relevance to the current Call Reports, as discussed in greater detail below, there is a ''temporary exception'' that permits certain insured institutions[50] to estimate certain fees and the exchange rate (and information that depends on the fees and exchange rate) in their disclosures if certain conditions are met. Importantly, EFTA section 919 expressly limits the length of the temporary exception to July 21, 2020. As a result, the temporary exception will expire on July 21, 2020.

In 2014, item 16 was added to Schedule RC–M of the FFIEC 031 and FFIEC 041 Call Reports, citing Section 1073 of the Dodd-Frank Act and the Remittance Rule.[51] In supporting the inclusion of this new item in the Call Reports, the agencies ''stated that the new item regarding remittance transfers could facilitate monitoring of market entry and exit, which would improve

[46] The tentative decision was made at the FASB Board meeting on October 16, 2019. The Board meeting minutes are available at *https://www.fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176173617941.* Currently, no exposure draft or ASU associated with this project has been issued.

[47] 83 FR 945–946 (January 8, 2018).

[48] 12 U.S.C. 5601.

[49] 15 U.S.C. 1693 *et seq.*

[50] The term ''insured institution'' refers to ''an insured depository institution, as defined in section 1813 of title 12, or an insured credit union, as defined in section 1752 of title 12.'' 15 U.S.C. 1693o–1(a)(4)(A).

[51] 79 FR 2509 (Feb. 14, 2014). Item 16 was later incorporated into the FFIEC 051 Call Report when that report was created.

understanding of the consumer payments landscape generally, and facilitate evaluation of the remittance transfer rule's impact. . .[as well as] enable the FFIEC and the agencies to refine supervisory procedures and policies. . .[and] help inform any later policy decisions regarding remittance transfers and activities regarding remittance transfers that are mandated by section 1073 of the Dodd-Frank Act.'' [52]

In 2018, the Bureau published its report of its Dodd-Frank-mandated assessment of the Remittance Rule (''Assessment Report'').[53] Based on information surfaced by the Bureau's assessment as well as a subsequent Request for Information,[54] the Bureau proposed amendments to the Remittance Rule in 2019 (''Remittance Proposal'' or ''Proposal'').[55] The Remittance Proposal included a proposed effective date of July 21, 2020. On June 5, 2020, the Bureau published a Final Rule amending the Remittance Rule.[56]

Currently, Schedule RC–M, Memoranda, item 16, ''International remittance transfers offered to consumers,'' and its instructions are identical across the FFIEC 031, FFIEC 041, and FFIEC 051 Call Report forms. The item consists of four questions, two of which are further subdivided into four and three questions, for a total of nine different data points requested of respondents that meet certain criteria outlined in the current Call Report instructions.

Through the Remittance Proposal process, the Bureau identified certain proposed changes to the information collected in Schedule RC–M, item 16. These changes would better align item 16 with the Remittance Rule as amended, as well as streamline reporting for respondents and reduce burden where appropriate. The agencies propose that revised item 16 would consist of two questions, one of which would be further subdivided into three questions, for a total of four different data points. Item 16.a would be renamed ''Estimated number of international remittance transfers provided by your institution during the calendar year ending on the report date.'' This data item would be proposed to be collected annually in the December Call Report only. Item 16.b.(1) through 16.b.(3) would be completed only by institutions that reported 501 or more international remittance transfers in Schedule RC–M, item 16.a, in either the current report or the report for the previous calendar year-end report date.[57] The revised items 16.b.(1) through (3) would request data on the estimated dollar value of remittance transfers provided by an institution during the calendar year ending on the report date and its usage during this same period of the permanent exceptions for insured institutions as incorporated into the Remittance Rule by the Bureau's 2020 Final Rule. Specifically, an institution would report the following information in revised items 16.b.(1) through (3), if applicable:

(1) Estimated dollar value of international remittance transfers;

(2) Estimated number of international remittance transfers for which your institution applied the permanent exchange rate exception; and

(3) Estimated number of international remittance transfers for which your institution applied the permanent covered third-party fee exception.

Consistent with the current instructions for reporting estimated numbers and dollar values for international remittance transfers in Schedule RC–M, item 16, the estimates reported in revised items 16.a and 16.b.(1) through (3) should be based on a reasonable and supportable methodology and the estimated dollar value of international remittance transfers, if required to be reported in item 16.b.(1), is not required to be estimated in thousands of dollars.

III. Timing

The revisions associated with the interim final rules, the proposed and final deposit insurance assessments rule, and the CARES Act provisions have been approved by OMB through the emergency clearance process, and these revisions have taken effect for the March 31, 2020, Call Report and FFIEC 101 or the June 30, 2020, Call Report, FFIEC 101, and FFIEC 002, or will take effect for the September 30, 2020, FFIEC 002, as discussed in Sections II.A and B. For the additional proposed revisions to the Call Report and FFIEC 002 instructions that are related to the amendment of the Board's Regulation D, as discussed in section II.A, the agencies propose to make these revisions effective for reporting beginning in the first quarter of 2021.

For the accounting changes discussed in Section II.C, the agencies propose to make the revisions effective as of the March 31, 2021, report date, except for the revisions for last-of-layer hedging, which would be implemented following the FASB's adoption of a final last-of-layer hedge accounting standard. A final standard is not expected to be issued before the second half of 2021.

The agencies propose to make the revisions to Schedule RC–M for the international remittance transfer items discussed in Section II.D effective March 31, 2021.[58]

The agencies invite comment on any difficulties that institutions would expect to encounter in implementing the systems changes necessary to accommodate the proposed revisions to the Call Reports, FFIEC 101, and FFIEC 002 consistent with those effective dates.

The specific wording of the captions for the new or revised Call Report, FFIEC 101, and FFIEC 002 data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Proposed new Memorandum item 8, ''Estimated amount of expected recoveries of amounts previously written off included within the allowances for credit losses on loans and leases held for investment (included in item 7, ''Balance end of current period,'' above),'' would be added to Schedule RI–B, Part II, Changes in Allowances for Credit Losses.

(1) Do institutions have information readily available on the estimated amount of these expected recoveries that is proposed to be collected? If not, what additional steps would institutions need to take to be able to report this estimated amount?

(2) Although, as proposed, this item applies to the overall allowance for credit losses on loans and leases held for investment, would reporting institutions or users of allowance data prefer a different or more disaggregated

[52] *Ibid.*

[53] Bureau, *Remittance Rule Assessment Report* (Oct. 2018, rev. Apr. 2019), *https://files.consumerfinance.gov/f/documents/bcfp_remittance-rule-assessment_report_corrected_2019-03.pdf*

[54] 84 FR 17971 (Apr. 29, 2019).

[55] 84 FR 67132 (Dec. 6, 2019).

[56] 85 FR 34870 (Jun. 5, 2020).

[57] For the transitional December 2021 Call Report only, an institution would complete Schedule RC–M, items 16.b.(1) through 16.b.(3), only if it reports 501 or more international remittance transfers in Schedule RC–M, item 16.a, in the December 2021 Call Report or it reported a combined total of 501 or more international remittance transfers in Schedule RC–M, item 16.d.(1), in the June and December 2020 Call Reports.

[58] Therefore, institutions will report current Schedule RC–M, item 16, in December 2020; will not report current Schedule RC–M, item 16, at all in June 2021; and will report the proposed revised Schedule RC–M, item 16, in December 2021 (covering all of calendar year 2021).

collection of information on expected recoveries? If so, please provide specific reasons and describe the preferred different or more disaggregated collection.

(b) Proposed changes for reporting last-of-layer FVHBAs would be made to Call Report Schedule RC–B, Securities, and Schedule RC–C, Part I, Loans and Leases, and FFIEC 002 Schedule RAL, Assets and Liabilities, and Schedule C, Part I, Loans and Leases, following the FASB's adoption of a final last-of-layer hedge accounting standard.

(1) How do institutions that have implemented last-of-layer hedging under ASU 2017–12 currently report the FVHBAs associated with loans and AFS debt securities in the Call Report or the FFIEC 002?

(2) Do such institutions find it challenging to allocate these last-of-layer FVHBAs on an individual asset basis or on a portfolio basis for financial and regulatory reporting purposes? If so, please explain whether these challenges are greater for regulatory reporting than financial reporting purposes and describe the reasons for this.

(3) Should the agencies consider implementing the changes for reporting FVHBAs proposed in Section II.C.4 or some other interim reporting treatment for FVHBAs before the FASB's adoption of a final last-of-layer hedge accounting standard, provided the resulting reporting of FVHBAs would not be inconsistent with GAAP? Please describe any suggested other interim reporting treatment.

(c) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(d) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(e) Ways to enhance the quality, utility, and clarity of the information to be collected;

(f) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(g) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Assistant Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 16, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–15788 Filed 7–21–20; 8:45 am]

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

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and have been removed from the list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On July 17, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List under the relevant sanctions authorities listed below.

Individuals

1. LIRA JIRON, Bismarck Antonio (a.k.a. JIRON LIRA, Bismarck Antonio), Residencial Altos de Santo Domingo, Las Cuatro Esquinas, Managua, Nicaragua; 1 Cine Leon, 3 Cuadras al Norte 1/2 Cuadra al Oeste, Monsenor Lezcano, Managua, Nicaragua; Achuapa, Leon, Nicaragua; Petronic El Carmen, 7 C al Oeste y 2 1/2 C al Sur, Barrio Williams Fonseca, Esteli, Nicaragua; DOB 27 Apr 1973; POB Esteli, Nicaragua; Cedula No. 288–270473–0002Y (Nicaragua) (individual) [SDNTK].

2. ROMAN DOMINGUEZ, Erika, c/o TAURA S.A., Cali, Colombia; Cedula No. 66955540 (Colombia) (individual) [SDNT].

3. ISSA FAWAZ, Benny (a.k.a. ISSA FAUSE, Benny), Calle 12, No. 10–79, Maicao, La Guajira, Colombia; Calle 13, No. 7–49, Barrio El Centro, Maicao, La Guajira, Colombia; DOB 29 Sep 1974; POB Barranquilla, Colombia; Cedula No. 72204490 (Colombia); Passport 72204490 (Colombia) (individual) [SDNTK] (Linked To: YORUMA SHIPPING COMPANY, S.A.; Linked To: FAUSSE ISSA Y CIA. S. EN C.; Linked To: FAMILY FEDCO; Linked To: FEDCO IMPORT & EXPORT, S.A.; Linked To: MICRO EMPRESA ASHQUI).

4. JIMENEZ NARANJO, Carlos Mario (a.k.a. ''MACACO''), Calle 10C No. 25–45, Medellin, Colombia; DOB 26 Feb 1966; POB Envigado, Antioquia, Colombia; Cedula No. 71671990 (Colombia); Passport AH521672 (Colombia); alt. Passport AE915378 (Colombia) (individual) [SDNT].

5. LONDONO VASQUEZ, Marco Julio, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Carrera 63B No. 42–50, Medellin, Colombia; DOB 04 Dec 1955; POB Fredonia, Antioquia, Colombia; Cedula No. 15345634 (Colombia); Passport AG062408 (Colombia) (individual) [SDNT].

6. HERRERA RAMIREZ, Linda Nicolle, c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia (individual) [SDNT].

7. HERRERA RAMIREZ, Giselle, c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia (individual) [SDNT].

8. MEJIA MOLINA, Luis Bernardo, c/o BOSQUES DE AGUA SOCIEDAD POR ACCIONES SIMPLIFICADA, Medellin, Colombia; c/o BROKER CMS EL AGRARIO S.A., Envigado, Antioquia, Colombia; c/o FUMIGACIONES Y

REPRESENTACIONES AGROPECUARIAS S.A., Medellin, Colombia; c/o LUIS B MEJIA ASOCIADOS Y CIA LTDA., Medellin, Colombia; c/o ROSEVILLE INVESTMENTS S.A., Panama; Calle 20 Sur No. 26C–140, Medellin, Colombia; DOB 18 Mar 1945; POB Envigado, Antioquia, Colombia; Cedula No. 4325882 (Colombia) (individual) [SDNT].

9. TOBON CALLE, Martha Elena, c/o FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A., Medellin, Colombia; c/o LUIS B MEJIA ASOCIADOS Y CIA LTDA., Medellin, Colombia; Calle 20 Sur No. 26C–140, Medellin, Colombia; DOB 16 Mar 1962; Cedula No. 43035196 (Colombia) (individual) [SDNT].

Entities

1. FAMILY FEDCO, Calle 13, No. 14–36, Maicao, La Guajira, Colombia; NIT # 72204490–4 (Colombia) [SDNTK].

2. FAUSSE ISSA Y CIA. S. EN C., Calle 79 No. 44–34, Barranquilla, Colombia; NIT # 800061571–7 (Colombia) [SDNTK].

3. FEDCO IMPORT & EXPORT, S.A., La Calle 16 Avenue, Santa Isabel, P.O. Box 3114, Zona Libre, Colon, Panama; RUC # 660249–1–461129 (Panama) [SDNTK].

4. YORUMA SHIPPING COMPANY, S.A., Panama; RUC # 1420095–1–631618 (Panama) [SDNTK].

5. ADMINISTRADORA GANADERA EL 45 LTDA., Carrera 49 No. 61Sur-540 Bod. 137, Medellin, Colombia; Carrera 49A No. 48S–60 Bod. 102, Medellin, Colombia; NIT # 811038291–3 (Colombia) [SDNT].

6. CASA DEL GANADERO S.A., Almacen Troncal Principal la Costa Jardin, Caceres, Antioquia, Colombia; Carrera 49A No. 61Sur-540 Bod. 137, Medellin, Colombia; Carrera 49A No. 48Sur-60 Bod. 102, Medellin, Colombia; NIT # 811034345–4 (Colombia) [SDNT].

7. GANADERIA LUNA HERMANOS LTDA., Carrera 49 No. 61Sur-540, Medellin, Colombia; Carrera 49A No. 48S–60 Bod. 102, Medellin, Colombia; NIT # 811045931–8 (Colombia) [SDNT].

8. INVERSIONES EL MOMENTO S.A., Carrera 49 No. 61Sur-540, Medellin, Colombia; Carrera 49A No.48S–60 Bod. 102, Medellin, Colombia; NIT # 811030776–7 (Colombia) [SDNT].

9. INVERSIONES LICOM LTDA. (a.k.a. RESTAURANTE ANGUS BRANGUS), Carrera 42 No. 34–15, Medellin, Colombia; Carrera 45 No. 54–56, Via las Palmas, Medellin, Colombia; NIT # 811038211–4 (Colombia) [SDNT].

10. SOCIEDAD MINERA GRIFOS S.A., Avenida Rodrigo Mira Calle 53 Cras. 49 y 45, El Bagre, Antioquia, Colombia; Carrera 43 No. 1A Sur-29, Medellin, Colombia; NIT # 811033869–7 (Colombia) [SDNT].

11. TEJAR LA MOJOSA S.A., Corregimiento Piemonte, Vereda la Mojosa, Caceres, Antioquia, Colombia; Transversal 13 No. 20C–35, Caucasia, Antioquia, Colombia; NIT # 900110438–9 (Colombia) [SDNT].

12. BOSQUES DE AGUA SOCIEDAD POR ACCIONES SIMPLIFICADA, Carrera 43A No. 23–14, Medellin, Colombia; NIT # 900320463–4 (Colombia) [SDNT].

13. BROKER CMS EL AGRARIO S.A., Carrera 43A No. 23 Sur-15, Envigado, Antioquia, Colombia; NIT # 900185889–9 (Colombia) [SDNT].

14. FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A. (a.k.a. FUMAGRO S.A.), Calle 11 Sur No. 29D–27 Suite 702, Medellin, Colombia; NIT # 890402231–1 (Colombia) [SDNT].

15. LUIS B MEJIA ASOCIADOS Y CIA LTDA., Calle 4 Sur No. 43A–195 oficina 117, Medellin, Colombia; NIT # 811040695–1 (Colombia) [SDNT].

16. ROSEVILLE INVESTMENTS S.A., Panama; RUC # 753808–1–480790–33 (Panama) [SDNT].

17. TREMAINE CORP., Panama; RUC # 808568–1–497226–92 (Panama) [SDNT].

Additionally, on July 17, 2020, OFAC updated the SDN List for the following person, whose property and interest in property continue to be blocked under the relevant sanctions authority listed below.

Individual

From: CASTRO JARAMILLO, Monica Maria, c/o COMERCIALIZADORA DE GANADO Y RENTAS DE CAPITAL S.A., Medellin, Colombia; c/o FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A., Medellin, Colombia; c/o LUIS B MEJIA ASOCIADOS Y CIA LTDA., Medellin, Colombia; DOB 27 Oct 1971; Cedula No. 43574795 (Colombia); Passport AK476053 (Colombia) (individual) [SDNT].

To: CASTRO JARAMILLO, Monica Maria; DOB 27 Oct 1971; Cedula No. 43574795 (Colombia); Passport AK476053 (Colombia) (individual) [SDNT] (Linked To: COMERCIALIZADORA DE GANADO Y RENTAS DE CAPITAL S.A.)

Dated: July 17, 2020.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2020–15844 Filed 7–21–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more individuals and entities that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). OFAC has determined that one or more applicable legal criteria were satisfied to place the individuals and entities on the SDN List. All property and interests in property subject to U.S. jurisdiction of these individuals and entities are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 17, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individuals and entities are blocked under the relevant sanctions authorities listed below.

Individuals

1. ORTEGA MURILLO, Juan Carlos, Montoya 1 Csur 1c Arriba 1 C Sur, Managua, Nicaragua; DOB 17 Oct 1981; POB Managua, Nicaragua; nationality Nicaragua; Gender Male; Passport A0007589 (Nicaragua) issued 28 Feb 2007 expires 27 Feb 2012 (individual) [NICARAGUA].

Designated pursuant to section 1(a)(i)(D) of Executive Order 13851 of November 27, 2018, ''Blocking Property of Certain Persons Contributing to the Situation in Nicaragua,'' 83 FR 61505, (''E.O. 13851''), for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, any transaction or series of transactions involving deceptive practices or corruption by, on behalf of, or otherwise related to the Government of Nicaragua or a current or former official of the Government of Nicaragua, such as the misappropriation of public assets or expropriation of private assets for personal gain or political purposes, corruption related to government contracts, or bribery.

2. MOJICA MEJIA, Jose Jorge, Carretera Sur. Kilometro 7.5, Colonia Frawley, Frente a Gasolinera Uno, Managua, Nicaragua; DOB 10 Oct 1966; POB Managua, Nicaragua; nationality Nicaragua; Gender Male; Passport C02366793 (Nicaragua) issued 14 Jun 2018 expires 14 Jun 2028 (individual) [NICARAGUA].

Designated pursuant to section 1(a)(i)(D) of E.O. 13851 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, any transaction or series of transactions involving deceptive practices or corruption by, on behalf of, or otherwise related to the Government of Nicaragua or a current or former official of the Government of Nicaragua, such as the misappropriation of public assets or expropriation of private assets for personal gain or political purposes, corruption related to government contracts, or bribery.

Entities

1. DIFUSO COMUNICACIONES S.A. (a.k.a. DIFUSO AUDIOVISUALES), Reparto El Carmen, De la Iglesia el Carmen, 1 cuadra al sur, 1 cuadra arriba, 1 cda al sur, Managua, Nicaragua; Registration ID J0310000147205 (Nicaragua) [NICARAGUA] (Linked To: ORTEGA MURILLO, Juan Carlos).

Designated pursuant to section 1(a)(v) of E.O. 13851 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, ORTEGA MURILLO, Juan Carlos, a person whose property and interests in property are blocked pursuant to E.O. 13851.

2. MUNDO DIGITAL S.A. (a.k.a. SYDITEK MUNDO DIGITAL S.A.), Calle Central de Altamira del BDF 100 Mts Norte, Managua, Nicaragua; website *www.syditek.com.ni;* Registration ID J0310000131740 (Nicaragua) [NICARAGUA] (Linked To: MOJICA MEJIA, Jose Jorge).

Designated pursuant to section 1(a)(v) of E.O. 13851 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MOJICA MEJIA, Jose Jorge, a person whose property and interests in property are blocked pursuant to E.O. 13851.

Dated: July 17, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–15852 Filed 7–21–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

SUB–AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On July 17, 2020 OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. CHENG, Guifeng; DOB 02 Feb 1958; nationality China; Gender Female; Registration ID 31010819580202164 (China) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Foreign Narcotics Kingpin Designation Act (''Kingpin Act''), 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the Zheng Drug Trafficking Organization, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

2. JI, Songyan; DOB 15 Oct 1994; nationality China; Registration ID 310230199410154380 (China) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Foreign Narcotics Kingpin Designation Act (''Kingpin Act''), 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the Zheng Drug Trafficking Organization, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

3. ZHANG, Longbao; DOB 10 Nov 1954; alt. DOB 11 Oct 1954; nationality China; Registration ID 310230195411106219 (China) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Foreign Narcotics Kingpin Designation Act (''Kingpin Act''), 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the Zheng Drug Trafficking Organization, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

4. ZHENG, Guangfu; DOB 20 Jan 1958; nationality China; Registration ID 310107195801202418 (China) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Foreign Narcotics Kingpin Designation Act (''Kingpin Act''), 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the Zheng Drug Trafficking Organization, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

Entity

1. GLOBAL UNITED BIOTECHNOLOGY INC., Virgin Islands, British; Room 707, No. 67, Jinyu Road, Pudong, Shanghai 201206, China; website *www.globalrc.net;* Email Address *researchchemical@aliyun.com;* Registration Number 1700919 [SDNTK] (Linked To: ZHENG DRUG TRAFFICKING ORGANIZATION). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, the Zheng Drug Trafficking Organization, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

Dated: July 17, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–15847 Filed 7–21–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Certificate of Foreign Contracting Party Receiving Federal Procurement Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

DATES: Written comments should be received on or before September 21, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Chakinna Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202)317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

OMB Number: 1545–2263.

Form Number: Form W–14.

Abstract: Tax on Certain Foreign Procurement, Notice of Purposed Rulemaking, contains proposed regulations under section 5000C of the Internal Revenue Code. The proposed regulations affect U.S. government acquiring agencies and foreign persons providing certain goods or services to the U.S. government pursuant to a contract. This document also contains proposed regulations under section 6114, with respect to foreign persons claiming an exemption from the tax under an income tax treaty. Section 5000C imposes a 2% tax on foreign persons (as defined in section 7701(a)(30)), that are parties to specified Federal procurement contracts with the U.S. government entered into on and after January 2, 2011. This tax is imposed on the gross amount of specified Federal procurement payments and is generally collected by increasing the amount withheld under chapter 3. A Form W–14 must be provided to the acquiring agency (U.S. government department, agency, independent establishment, or corporation) to: Establish that they are a foreign contracting party; and If applicable, claim an exemption from withholding based on an international agreement (such as a tax treaty); or Claim an exemption from withholding, in whole or in part, based on an international procurement agreement or because goods are produced, or services are performed in the United States. A Form W–14 must be provided to the acquiring agency if a foreign contracting party has been paid a specified Federal procurement payment and the foreign contracting party is seeking to claim an exemption (in whole or in part) from the tax imposed by section 5000C. Form W–14 must be submitted when requested by the acquiring agency, whether or not an exemption (in whole or in part) is claimed from withholding under section 5000C.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal government.

Estimated Number of Annual Responses: 2,000.

Estimated Time Per Response: 5 hrs., 55 mins.

Estimated Total Annual Burden Hours: 11,840.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 9, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15829 Filed 7–21–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the General Business Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 3800, General Business Credit.

DATES: Written comments should be received on or before September 21, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Chakinna Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* General Business Credit.

OMB Number: 1545–0895.

Form Number: Form 3800.

Abstract: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, work opportunity credit, welfare-to-work credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Current Actions: We have made no changes to Form 3800 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms and individuals.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 33.38 hours.

Estimated Total Annual Burden Hours: 8,345,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15828 Filed 7–21–20; 8:45 am]

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Part II

Bureau of Consumer Financial Protection

12 CFR Part 1041

Payday, Vehicle Title, and Certain High-Cost Installment Loans; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1041

[Docket No. CFPB–2019–0006]

RIN 3170–AA80

Payday, Vehicle Title, and Certain High-Cost Installment Loans

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to amend its regulations governing payday, vehicle title, and certain high-cost installment loans. Specifically, the Bureau is revoking provisions of those regulations that: Provide that it is an unfair and abusive practice for a lender to make a covered short-term or longer-term balloon-payment loan, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay those loans according to their terms; prescribe mandatory underwriting requirements for making the ability-to-repay determination; exempt certain loans from the mandatory underwriting requirements; and establish related definitions, reporting, recordkeeping, and compliance date requirements. The Bureau is making these amendments to the regulations based on its re-evaluation of the legal and evidentiary bases for these provisions.

DATES: This rule is effective October 20, 2020.

FOR FURTHER INFORMATION CONTACT: Joseph Baressi, Lawrence Lee, or Adam Mayle, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Summary of the Rule

On November 17, 2017, the Bureau published a final rule (2017 Final Rule or Rule [1]) establishing consumer protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans, relying on authorities under title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act).[2] The 2017 Final Rule addressed two discrete topics. First, the Rule contained a set of provisions with respect to the underwriting of covered short-term and longer-term balloon-payment loans, including payday and vehicle title loans, and related recordkeeping and reporting requirements.[3] These provisions are referred to herein as the ''Mandatory Underwriting Provisions'' of the 2017 Final Rule. Second, the Rule contained a set of provisions, applicable to the same set of loans and also to certain high-cost installment loans,[4] establishing certain requirements and limitations with respect to attempts to withdraw payments on the loans from consumers' checking or other accounts.[5] These provisions are referred to herein as the ''Payment Provisions'' of the 2017 Final Rule.

The Rule became effective on January 16, 2018, although most provisions (12 CFR 1041.2 through 1041.10, 1041.12, and 1041.13) had a compliance date of August 19, 2019.[6] On January 16, 2018, the Bureau issued a statement announcing its intention to engage in rulemaking to reconsider the 2017 Final Rule.[7] A legal challenge to the Rule was filed on April 9, 2018, and is pending in the United States District Court for the Western District of Texas.[8] On October 26, 2018, the Bureau issued a statement announcing it expected to issue notices of proposed rulemaking to reconsider certain provisions of the 2017 Final Rule and to address the Rule's compliance date.[9]

On February 14, 2019, the Bureau published a notice of proposed rulemaking (2019 NPRM) to revoke the Mandatory Underwriting Provisions of the 2017 Final Rule.[10] The 2019 NPRM did not propose to amend the ''Payment Provisions'' of the 2017 Final Rule.

The Bureau is finalizing the amendments to the regulations as proposed in the 2019 NPRM. Specifically, the Bureau is revoking: (1) The ''identification'' provision, which states that it is an unfair and abusive practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that consumers will have the ability to repay the loans according to their terms; [11] (2) the ''prevention'' provision, which establishes specific underwriting requirements for these loans to prevent the unfair and abusive practice; [12] (3) the ''principal step-down exemption'' provision for certain covered short-term loans; [13] (4) the ''furnishing'' provisions, which require lenders making covered short-term or longer-term balloon-payment loans to furnish certain information regarding such loans to registered information systems (RISes) and create a process for registering such information systems; [14] (5) those portions of the recordkeeping provisions related to the mandatory underwriting requirements; [15] and (6) the portion of the compliance date provisions related to the mandatory underwriting requirements.[16] The Bureau also is revoking the Official Interpretations relating to these provisions. The Bureau is making these changes to the regulations based on a re-evaluation of the legal and evidentiary bases for these provisions.

The Bureau revokes the 2017 Final Rule's determination that it is an unfair practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that consumers will have the ability to repay the loans according to their terms. For the reasons discussed below, the Bureau withdraws the Rule's determination that consumers cannot reasonably avoid any substantial injury caused or likely to be caused by the failure to consider a borrower's ability to repay.[17] The Bureau also determines that, even if the Bureau had not revoked its reasonable avoidability finding, the countervailing benefits to

[1] 82 FR 54472 (Nov. 17, 2017) (codified at 12 CFR part 1041).

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 12 CFR 1041.4 through 1041.6, 1041.10, 1041.11, and portions of § 1041.12.

[4] The 2017 Final Rule refers to all three of these categories of loans together as covered loans. 12 CFR 1041.3(b).

[5] 12 CFR 1041.7 through 1041.9, and portions of § 1041.12.

[6] 82 FR 54472, 54814.

[7] *See* Bureau of Consumer Fin. Prot., *Statement on Payday Rule* (Jan. 16, 2018), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/.*

[8] *Cmty. Fin. Servs. Ass'n of Am.* v. *Consumer Fin. Prot. Bureau,* No. 1:18–cv–295 (W.D. Tex. filed Apr. 9, 2018). On November 6, 2018, the court issued an order staying the August 19, 2019 compliance date of the Rule pending further order of the court. *See id.,* ECF No. 53. The litigation is currently stayed. *See id.,* ECF No. 66 (Dec. 6, 2019).

[9] *See* Bureau of Consumer Fin. Prot., *Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date* (Oct. 26, 2018), *https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/.*

[10] *Payday, Vehicle Title, and Certain High-Cost Installment Loans,* 84 FR 4252 (proposed Feb. 14, 2019). On the same day, the Bureau published a notice of proposed rulemaking to delay the compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule. *See Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date,* 84 FR 4298 (proposed Feb. 14, 2019). On June 17, 2019, the Bureau published a final rule delaying the compliance date for the Mandatory Underwriting Provisions. *See* 84 FR 27907 (June 17, 2019).

[11] 12 CFR 1041.4.

[12] 12 CFR 1041.5.

[13] 12 CFR 1041.6.

[14] 12 CFR 1041.10 and 1041.11.

[15] 12 CFR 1041.12(b)(1) through (3).

[16] 12 CFR 1041.15(d).

[17] *See* 12 U.S.C. 5531(c)(1)(A).

consumers and competition in the aggregate from the identified practice would outweigh any relevant injury.[18]

Further, the Bureau revokes the 2017 Final Rule's determination that the identified practice is abusive. The Bureau determines that a lender's not considering a borrower's ability to repay does not take unreasonable advantage of particular consumer vulnerabilities.[19] The Bureau also withdraws the Rule's determination that consumers do not understand the materials risks, costs, or conditions of covered loans,[20] as well as its determination that consumers do not have the ability to protect their interests in selecting or using covered loans.[21]

II. Background

The **SUPPLEMENTARY INFORMATION** accompanying the 2017 Final Rule contains a more comprehensive description of the payday and vehicle title markets[22] and of the consumers who use these products.[23]

A. The Market for Short-Term and Balloon-Payment Loans

Consumers living paycheck to paycheck and with little to no savings often use credit as a means of coping with financial shortfalls.[24] These shortfalls may be due to mismatched timing between income and expenses, income volatility, unexpected expenses or income shocks, or expenses that simply exceed income.[25] According to a recent survey conducted by the Board of Governors of the Federal Reserve System (Board), one-quarter of adults are either just getting by or finding it difficult to get by; a similar percentage skipped necessary medical care in 2018 due to being unable to afford the cost. In addition, nearly 40 percent of adults reported they would either be unable to cover an emergency expense costing $400 or would have to sell something or borrow money to cover it.[26] Whatever the cause of these financial shortfalls, consumers in these situations sometimes seek what may broadly be termed a ''liquidity loan.''

The Mandatory Underwriting Provisions focus specifically on short-term loans and a smaller market segment of longer-term balloon-payment loans. The largest categories of short-term loans are ''payday loans,'' which are generally short-term loans required to be repaid in a lump-sum single payment on receipt of the borrower's next income payment, and short-term vehicle title loans, which are also almost always due in a lump-sum single payment, typically within 30 days after the loan is made.[27]

1. Payday Loans

Eighteen States and the District of Columbia prohibit payday lending or impose interest rate caps that most payday lenders find too low to enable them to make such loans profitably.[28] The remaining 32 States have either created a carve-out from their general usury caps for payday loans or do not regulate loan interest rates.[29] Several States that previously authorized payday lending have, over the past several years, changed their laws to restrict payday lending.[30] The States that do permit payday lending have enacted a wide variety of regulations on payday lending practices—including limits on price, or loan term, all of which reflect the judgments of the various States.[31] While a few States have enacted general requirements that payday lenders consider a borrower's ability to repay or set loan-to-income percentages,[32] no State has adopted

[18] *See* 12 U.S.C. 5531(c)(1)(B).

[19] *See* 12 U.S.C. 5531(d)(2).

[20] *See* 12 U.S.C. 5531(d)(2)(A).

[21] *See* 12 U.S.C. 5531(d)(2)(B).

[22] *See* 82 FR 54472, 54474–96.

[23] *Id.* at 54555–60.

[24] *Id.* at 54474.

[25] *Id.* (citing Rob Levy & Joshua Sledge, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers* (Ctr. for Fin. Servs. Innovation 2012), *https://www.fdic.gov/news/conferences/consumersymposium/2012/A%20Complex%20Portrait.pdf*).

[26] Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2018,* at 5, 23 (May 2019), *https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf;* and Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2018, Appendix A: Survey Questionnaire, https://www.federalreserve.gov/publications/appendix-a-survey-questionnaire.htm.* The 2016 survey relied upon in the 2017 Final Rule found that 44 percent of adults could not cover an emergency expense costing $400 or would cover it by selling something or borrowing money. *See* 82 FR 54472, 54474 & n.9 (citing Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2016,* at 2, 8 (May 2017), *https://www.federalreserve.gov/publications/files/2016-report-economic-well-being-us-households-201705.pdf*).

[27] 82 FR 54472, 54475.

[28] These jurisdictions are Arizona, Arkansas, Colorado, Connecticut, Georgia, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Dakota, Vermont, West Virginia, and Washington, DC Ariz. Rev. Stat. section 6–632; Ark. Const. art. XIX, sec. 13; *see* Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement, https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf; see also* Colo. Sec'y of State, *Official Certified Results—State Offices & Questions, https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/C_2* (Proposition 111); Conn. Gen. Stat. 36a–558(d); Ga. Code Ann. 16–17–8; Md. Code Ann. Com. Law 12–306(a)(2)(i); 209 Mass. Regs. Code tit. 209, 26.01; Mont. Code Ann. 31–1–722(2); N.H. Rev. Stat. 399–A:13(XX); N.J. Stat. Ann. 2C:21–19; 2017 N.M. Laws ch. 110 (H.B. 347); N.Y. Penal Law 190.40; N.C. Gen. Stat. 53–281; Ohio Rev. Code Ann. 1321.35 to 1321.48; 7 Pa. Cons. Stat. Ann. 6201 to 6219; S.D. Codified Laws 54–4–44, as amended by Initiated Measure 21 2 (Nov. 8, 2016); Vt. Stat. Ann. tit. 9, 41a; W. Va. Code 32A–3–1(e), 46A–4–107 to 46A–4–113; District of Columbia Laws 17–42 (Act 17–115) 2 (Nov. 24, 2007).

[29] *See, e.g.,* 82 FR 54472, 54477 & n.25. The 2017 Final Rule cited New Mexico and Ohio as payday authorizing States. At the time the rule was issued, New Mexico had enacted a law which had not yet taken effect, prohibiting short-term payday lending. As of April 27, 2019, Ohio effectively prohibited short-term payday and bans vehicle title lending. New Mexico and Ohio are no longer counted as payday authorizing States. *See* Ohio House Bill 123, *An Act to Modify the Short-Term Loan Act, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-123; https://www.com.ohio.gov/documents/fiin_HB123_Guidance.pdf.* Oklahoma for purposes of this rulemaking is counted as a payday-authorizing State, but SB 720 established August 1, 2020 as the date after which payday loans are banned. Loans of $1,500 or less must have a minimum loan term of 60 days, be repaid in fully amortizing payments of substantially equal amounts, and carry maximum fees of 17 percent per month plus database verification fees, *http://www.oklegislature.gov/BillInfo.aspx?Bill=sb720&Session=1800.* After August 1, 2020, references herein to Oklahoma law may not be applicable. In addition, in 2021, Virginia will no longer be counted as a payday-authorizing State when HB 789 takes effect. Among other things, the bill sets a four month minimum loan term for ''short-term'' loans, *https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB789&201+sum+HB789.*

[30] *See, e.g.,* 82 FR 54472, 54485–86. In addition to New Mexico and Ohio, voters in Colorado approved a ballot initiative on November 6, 2018, to cap annual percentage rates (APRs) on payday loans at 36 percent. This initiative took effect February 1, 2019, shortly before the release of the 2019 NPRM. Colorado is counted here as a State that prohibits short-term payday lending. *See* Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement, https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf; see also* Colo. Sec'y of State, *Official Certified Results—State Offices & Questions, https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/C_2* (Proposition 111). Until the ballot initiative, Colorado law required that payday loans have a six-month minimum loan term. Colo. Rev. Stat. 5–3.1–103. There was no prohibition on lenders making a single-installment loan due in six months, but all payday lenders reported that they offered only installment loans. 4 Colo. Code Regs. 902–1, Rule 17(B) (2010); State of Colorado, Dep't of Law, *2016 Deferred Deposit/Payday Lenders Annual Report,* question 10, *https://coag.gov/office-sections/consumer-protection/consumer-credit-unit/uniform-consumer-credit-code/general-information/.* As described in note 29 above, Oklahoma will, as of August 1, 2020, prohibit payday lending. In addition, as of January 1, 2020, California caps rates on installment loans of $2,500 to $10,000 at 36 percent plus the Federal Funds Rate, *https://dbo.ca.gov/2019/12/11/new-requirements-for-cfl-licensees/.* California caps rates on smaller installment loans up to $2,500 at 30 percent APR, depending on the loan amount, and also caps payday loan fees as noted above. *See* Cal. Fin. Code section 9:22303.

[31] *See* 84 FR 4252, 4254.

[32] *See* 82 FR 54472, 54480–81, 54491. Community Financial Services of America, a trade association representing payday and small-dollar lenders,

Continued

mandatory underwriting requirements for payday loans that are similar to those in the 2017 Final Rule.

The primary channel through which consumers obtain payday loans, as measured by total dollar volume, is through State-licensed storefront locations, although the share of online loan volume has grown while storefront loan volume has continued to decline. There were an estimated 13,700 storefronts in 2018, down from the industry's peak of over 24,000 stores in 2007.[33] The decline was due to several factors including industry consolidation, changes in State laws, increased consumer demand for alternative products such as installment loans, and a shift to greater online lending.[34]

From 2009 to 2014, storefront payday lending generated approximately $30 billion in new loans per year; by 2018 the volume had declined to $15 billion,[35] although these numbers may include products other than single-payment loans. Combined storefront and online payday loan volume was $30.5 billion in 2017 and $29.2 billion in 2018,[36] down from a peak of about $50 billion in 2007.[37] The online payday loan industry generates about 50 percent of total payday loan revenue.[38] In 2018, storefront industry revenue (fees paid on payday loans) was $2.1 billion.[39] Combined storefront and online payday revenue was estimated at $4.8 billion in 2017 and $4.6 billion in 2018,[40] down from a peak of over $9 billion in 2012.[41] Reports from several States and publicly traded companies offering payday loans show a shift from payday loans to small-dollar installment loans and other credit products. For example, California and Texas payday loan volume decreased approximately 35 percent from 2015 to 2018; there was a corresponding increase in installment loan volume (of amounts at or below $2,500) of approximately 35 percent over the same period.[42] Two publicly traded companies offering payday loans reported a significant decrease in the percent of revenue contributed by single-payment or short-term credit products and simultaneous substantial increases in percent of revenue contributed by other credit products.[43]

When the 2019 NPRM was issued, there were at least 12 payday lenders with approximately 200 or more storefront locations,[44] and, despite the storefront decline, these lenders continue to have significant market share.[45] The Bureau estimated in 2017 that over 2,400 storefront payday lenders are small businesses as defined by the Small Business Administration (SBA);[46] the number of storefront payday lenders classified as small businesses has likely declined to some extent, continuing the trend noted over the last several years.[47]

Estimates of the number of consumers who use payday loans annually range from 2.2 million households[48] to 12 million individuals.[49] Given the number of storefronts and the average number of customers per storefront plus the presence of the large online market for payday loans, the actual number of borrowers appears closer to the higher end of the estimates.[50]

A small percentage of the up to 12 million consumers who take out payday loans each year complain to the Bureau about them. In 2016, for example, the Bureau handled approximately 4,400 complaints in which consumers reported ''payday loan'' as the complaint product.[51] The Bureau received approximately 2,900 payday loan complaints in 2017, approximately 2,300 in 2018, and approximately 2,100 in 2019.[52] Consumers have complained most frequently about unexpected fees

includes among its best practices that its members should, before extending credit, ''undertake a reasonable, good-faith effort to determine a customer's creditworthiness and ability to repay the loan.'' *See* Cmty. Fin. Servs. of Am., *Best Practices for the Small-Dollar Loan Industry, https://www.cfsaa.com/files/files/CFSA-BestPractices.pdf* (last visited Apr. 28, 2020).

[33] *See* John Hecht, *State of the Industry: Innovating and Adapting Amongst a Complex Backdrop* (Mar. 2019) (Jefferies LLC, slide presentation) (on file) (Hecht 2019). In the 2017 Final Rule, the Bureau cited the same analyst's estimate of 16,480 payday storefronts in 2015. *See* 82 FR 54472, 54480 & n.53.

[34] Hecht 2019.

[35] *See id.*

[36] *See id.*

[37] John Hecht, *The State of Short-Term Credit Amid Ambiguity, Evolution and Innovation* (2016) (Jefferies LLC, slide presentation) (on file) (Hecht 2016).

[38] *See* 82 FR 54472, 54487; Hecht 2016.

[39] *See* Hecht 2019.

[40] *See id.*

[41] Hecht 2016.

[42] Calculations were based on total reported volume of single payment transactions and installment transactions for amounts less than $2,500. *See* California Dep't of Bus. Oversight, *California Department of Business Oversight Annual Report and Industry Survey: Operation of Payday Lenders Licensed Under the California Deferred Deposit Transaction Law* for 2015 through 2018, *https://dbo.ca.gov/payday-lenders-publications/* and Texas Office of Consumer Credit Comm'r, *Credit Access Business Annual Data Report* for 2015 through 2018, *https://occc.texas.gov/publications/activity-reports.*

[43] At Enova International, a publicly traded online lender, revenue from installment, line of credit, and receivables purchase agreement (small business) products rose from 2 percent to 89 percent from 2009 to 2019, while short-term loan revenue fell from 98 percent to 11 percent. Similarly, at CURO, revenue from installment and open-end line-of-credit products rose from 19 percent to 78 percent from 2010 to 2019. *See* Enova Int'l, *Investor Presentation: November 2019,* at 9 (Nov. 2019), *http://ir.enova.com/download/Enova+Investor+Presentation+%2811-6-2019%29+-+FINAL.pdf* and CURO Group, *November 2019: Stephens Investment Conference,* at 7 (Nov. 13, 2019), *https://ir.curo.com/~/media/Files/C/Curo-IR/reports-and-presentations/stephens-conference-november-2019.pdf.*

[44] 84 FR 4252, 4255.

[45] *See* Hecht 2019.

[46] 82 FR 54472, 54479 & n.52.

[47] *See id.* at 54480 & n.53.

[48] *See* Fed. Deposit Ins. Corp., *2017 FDIC National Survey of Unbanked and Underbanked Households,* at 41 (Oct. 2018), *https://www.fdic.gov/householdsurvey/2017/2017report.pdf* (FDIC 2017 Survey). This is a reduction from the 2015 numbers of 2.5 million households cited in the 2017 Final Rule; *see* 82 FR 54472, 54479 & n.42 (citing Fed. Deposit Ins. Corp., *2015 FDIC National Survey of Unbanked and Underbanked Households,* at 2, 34 (Oct. 20, 2016), *https://www.fdic.gov/householdsurvey/2015/2015report.pdf*). The FDIC used the United States Census Bureau's definition of ''household'' in the Current Population Survey. *See* FDIC 2017 Survey at 73; *https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html#household.*

[49] 82 FR 54472, 54479 & n.44 (citing Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 4 (July 2012), *http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.*).

[50] Community Financial Services of America, a trade association representing payday and small-dollar lenders, states that approximately 12 million Americans use small-dollar loans each year. *See https://www.cfsaa.com/* (last visited Apr. 28, 2020). The 2017 Final Rule pointed to one study estimating, based on administrate State data from three States, that the average payday store served around 500 customers per year. 82 FR 54472, 54480 & n.59 (citing Pew Charitable Trusts, *Payday Lending in America: Policy Solutions,* at 18 (Report 3, 2013), *https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf*).

[51] Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2016,* at 33 (Mar. 2017), *https://www.consumerfinance.gov/documents/3368/201703_cfpb_Consumer-Response-Annual-Report-2016.pdf.*

[52] Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2017,* at 34 (Mar. 2018), *https://www.consumerfinance.gov/documents/6406/cfpb_consumer-response-annual-report_2017.pdf;* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2018,* at 62 (Mar. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf;* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2019,* at 62 (Mar. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.* To provide a sense of the number of complaints for payday loans relative to the number of complaints for other product categories, in 2019, approximately 0.6 percent of all consumer complaints the Bureau received were about payday loans, and 0.2 percent were about vehicle title loans. Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2019,* at 9 (Mar. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.* There is some overlap across product categories, for example, a consumer complaining about the conduct of a debt collector seeking to recover on a payday loan would be in the debt collection product category rather than the payday loan product category.

or interest associated with payday loans and in the last two years frequently selected the category ''struggling to pay your loan.'' [53]

2. Single-Payment Vehicle Title Loans

The second major category of loans covered by the Mandatory Underwriting Provisions is single-payment vehicle title loans. As with payday loans, the States have taken different regulatory approaches with respect to single-payment vehicle title loans. Sixteen States permit single-payment vehicle title lending at rates that vehicle title lenders will offer under their business models.[54] Another six States permit only title installment loans but those loans are not affected by the Mandatory Underwriting Provisions.[55] Three States (Arizona, Georgia, and New Hampshire) permit single-payment vehicle title loans but prohibit or substantially restrict payday loans.[56] Although a few States have enacted general requirements that single-payment vehicle title lenders consider a borrower's ability to repay or set loan-to-income percentages,[57] no State has adopted mandatory underwriting requirements for single-payment vehicle title loans that are similar to those in the 2017 Final Rule.

Information about the vehicle title market is more limited than that available for the storefront payday industry.[58] According to a 2015 report, there were approximately 8,000 title loan storefront locations in the United States, about half of which also offered payday loans.[59] Of the locations that predominantly offered vehicle title loans in 2017, three privately held firms dominated the market and together accounted for approximately 2,500 stores in over 20 States.[60] In addition to the large title lenders, in 2017 there were about 800 vehicle title lenders that were small businesses as defined by the SBA.[61]

Estimates of the number of consumers who use vehicle title loans annually have ranged from 1.8 million households to 2 million adults, although these estimates do not necessarily differentiate between users of single-payment and installment vehicle title loans.[62] The demographic profiles of vehicle title borrowers appear to be comparable to the demographics of payday borrowers, which is to say that they tend to be lower and moderate income.[63]

As with payday loans, a small percentage of the estimated two million consumers who take out vehicle title loans each year file complaints with the Bureau. In 2019, the Bureau received approximately 530 complaints involving vehicle title loans, down 7 percent from 2018.[64] In 2019, consumers most frequently complained about unexpected fees or interest and struggling to pay their vehicle title loans.[65] Vehicle title loan complaints made up 0.2 percent of all consumer complaints the Bureau received in 2019.[66]

3. Longer-Term Balloon-Payment Loans

The third category of loans covered by the Mandatory Underwriting Provisions is longer-term balloon-payment loans which generally involve a series of small, often interest-only, payments followed by a single larger lump sum payment.[67] There does not appear to be a large market for such loans. However, in the preamble to the 2017 Final Rule, the Bureau expressed the concern that the market for these longer-term balloon-payment loans, with structures similar to payday loans that pose similar risks to consumers, might grow if only covered short-term loans were regulated under the 2017 Final Rule.[68] Because the market was relatively small, the Bureau supplemented its analysis of these loans by using relevant information on related types of covered longer-term loans, such as hybrid payday loans, payday installment loans, and vehicle title installment loans.[69] The profile of borrowers in the market for longer-term balloon-payment loans is similar to those seeking covered short-term and vehicle title loans—they also generally have low average incomes, poor credit histories, and recent credit-seeking activity.[70]

4. Short-Term Lending by Depository Institutions

Since the issuance of the 2017 Final Rule, prudential regulators have released additional regulations and guidance on small-dollar lending by depository institutions. On October 5, 2017, the Office of the Comptroller of the Currency (OCC) rescinded its November 2013 ''Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products.'' [71] From its market monitoring activities, the Bureau is aware that at least one large bank has

[53] Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2018,* at 64 (Mar. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf;* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2019,* at 64 (Mar. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.*

[54] Alabama, Mississippi, New Hampshire, Oregon, and Tennessee authorize single-payment title lending and Arizona, Delaware, Georgia, Idaho, Louisiana, Minnesota, Missouri, Nevada, Texas, Utah, and Wisconsin authorize both single-payment or installment title lending. *See* Pew Charitable Trusts, *Auto Title Loans—Market Practices and Borrowers' Experiences* (2015), *https://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf* (updated to reflect State law changes since 2015) (Pew Auto Title Loans). As noted in the 2017 Final Rule, New Mexico enacted a law in 2017, effective January 1, 2018, that prohibits single-payment vehicle title loans and allows only installment title lending. *See* 82 FR 54472, 54490. As of April 27, 2019, Ohio prohibits lenders from making loans of $5,000 or less secured by a vehicle title or any other collateral. *See https://www.com.ohio.gov/documents/fiin_HB123_Guidance.pdf; see also* Ohio House Bill 123, *An Act to Modify the Short-Term Loan Act, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-123.*

[55] *See* 82 FR 54472, 54490. *See also* Pew Auto Title Loans (updated to reflect State law changes since 2015 by adding New Mexico).

[56] *Id.*

[57] *See* 82 FR 54472, 54491.

[58] *Id.*

[59] *See id.* at 54491 & n.197 (citing Pew Charitable Trusts, *Auto Title Loans—Market practices and borrowers' experiences,* at 1 (2015), *https://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

[60] 82 FR 54472, 54492; *see also https://www.midwesttitleloans.net/SiteMap, https://www.northamericantitleloans.net/SiteMap* (last visited Apr. 28, 2020). Store counts for these three firms may include States with stores that offer installment vehicle title loans.

[61] 82 FR 54472, 54492 & n.200 (explaining that State reports have been supplemented with estimates from Center for Responsible Lending, revenue information from public filings, and from non-public sources). *See* Jean Ann Fox *et al., Driven to Disaster: Car-Title Lending and Its Impact on Consumers,* at 7 (Consumer Fed'n of Am. & Ctr. for Responsible Lending (2013), *https://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/CRL-Car-Title-Report-FINAL.pdf.*).

[62] FDIC 2017 Survey at 41. The number of households using vehicle title loans in the 2017 FDIC survey rose from the 1.7 million households reported in the 2015 survey cited in the 2017 Final Rule. The individual user estimate is from a 2015 report. *See* Pew Auto Title Loans at 33; 82 FR 54472, 54491 & n.195.

[63] FDIC 2017 Survey (calculations made using custom data tool).

[64] Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2019,* at 67 (Mar. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.* The vehicle title category may include complaints about both single payment and installment vehicle title loans. In addition, there is some overlap across product categories; a consumer complaining about debt collection on a vehicle title loan would be in the debt collection product category rather than the vehicle title loan product category.

[65] *Id.* at 69.

[66] *Id.* at 9.

[67] 82 FR 54472, 54475. For examples of longer-term balloon-payment loans, *see id.* at 54486 & n.143, 54490 & n.179.

[68] *Id.* at 54472, 54527–28.

[69] *Id.* at 54580.

[70] *Id.* at 54581.

[71] OCC News Release 2017–118, *Acting Comptroller of the Currency Rescinds Deposit Advance Product Guidance* (Oct. 5, 2017), *https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-occ-2017-118.html.*

reopened its deposit advance products to new customers. On May 23, 2018, the OCC issued a bulletin encouraging banks ''to offer responsible short-term, small-dollar installment loans, typically two to 12 months in duration with equal amortizing payments, to help meet the credit needs of consumers.'' [72] From its market monitoring activities, the Bureau is aware that since the release of the OCC's bulletin, at least one large bank is offering a short-term, small-dollar installment lending product. On November 14, 2018, the Federal Deposit Insurance Corporation (FDIC) issued a request for information on small-dollar lending ''to encourage FDIC-supervised institutions to offer small-dollar credit products that are responsive to customers' needs and that are underwritten and structured prudently and responsibly.'' [73]

In addition, on October 1, 2019 the National Credit Union Administration (NCUA) published a rule expanding its original Payday Alternative Loan (PAL) program with a new program referred to as ''PALs II'' ''to encourage responsible lending [by Federal credit unions] that allows consumers to address immediate needs while working towards fuller financial inclusion.'' [74] The PALs II rule, effective December 2, 2019, authorizes Federal credit unions to offer small-dollar loans with larger loan amounts and longer loan terms than were available under the original PALs rule, removes the membership tenure requirement, and limits Federal credit unions to one type of PALs loan at a time. The other requirements of the original PAL rule apply to PALs II.[75]

The 2017 Final Rule establishes a safe harbor under the conditional exemption for alternative loans for Federal credit unions' original PALs loans.[76] The conditional exemption is, by its terms, limited to original PALs loans. If Federal credit unions structure PALs II to be substantially repaid within 45 days, PALs II could be covered loans under the 2017 Final Rule. However, Federal credit unions are unlikely to structure PALs II loans to be repaid within 45 days as PALs II are generally designed for larger loan amounts of up to $2,000 and must fully amortize over the life of the loan.[77] Consequently, it is highly unlikely that PALs II meet the definition of covered short-term loans under the 2017 Final Rule or are subject to its Mandatory Underwriting Provisions. In addition, the Payment Provisions of the 2017 Final Rule do not apply to PALs II with loan terms longer than 45 days due to the NCUA's 28 percent interest rate limitation on PALs II loans.[78]

The Bureau is of course aware of the COVID–19 pandemic and its economic effects. On March 26, 2020, in response to the pandemic, the Bureau and four other Federal regulators issued a joint statement encouraging banks, savings associations, and credit unions to offer responsible small-dollar loans including closed-end installment loans, open-end lines of credit, and appropriately structured single-payment loans.[79] The statement also recognized that in ordinary circumstances small-dollar loans may be beneficial to consumers to address unexpected expenses or temporary income shortfalls.[80] The joint statement's analysis of responsible small-dollar lending is distinct from the analysis in this rulemaking and the determinations herein with respect to the 2017 Final Rule. The Bureau's analysis or determinations in this final rule do not rely in any way on either the occurrence of the pandemic or its economic effects.

On May 20, 2020, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency issued joint small-dollar loan lending principles for purposes of their oversight of banks, savings associations, and credit unions under their authorities. The analysis of those agencies is distinct from the Bureau's analysis in this final rule under its statutory authorities.[81]

On May 22, 2020, the Bureau issued a No-Action Letter (NAL) template to the Bank Policy Institute under its innovation policies that insured depository institutions may use to apply for a NAL covering their small-dollar credit products. The template is intended to further competition in the small-dollar lending space and facilitate robust competition that fosters access to credit.[82]

B. The Mandatory Underwriting Provisions of the 2017 Final Rule

Section 1041.4 contains an identification provision which provides that it is an unfair and abusive practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that consumers have the ability to repay the loans according to their terms. The preamble to the 2017 Final Rule sets out the legal reasoning and factual analysis in support of the unfairness and abusiveness findings to § 1041.4.[83]

Section 1041.5 contains a detailed and extensive set of underwriting requirements adopted to prevent the unfair and abusive practice. Specifically, § 1041.5(c)(2) requires lenders making covered short-term or longer-term balloon-payment loans to obtain a written statement from the consumer with respect to the consumer's net income and major financial obligations; obtain verification evidence of the consumer's income, if reasonably available, and major financial obligations; obtain a report from a national consumer reporting

[72] OCC Bulletin 2018–14, *Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending* (May 23, 2018), *https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html.*

[73] Fed. Deposit Ins. Corp., *Financial Institution Letters: Request for Information on Small-Dollar Lending* (Nov. 14, 2018), *https://www.fdic.gov/news/news/financial/2018/fil18071.html.*

[74] 84 FR 51942 (Oct. 1, 2019); Nat'l Credit Union Admin., Press Release, *Payday Alternative Loan Rule Will Create More Alternatives for Borrowers* (Sept. 2019), *https://www.ncua.gov/newsroom/press-release/2019/payday-alternative-loan-rule-will-create-more-alternatives-borrowers.*

[75] 84 FR 51942, 51950–52.

[76] *See* 12 CFR 1041.3(e)(4), 84 FR 51942, 54873–74.

[77] *See* 12 CFR 701.21(c)(7)(iv)(A)(*1*) and (*5*). PALs II may also meet the 2017 Final Rule's conditional exemption for accommodation loans in 12 CFR 1041.3(f).

[78] *See* 12 CFR 1041.2(a)(7) and 1041.3(b)(2). The NCUA also authorizes an application fee of up to $20 on both types of PALs. 12 CFR 701.21(c)(7)(iii)(A) and (c)(7)(iv)(A). Under the Truth in Lending Act, an application fee charged to all applicants, whether or not credit is extended, is exempt from the finance charge and APR calculation. 12 CFR 1026.4(c)(1). If in the future the NCUA increases the permitted PALs II rate above 36 percent APR, potentially bringing PALs II within the scope of the Payment Provisions, PALs II may qualify for other exemptions. *See* 12 CFR 1041.3(f) (conditional exemption for accommodation loans) and 1041.8(a)(1)(ii) (conditional exclusion for certain transfers by account-holding institutions).

[79] Bd. of Governors of the Fed. Reserve Sys., Bureau of Consumer Fin. Prot., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, *Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID–19* (Joint Statement), *https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_small-dollar-lending-covid-19_2020-03.pdf.* The agencies also stated that the loans should be consistent with safety and soundness, treat consumers fairly, and comply with applicable statutes and regulations, including consumer protection laws.

[80] *Id.*

[81] Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, *Federal agencies share principles for offering Responsible Small-Dollar Loans* (May 2020), *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200520a.htm.*

[82] Bureau of Consumer Fin. Prot., *CFPB Takes Action to Help Struggling Homeowners Seeking Mitigation Efforts; Consumers Seeking Small-Dollar Loans* (May 2020), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-helps-struggling-homeowners-seeking-mitigation-efforts-consumers-seeking-small-dollar-loans/.*

[83] 82 FR 54472, 54553–624.

agency and a report from a registered information system with respect to the consumer; and review its own records and the records of its affiliates for evidence of the consumer's required payments under any debt obligations. Using these inputs, the lender is generally required pursuant to § 1041.5(b) and (c)(1) to make a reasonable projection of the consumer's net income and payments for major financial obligations over the ensuing 30 days; calculate either the consumer's debt-to-income ratio or the consumer's residual income; estimate the consumer's basic living expenses; and determine based upon the debt-to-income or residual income calculations whether the consumer will be able to make the payments for his or her payment obligations and the payments under the covered loan and still meet the consumer's basic living expenses during the term of the loan and for a period of 30 days thereafter.[84]

This determination is required each time a consumer returns to take out a new loan, although pursuant to § 1041.5(c)(2)(ii)(D) the lender generally need not obtain a new national credit report if one was obtained within the prior 90 days. If a consumer has obtained three loans each within 30 days of the prior loan, pursuant to § 1041.5(d)(2) the lender cannot make another covered short-term or longer-term balloon-payment loan for a period of 30 days.

As also noted above, § 1041.6 contains a principal step-down exemption that allows lenders to make covered short-term loans without an ability-to-repay determination under § 1041.5. In order to qualify for the principal step-down exemption pursuant to § 1041.6(b)(1)(i), the principal cannot exceed $500 for the first in a sequence of covered short-term loans, and pursuant to § 1041.6(b)(3) the principal step-down exemption is not available for vehicle title loans. A lender may not make more than three loans in succession under this principal step-down exemption and the loans must provide for a ''principal step-down'' over the sequence pursuant to § 1041.6(b)(1)(ii) and (iii) such that the second loan in a sequence can be for only two-thirds of the amount of the initial loan and the third loan in a sequence for one-third of the initial loan amount.

Pursuant to § 1041.6(c)(1), a lender cannot make a loan under the principal step-down exemption to a consumer who has had an outstanding covered short-term or longer-term balloon-payment loan in the preceding 30 days. Pursuant to § 1041.6(c)(3), the lender also cannot make a loan that would result in the consumer having more than six covered short-term loans outstanding during any consecutive 12-month period or result in the consumer being in debt on any covered short-term loans for longer than 90 days in any consecutive 12-month period. To verify the consumer's eligibility, before making a conditionally exempt covered short-term loan pursuant to § 1041.6(a), the lender must review the consumer's borrowing history in its own records and those of its affiliates and obtain a report from a Bureau-registered information system to determine a potential loan's compliance with § 1041.6(b) and (c).

Lenders making covered short-term and longer-term balloon-payment loans—including conditionally exempt covered short-term loans—generally are required to furnish certain information on those loans to every registered information system that has been registered with the Bureau for 180 days or more. Pursuant to § 1041.10(c)(1), certain information must be furnished no later than the date on which the loan is consummated or as close in time as feasible thereafter; pursuant to § 1041.10(c)(2), updates to such information must be furnished within a reasonable period after the event that requires the update.

In adopting the Mandatory Underwriting Provisions in 2017, the Bureau considered and rejected a number of alternatives, including requiring disclosures, adopting a payment-to-income ratio requirement, adopting one of the various State law approaches to regulating short-term loans (such as rollover caps, less detailed ability-to-repay frameworks, complete bans on short-term lending products), and other suggestions from commenters. A comprehensive description of the Bureau's consideration and treatment of these alternatives is set forth in the 2017 Final Rule.[85]

III. Outreach

In developing the 2019 NPRM, the Bureau took into account the input it received from stakeholders through its efforts to monitor and support industry implementation of the 2017 Final Rule, as well as comments received in response to other Bureau initiatives, such as a series of requests for information (RFIs) the Bureau published in 2018.[86] The Bureau also held a series of briefing calls with various government, industry, and consumer group stakeholders on the 2019 NPRM.

Interagency Consultation. As discussed in connection with section 1022(b)(2) of the Dodd-Frank Act below, the Bureau's outreach included consultation with other Federal consumer protection and prudential regulators, and their feedback has assisted the Bureau in preparing this final rule.

Consultation with State and Local Officials. The Bureau's outreach has included calls with State attorneys general, State financial regulators, and organizations representing the officials charged with enforcing applicable Federal, State, and local laws on small-dollar loans.

Tribal Consultation. On December 19, 2018, the Bureau held a consultation with representatives from a number of Indian tribes about what it might address in its proposed rulemaking. Federally recognized Indian tribes were invited to participate in this consultation. On March 13, 2020, the Bureau held a consultation regarding the finalization of the 2019 NPRM. Federally recognized Indian tribes were invited to participate in this consultation.

Public Comments. The Bureau received approximately 197,000 comments on the 2019 NPRM. All comments have been posted to the public docket for this rulemaking.[87] These comments included several hundred detailed comments from consumer groups, trade associations, non-depository lenders, banks, credit unions, research and advocacy organizations, members of Congress, industry service providers, fintech companies, Tribal leaders, faith leaders and coalitions of faith leaders, and State and local government officials and agencies. The Bureau allowed into the docket and considered comments received after the comment period had closed.

The Bureau did not tally precisely comments supporting or opposing the 2019 NPRM. A minority of comments were hard to categorize as simply in favor of or in opposition to reconsidering the 2017 Final Rule. As with the 2017 Final Rule, it was possible to achieve a rough approximation that broke down the

[84] The Rule defines ''basic living expenses'' and ''major financial obligations.'' 12 CFR 1041.5(a)(1) and (3).

[85] *See* 82 FR 54472, 54636–40.

[86] *See* Bureau of Consumer Fin. Prot., *Calls for Evidence, https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence/* (lasted visited Mar. 12, 2020).

[87] *https://www.regulations.gov/docket?D=CFPB-2019-0006.*

universe of comments in this manner. More than 150,000 commenters wrote in favor of payday lending generally or in opposition to regulation generally. Approximately 31,000 commenters wrote in opposition to payday lending generally or in opposition to regulation generally.

Somewhat fewer comments either explicitly supported or opposed generally the proposed revocation of the 2017 Final Rule or could be fairly read to support or oppose the specific rule proposed in the 2019 NPRM. Of the individual comments that specifically addressed the 2019 NPRM, just over half (approximately 29,000 comments) more specifically supported the 2019 NPRM and/or opposed the Mandatory Underwriting Provisions of the 2017 Final Rule, while somewhat fewer (approximately 25,000 comments) more specifically opposed the 2019 NPRM and/or supported the Mandatory Underwriting Provisions of the 2017 Final Rule.

A rough estimate of pro and con submissions by individuals may provide insight as to public interest in a topic and to individual consumer experiences. However, under both the Administrative Procedure Act (APA)[88] and the Dodd-Frank Act, the Bureau must base its determinations in rulemaking on the facts and the law in the rulemaking record as a whole.

A comment submitted by a consumer group observed that many of the individual comments writing in favor of the 2019 NPRM used identical or near-identical language and stories, and even repeated certain typographical errors. The consumer group stated that such patterns suggested that the comments were not submitted by actual consumers sharing their real experiences. The comment did not provide support for the suggested inference.

Ex parte communications. In addition to comments submitted to the docket, the Bureau also considered input from 17 *ex parte* meetings and telephone conferences. These communications were memorialized in the form of summary memoranda and placed into the docket for this rulemaking.[89]

Comments on the Payment Provisions. In the 2019 NPRM, the Bureau did not propose to reconsider the Payment Provisions of the 2017 Final Rule. The Payment Provisions are outside the scope of this final rule. However, the Bureau has received a rulemaking petition to exempt debit card payments from the Rule's Payment Provisions.

The Bureau also received requests related to various aspects of the Payment Provisions or the Rule as a whole, including requests to exempt certain types of lenders or loan products from the Rule's coverage and to delay the compliance date for the Payment Provisions. The Bureau has engaged with several stakeholders on their requests related to various aspects of the Payment Provisions, including receiving questions related to implementation as well as requests to exempt certain types of lenders or loan products from the Rule's coverage. The Bureau, concurrent with the release of this final rule, has issued compliance aids, including FAQs and an updated Small Entity Compliance Guide, to respond to certain queries and to support ongoing implementation efforts. In addition, the Bureau has also issued a policy statement to address concerns pertaining to the coverage of certain large loans. The Bureau will monitor and assess the effects of the Payment Provisions and determine whether further action is needed in light of what it learns. In addition, the Bureau intends to use its market monitoring authority to gather data on whether the requirement in the 2017 Final Rule that lenders provide consumers with ''unusual withdrawal'' notices before the lenders make certain withdrawal attempts are made affects the number of unsuccessful withdrawals made from consumers' accounts.

IV. Legal Authority

The Bureau adopted the Mandatory Underwriting Provisions in principal reliance on the Bureau's authority under section 1031(b) of the Dodd-Frank Act.[90] Section 1031(b) of the Dodd-Frank Act provides that the Bureau ''may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.'' Section 1031(b) of the Dodd-Frank Act further provides that rules under section 1031 may include requirements for the purpose of preventing such acts or practices.

Section 1031(c)(1) of the Dodd-Frank Act provides that the Bureau shall have no authority under section 1031 to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers, and that such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[91] The unfairness provisions of the Dodd-Frank Act are similar to the unfairness provisions under the Federal Trade Commission Act (FTC Act), and the meaning of the Bureau's authority under section 1031(b) is informed by the FTC Act unfairness standard and Federal Trade Commission (FTC or Commission) and other Federal agency rulemakings.[92] When applying section 1031(c) of the Dodd-Frank Act, the Bureau also considers the FTC's ''Commission Statement of Policy on Scope of Consumer Unfairness Jurisdiction'' (FTC Unfairness Policy Statement), the principles of which Congress generally incorporated into section 5 of the FTC Act.[93]

Under section 1031(d) of the Dodd-Frank Act, the Bureau ''shall have no authority . . . to declare an act or practice abusive in connection with the provision of a consumer financial product or service'' unless the act or practice meets at least one of several enumerated conditions.[94] Section 1031(d)(2) of the Dodd-Frank Act provides, in pertinent part, that an act or practice is abusive when it takes unreasonable advantage of: (1) A consumer's lack of understanding of the

[88] 5 U.S.C. 551 *et seq.*, 701 *et seq.*

[89] The docket is available at *https://www.regulations.gov/docket?D=CFPB-2019-0006.*

[90] 12 U.S.C. 5531(b).

[91] 12 U.S.C. 5531(c)(1). Additionally, section 1031(c)(2) of the Dodd-Frank Act provides that in determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination. 12 U.S.C. 5531(c)(2).

[92] 82 FR 54472, 54520. *See also* 15 U.S.C. 41 *et seq.* Section 5(n) of the FTC Act, as amended in 1994, provides that the FTC shall have no authority to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the FTC may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination. 15 U.S.C. 45(n).

[93] *See* Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), *reprinted in In re Int'l Harvester Co.*, 104 F.T.C. 949, 1070–88 (1984); *see also* S. Rep. No. 103–130, at 12–13 (1993) (legislative history to FTC Act amendments indicating congressional intent to codify the principles of the FTC Unfairness Policy Statement).

[94] 12 U.S.C. 5531(d).

material risks, costs, or conditions of the product or service; or (2) a consumer's inability to protect the interests of the consumer in selecting or using a consumer financial product or service.

In addition to section 1031 of the Dodd-Frank Act, the Bureau relied on other legal authorities for certain aspects of the Mandatory Underwriting Provisions.[95] These include: The principal step-down exemption for certain loans in § 1041.6; two provisions (§§ 1041.10 and 1041.11) that facilitate lenders' ability to obtain certain information about consumers' borrowing history from information systems that have registered with the Bureau; and certain recordkeeping requirements in § 1041.12.

In adopting each of these provisions, the Bureau relied on one or more of the following authorities. Section 1022(b)(3)(A) of the Dodd-Frank Act authorizes the Bureau, in a rulemaking, to conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services from any rule issued under title X, which includes a rule issued under section 1031, as the Bureau determines is necessary or appropriate to carry out the purposes and objectives of title X. In doing so, the Bureau must take into consideration the factors set forth in section 1022(b)(3)(B) of the Dodd-Frank Act.[96] Section 1022(b)(3)(B) specifies three factors that the Bureau shall, as appropriate, take into consideration in issuing such an exemption.[97] The Bureau also relied, in adopting certain provisions, on its authority under section 1022(b)(1) of the Dodd-Frank Act to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws.[98] The term ''Federal consumer financial law'' includes rules prescribed under title X of the Dodd-Frank Act, including those prescribed under section 1031.[99] Additionally, the Bureau relied, for certain provisions, on other authorities, including those in sections 1021(c)(3), 1022(c)(7), 1024(b)(7), and 1032 of the Dodd-Frank Act.[100]

The Bureau's decisions to use these authorities were premised on its decision to use its authority under section 1031 of the Dodd-Frank Act. In light of the Bureau's decision to revoke its use of section 1031 authority in the Mandatory Underwriting Provisions, the Bureau now concludes that it must also revoke its uses of these other authorities in the Mandatory Underwriting Provisions. The specific provisions of the 2017 Final Rule that the Bureau is revoking are discussed further in the section-by-section analysis in part VIII below.

V. Amendments to 12 CFR Part 1041 To Eliminate the Mandatory Underwriting Provisions—Revoking the Identification of an Unfair Practice

The Bureau has determined that the grounds provided in the 2017 Final Rule do not support its determination that the identified practice is unfair, thereby eliminating the basis for the Mandatory Underwriting Provisions to address that conduct.[101]

This part explains the Bureau's reasons for determining that the identified practice in the 2017 Final Rule is not unfair under section 1031 of the Dodd-Frank Act. Combined with the Bureau's determinations concerning abusive practices set out in part VI below, the Mandatory Underwriting Provisions are therefore not supported by an appropriate legal or evidentiary basis.[102]

Part V.A reviews certain of the factual predicates and legal conclusions underlying this use of authority. Part V.B sets forth the Bureau's legal and factual bases, under section 1031(c) of the Dodd-Frank Act, for withdrawing its previous finding that an injury associated with the identified practice is not reasonably avoidable. Part V.C analyzes the reasons why the Bureau has revalued the countervailing benefits under the unfairness analysis and determined that they were greater than the Bureau found in the 2017 Final Rule, and that the benefits to consumers and competition in the aggregate from the practice outweigh any such injury.

A. Overview of the Factual Predicates and Legal Conclusions Underlying the Identification of an Unfair Practice in § 1041.4

As noted above, section 1031(c)(1)(A) of the Dodd-Frank Act states that the Bureau has no authority to declare an act or practice to be unfair unless the Bureau has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury which is not reasonably avoidable by consumers and that such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[103]

In the 2017 Final Rule, the Bureau found that the practice of making covered short-term or longer-term balloon-payment loans to consumers without reasonably determining if the consumers have the ability to repay them according to their terms causes or is likely to cause substantial injury to consumers. The Bureau reasoned that where lenders were engaged in this identified practice and the consumer in fact lacks the ability to repay, the consumer will face choices—default, delinquency, and reborrowing, as well as the negative collateral consequences of being forced to forgo major financial obligations or basic living expenses to cover the unaffordable loan payment—each of which the Bureau found in the 2017 Final Rule leads to injury for many of these consumers and ''the sum of that injury is very substantial.'' [104]

[95] *See* 82 FR 54472, 54522.

[96] 12 U.S.C. 5512(b)(3)(A).

[97] 12 U.S.C. 5512(b)(3)(B).

[98] 12 U.S.C. 5512(b)(1). The Bureau also interprets section 1022(b)(1) of the Dodd-Frank Act as authorizing it to revoke or amend a previously issued rule if it determines such rule is not necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, including a rule issued to identify and prevent unfair, deceptive, or abusive acts or practices.

[99] 12 U.S.C. 5481(14).

[100] *See* 82 FR 54472, 54522; *see also* 12 U.S.C. 5511(c)(3), 5512(c)(7), 5514(b)(7), 5522.

[101] The rulemaking addresses the legal and evidentiary bases for particular rule provisions identified in this final rule. It does not prevent the Bureau from exercising other tool choices, such as appropriate exercise of supervision and enforcement tools, consistent with the Dodd-Frank Act and other applicable laws and regulations. It also does not prevent the Bureau from exercising its judgment in light of factual, legal, and policy factors in particular circumstances as to whether an act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers, and whether such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

[102] The Bureau notes that, alongside covered short-term loans, the 2017 Final Rule included covered longer-term balloon-payment loans within the scope of the identified unfair and abusive practice. The Bureau stated that it was concerned that the market for covered longer-term balloon-payment loans, which is currently quite small, could expand dramatically if lenders were to circumvent the Mandatory Underwriting Provisions by making these loans without assessing borrowers' ability to repay. 82 FR 54472, 54583–84. The Bureau did not separately analyze the elements of unfairness and abusiveness for covered longer-term balloon-payment loans. *See id.* at 54583 n.626. Because the Bureau's identification in the 2017 Final Rule that the failure to determine ability to repay was unfair for covered longer-term balloon-payment loans was predicated on its identification that it was unfair to fail to determine ability to repay for covered short-term loans, in the 2019 NPRM the Bureau proposed that if the identification for covered short-term loans is revoked then the identification for covered longer-term balloon-payment loans also should be revoked. The Bureau received no comments on this proposed treatment of covered longer-term balloon-payment loans and so finalizes it as proposed.

[103] 12 U.S.C. 5531(c)(1).

[104] 82 FR 54472, 54590–94.

The Bureau in the 2017 Final Rule found that consumers could not reasonably avoid this substantial injury. The Bureau stated that, under section 1031(c)(1)(A) of the Dodd-Frank Act, an injury is reasonably avoidable if consumers ''have reasons generally to anticipate the likelihood and severity of the injury and the practical means to avoid it.'' [105] The Bureau added: ''[t]he heart of the matter here is consumer perception of risk, and whether borrowers are in [a] position to gauge the likelihood and severity of the risks they incur by taking out covered short-term loans in the absence of any reasonable assessment of their ability to repay those loans according to their terms.'' [106]

In applying this standard, the 2017 Final Rule focused on borrowers' ability to predict their individual outcomes prior to taking out loans. The Bureau acknowledged that it ''is possible that many borrowers accurately anticipate their debt duration.'' [107] However, the Bureau stated that its ''primary concern is for those longer-term borrowers who find themselves in extended loan sequences'' and that for those borrowers ''the picture is quite different, and their ability to estimate accurately what will happen to them when they take out a payday loan is quite limited.'' [108] That led the Bureau to conclude that ''many consumers do not understand or perceive the probability that certain harms will occur'' [109] and that therefore it would not be reasonable to expect consumers to take steps to avoid injury.[110] Note that, although the Bureau made these statements about consumers who take out payday loans as part of an extended sequence, the identified practice and the corresponding Mandatory Underwriting Provisions to address that practice apply to all consumers who take out all payday loans, including those that are not part of an extended sequence.

The 2017 Final Rule based that finding primarily on the Bureau's interpretation of limited data from a study by Professor Mann of Columbia Law School. The Mann study compared consumers' predictions when taking out a payday loan about how long they would be in debt with administrative data from lenders showing the actual duration consumers were in debt.[111] The Bureau did not base its central findings on the conclusions in Professor Mann's study. Rather, the Bureau selected limited data compiled in the course of that study, conducted its own analysis of the data, and interpreted the results as ''provid[ing] the most relevant data describing borrowers' expected durations of indebtedness with payday loan products.'' [112] The Bureau's interpretation of limited data from the Mann study is discussed in part V.B.1 below.[113]

In further support of the finding in the 2017 Final Rule that some consumers were not in a position to evaluate the likelihood and severity of these risks and therefore it would not be reasonable to expect consumers to take steps to avoid the injury, the Bureau in the 2017 Final Rule relied on other findings, including those related to the marketing and servicing practices of providers of short-term loans,[114] and on the Bureau's own expertise and experience in supervisory matters and enforcement actions concerning covered lenders in the markets for covered short-term and longer-term balloon-payment loans.[115] These additional factors are discussed in detail in part V.C.2 below.

B. Reasonable Avoidability

1. Reasonable Avoidability—Legal Standard

The Bureau's Proposal

The Bureau determined in the 2017 Final Rule that making covered short-term or longer-term balloon-payment loans without reasonably assessing a borrower's ability to repay the loan according to its terms is an unfair act or practice. In making this determination, the Bureau concluded that this practice: (1) Caused or was likely to cause substantial injury to consumers; (2) which is not reasonably avoidable by consumers; and (3) that such injury was not outweighed by countervailing benefits to consumers or competition.[116]

In the 2017 Final Rule, the Bureau interpreted section 1031(c)(1)(A) of the Dodd-Frank Act to mean that for an injury to be reasonably avoidable consumers must ''have reason generally to anticipate the likelihood and severity of the injury and the practical means to avoid it.'' [117] The Bureau interpreted this standard as requiring consumers to have a specific understanding of the magnitude and severity of their personal risks such that they could accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan.[118] The Bureau stated in the 2017 Final Rule that such borrowers ''typically understand that they are incurring a debt which must be repaid within a prescribed period of time and that, if they are unable to do so, they will either have to make other arrangements or suffer adverse consequences.'' [119] The Bureau also stated that its interpretation of limited data from the Mann study indicated that most payday borrowers expected some repeated sequences of loans.[120] Nonetheless, the Bureau stated that ''[t]he heart of the matter here is consumer perception of risk, and whether borrowers are in [a] position to gauge the likelihood and severity of the risks they incur by taking out covered short-term loans in the absence of any reasonable assessment of their ability to repay those loans according to their terms.'' [121] Because it found that consumers do not understand or perceive the probability that certain harms will occur, including the substantial injury that can flow from default, reborrowing, and the negative collateral consequences of making unaffordable payments, the Bureau found that consumers could not reasonably avoid the harm.[122]

The Bureau in the 2019 NPRM expressed concern about the standard that it applied in the 2017 Final Rule for reasonable avoidability under section 1031(c)(1)(A) of the Dodd-Frank Act. The 2019 NPRM stated that, in assessing whether consumers could reasonably avoid harm, the Bureau in the 2017 Final Rule concluded that they could not without a *specific* understanding of their *individualized* risk, as determined by their ability to accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan.[123] In

[105] *Id.* at 54594.

[106] *Id.* at 54597.

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *Id.* at 54594.

[111] Ronald J. Mann, *Assessing the Optimism of Payday Loan Borrowers,* 21 Supreme Court Econ. Rev. 105 (2013) (discussed at 82 FR 54472, 54568–70, 54592, 54597); *see also* 82 FR 54472, 54816–17, 54836–37 (section 1022(b)(2) analysis discussion of the Mann study).

[112] 82 FR 54472, 54816.

[113] The Bureau also referenced two academic studies, one of which compared borrowers' belief about the average borrower with data about the average outcome of borrowers and the other of which compared borrowers' predictions of their own borrowing with average outcomes of borrowers in another State. These studies found that borrowers appear, on average, somewhat optimistic about the length of their indebtedness. *See id.* at 54568, 54836. However, the Bureau noted the weaknesses of these studies, *id.* at 54568, and, as discussed, relied primarily on the Bureau's interpretation of limited data from the Mann study.

[114] *See, e.g., id.* at 54616.

[115] *Id.* at 54505–07.

[116] *Id.* at 54588.

[117] *Id.* at 54594.

[118] *Id.* at 54594–96.

[119] *Id.* at 54615.

[120] *Id.* at 54569.

[121] *Id.* at 54597.

[122] *Id.* at 54594; *see also id.* at 54597.

[123] *Id.* at 54597–98.

reconsidering this interpretation of reasonable avoidability, the Bureau preliminarily determined that consumers need not have a specific understanding of their individualized likelihood and magnitude of harm such that they could accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan for the injury to be reasonably avoidable. The Bureau reasoned that requiring consumers to know their individualized likelihood and magnitude of risk of harm for that harm to be reasonably avoidable would overstate consumer injury and effectively shift the burden to lenders to make such determinations. This burden shifting would deter lenders from offering products or product features, which would suppress rather than facilitate consumer choice.

The 2019 NPRM stated that the particular problem with the 2017 Final Rule is illustrated by how the Bureau responded to several comments that urged the Bureau to mandate consumer disclosures instead of imposing an ability-to-repay requirement. In rejecting that suggestion, the Bureau stated that ''generalized or abstract information'' about the attendant risks would ''not inform the consumer of the risks of the particular loan in light of the consumer's *particular* financial situation.'' [124] Upon further consideration, in the 2019 NPRM the Bureau preliminarily determined that there was a better reasonable avoidability standard than the one set out in the 2017 Final Rule. The 2019 NPRM explained that FTC Act precedent informs the Bureau's understanding of the unfairness standard under section 1031(c)(1)(A) of the Dodd-Frank Act. In analyzing unfairness under the FTC Act, the FTC and courts have held that ''an injury is reasonably avoidable if consumers have reason to anticipate the impending harm and the means to avoid it,'' [125] meaning that ''people know the physical steps to take in order to prevent'' injury,[126] but also ''understand the necessity of actually taking those steps.'' [127] The 2019 NPRM noted that the Bureau in the 2017 Final Rule had not identified relevant precedent suggesting that consumers must understand their own specific individualized likelihood and magnitude of harm to reasonably avoid injury.

The Bureau also stated in the 2019 NPRM that its approach to reasonable avoidability was consistent with trade regulation rules promulgated by the FTC over several decades to address unfair or deceptive practices that occur on industry-wide bases.[128] To prevent such conduct, the Bureau stated that the FTC has routinely established disclosure requirements that mandate that businesses provide to consumers general information about material terms, conditions, or risks related to products or services.[129] However, according to the 2019 NPRM, no FTC trade regulation rule based on unfairness has required businesses to provide individualized forecasts or disclosures of each customer's or prospective customer's own specific likelihood and magnitude of potential harm.[130]

The Bureau stated in the 2019 NPRM its preliminary conclusion that injury is reasonably avoidable if payday borrowers have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms and understand the necessity of taking reasonable steps to prevent resulting injury. Specifically, this means consumers need only understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other arrangements they may either end up in extended loan sequences, default, or struggle to pay other bills after repaying their payday loan. The Bureau preliminarily determined in the 2019 NPRM that this approach, consistent with the FTC's longstanding approach on informed consumer decision-making in its interpretation of the unfairness standard, is the better interpretation of section 1031(c)(1)(A) as a legal and policy matter. In the Bureau's preliminary judgment, this approach appropriately emphasized prohibiting practices that prevent or hinder informed consumer decision-making in the marketplace.[131]

Applying an interpretation in the 2019 NPRM that was more consistent with FTC precedent, the Bureau preliminarily concluded that, assuming for purposes of argument that the identified practice causes or is likely to cause substantial injury, consumers could reasonably avoid that injury. As noted above, in the 2017 Final Rule, the Bureau found that payday loan borrowers ''typically understand they are incurring a debt which must be repaid within a prescribed period of time and that, if they are unable to do so, they will either have to make other arrangements or suffer adverse consequences.'' [132] The 2019 NPRM stated that consumers who have reborrowed in the past would seem particularly likely to have an understanding that such reborrowing is relatively common even if they cannot predict specifically how long they will need to borrow. Further, the 2019 NPRM noted a Bureau analysis of a study of State-mandated payday loan disclosures—which inform consumers about repayment and reborrowing rates—in which the majority of consumers in the study continued to take out payday loans despite the disclosures.[133] The 2019 NPRM stated that a plausible explanation for the limited effect of disclosures on consumer behavior in this study is that payday loan users were already aware that such loans can result in extended loan sequences.

The 2019 NPRM stated that the Bureau in the 2017 Final Rule did not offer evidence that would support the conclusion that consumers cannot reasonably avoid substantial injury from

[124] *Id.* at 54637 (emphasis added).

[125] *See Davis* v. *HSBC Bank Nev.,* 691 F.3d 1152, 1168 (9th Cir. 2012).

[126] *See Int'l Harvester,* 104 F.T.C. at 1066.

[127] *Id.*

[128] Section 18 of the FTC Act provides that the FTC is authorized to prescribe ''rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce'' within the meaning of section 5 of the FTC Act. 15 U.S.C. 57a. The FTC's trade regulation rules are codified at 16 CFR part 400.

[129] *See, e.g., Use of Prenotification Negative Option Plans Rule,* 16 CFR 425.1(a)(1) (promotional material must clearly and conspicuously disclose material terms); *Funeral Industry Practices Rule,* 16 CFR 453.2(b) (requiring itemized price disclosures of funeral goods and services and other non-consumer specific disclosures); *Credit Practices Rule,* 16 CFR 444.3 (prohibiting certain practices and requiring disclosures about cosigner liability).

[130] For example, the Credit Practices Rule requires that a covered creditor to provide a ''Notice to Cosigner'' disclosure prior to a cosigner becoming obligated on a loan. This notice advises in a concise and general manner consumers who cosign obligations about their potential liability. This notice is not individually tailored and does not require a covered creditor to disclose information about the severity or likelihood of risks related to cosigner liability. *See* 16 CFR 444.3.

[131] As the FTC stated in the FTC Unfairness Policy Statement: ''[W]e expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market. We anticipate that consumers will survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.'' FTC Unfairness Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1074. *See also Orkin Exterminating Co.* v. *FTC,* 849 F.2d 1354, 1365 (11th Cir. 1988) (''The Commission's focus on a consumer's ability to reasonably avoid injury 'stems from the Commission's general reliance on free and informed consumer choice as the best regulator of the market.''') (quoting *Am. Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 976 (D.C. Cir. 1985) (*AFSA*)).

[132] 82 FR 54472, 54615.

[133] *Id.* at 54577–78; *see* Tex. Office of Consumer Credit Comm'r, *Credit Access Businesses, http://occc.texas.gov/industry/cab.*

taking out payday loans applying a standard that focuses on understanding that is sufficient to alert consumers of the need to take steps to protect themselves from the harm from taking out such loans. The Bureau also found in the 2017 Final Rule that consumers who would not be offered a payday loan under either § 1041.5 or § 1041.6 would have alternatives to payday loans.[134] Accordingly, the Bureau preliminarily determined that there is not a sufficient evidentiary basis on which to find that consumers cannot reasonably avoid substantial injury caused or likely to be caused by lenders making covered short-term and longer-term balloon-payment loans without assessing borrowers' ability to repay.[135]

The Bureau sought comments on reasonable avoidability, including the Bureau's revised interpretation of reasonable avoidability under section 1031(c)(1) of the Dodd-Frank Act. The Bureau requested comment about the types or sources of information with respect to consumer understanding about covered short-term and longer-term balloon-payment loans that would be pertinent to a determination of whether consumers can reasonably avoid the substantial injury caused or likely to be caused by the identified practice.

Comments Received—Reasonable Avoidability Standard

Industry commenters and a group of 12 State attorneys general stated that the 2019 NPRM's proposed application of reasonable avoidability in unfairness was consistent with established principles of consumer protection law. A group of 12 State attorneys general stated that the Dodd-Frank Act requires the Bureau to look to the FTC Act when interpreting its unfair, deceptive, or abusive act or practice (UDAAP) authorities. A commenter asserted that understanding has been long understood to mean a general awareness of possible outcomes, not an understanding of one's individual likelihood of being exposed to risks. Commenters stated that requiring covered lenders to assess whether consumers can avoid harm by repaying a loan would shift the risk calculus from consumers to lenders and deprive consumers of choice.

Several commenters opined on the legal standards the Bureau should use when assessing reasonable avoidability more broadly. Citing *Katharine Gibbs School (Inc.)* v. *FTC,* a commenter stated that FTC precedent does not support the use of unfairness authority to prescribe core economic terms, such as imposing an ability-to-repay requirement.[136] Industry commenters and 12 State attorneys general commented that the proper focus of reasonable avoidability is on free and informed consumer choice. According to the commenters, unless a lender's conduct interferes with free choice, such as through deception or coercion, harm from a financial product is reasonably avoidable. In other words, according to the commenters, if any of the reasons that consumers could not avoid harm caused by a lender was not itself also caused by the lender, the act or practice is not unfair.

Consumer groups and a group of 25 State attorneys general stated that the 2019 NPRM's proposed standard was unreasonably restrictive and misapplied lessons from FTC precedent. Some commenters stated that FTC precedent indicates that consumers must understand their individualized likelihood and magnitude of harm—a general understanding of risk is insufficient. Citing *International Harvester,* a group of 25 State attorneys general stated that for consumers to understand the necessity of taking steps to avoid harm, they must understand the ''full consequences'' that might follow from their decision to use covered loans.[137]

Other commenters stated that the 2019 NPRM mischaracterized the 2017 Final Rule's standard for reasonable avoidability.[138] According to these commenters, the 2017 Final Rule did not state that consumers had to have a specific understanding of their individualized risks for a harm to be reasonably avoidable. Rather, a general awareness of the specific risks of injury was sufficient. Thus, according to these commenters, the 2019 NPRM's standard for reasonable avoidability is essentially identical to the 2017 Final Rule's standard.

At least one commenter stated that the 2019 NPRM's application of reasonable avoidability is inconsistent with the Bureau's proposed standard. The 2019 NPRM stated that for harm to be reasonably avoidable, ''consumers need only to understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other arrangements they either end up in long loan sequences, default, or struggle to pay other bills after repaying their payday loan.'' A commenter argued that this statement appears to omit the ''likelihood and magnitude of risks of harm'' language in the standard and ignores whether consumers have the means to avoid the harm.

Some commenters stated that in crafting the 2019 NPRM's proposed standard, the Bureau misread portions of *International Harvester.* One commenter stated that the specific disclosure that the 2019 NPRM cited as making harm reasonably avoidable was criticized by the Commission for failing to spell out the exact nature of the hazard at a level of detail that would effectively motivate compliance.[139]

Comments Received—Consumer Understanding of the Risk of Harm

In applying the proposed standard and assessing whether injury is reasonably avoidable, industry commenters and a group of 12 State attorneys general stated that consumers have sufficient information to understand the likelihood and magnitude of covered loan risk. Commenters asserted that consumers rationally choose to use covered loan products and a lack of understanding does not drive covered loan use.

In support of the proposition that consumers have requisite understanding about covered loan risk of harm, a non-profit research and advocacy organization commenter stated that the 2017 Final Rule recognized that consumers generally understand how covered loans function and that non-payment has consequences.[140] Twelve State attorneys general agreed with the 2019 NPRM's interpretation of a Bureau analysis of a study of State-mandated payday loan disclosures to conclude that the disclosures' limited impact on reborrowing suggests that consumers are already aware that such loans can result in extended loan sequences.[141] Another

[134] 82 FR 54472, 54840–41.

[135] Relatedly, the 2019 NPRM proposed to find that ''robust and reliable'' evidence was necessary in order to support a determination that consumers cannot reasonably avoid injury, in light of the dramatic impacts of the Rule on the market; this approach to requiring ''robust and reliable'' evidence is discussed in part V.B.2 of this preamble.

[136] 612 F.2d 658 (2d Cir. 1979).

[137] *Int'l Harvester,* 104 F.T.C. at 1066.

[138] The 2019 NPRM stated that ''[i]n assessing whether consumers could reasonably avoid harm, the Bureau in the 2017 Final Rule concluded that they could not without a specific understanding of their individualized risk, as determined by their ability to accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan.'' 84 FR 4252, 4269.

[139] *Int'l Harvester,* 104 F.T.C. at 1054.

[140] 82 FR 54472, 54615 (''[B]orrowers who take out a payday, title, or other covered short term loan typically understand that they are incurring a debt which must be repaid within a prescribed period of time and that if they are unable to do so, they will either have to make other arrangements or suffer adverse consequences.'').

[141] 84 FR 4252, 4271.

commenter identified two studies—the Mann study and the Miller study [142]—that the commenter stated demonstrate that consumers make informed choices when using covered loans. Commenters also pointed to the purportedly low frequency of consumer complaints about covered loans to the Bureau, FTC, and State regulatory agencies as evidence that consumers understand covered loan products and appreciate their access and use.

In contrast, consumer group commenters and 25 State attorneys general disagreed with the 2019 NPRM's preliminary determination that the 2017 Final Rule wrongly found that consumers do not understand the likelihood and magnitude of risk of harm. A commenter stated that the 2017 Final Rule specifically found that consumers do not understand the risks and costs of unaffordable loans made without assessing ability to repay, including how long they would be in debt or the consequences of extended reborrowing.[143] Commenters stated that the 2019 NPRM did not provide a reasoned explanation to disregard that finding. Further, these commenters stated that the 2019 NPRM offered no evidence that payday loan users understand the various harms that flow from extended reborrowing, that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other arrangements they either end up in long loan sequences, or that such users even have a general awareness about the risks of covered loans.

These commenters also objected to the Bureau's preliminary determination in the 2019 NPRM that the record supports the finding that consumers affirmatively understand the likelihood and magnitude of risk of harm related to covered loans. Several commenters stated that the Bureau's interpretation of a study of State-mandated payday loan disclosures was not plausible and was speculative. An academic commenter stated that this interpretation is contradicted by a study that the Bureau had not previously considered that found a significant proportion of payday loan users understand neither loan terms nor costs.[144] This commenter asserted that a more plausible interpretation of the study is that the State-mandated disclosures are simply ineffective. A commenter also objected to the 2019 NPRM's suggestion that consumers can infer certain risks associated with covered loans, either because of their limited options or the fact payday loans are advertised as products designed to assist those in financial distress. This commenter stated that this suggestion ignores informational asymmetry between consumers and lenders regarding the performance of credit products. Further, this commenter stated that any mere inference that short-term loans are risky does not reveal information about the likelihood and magnitude of that risk. A commenter also questioned the 2019 NPRM's proposed presumption that borrowers' prior experience with covered loans imparts sufficient understanding about risk, noting that the Mann study found that heavy users "are least likely" to predict how long they will be in loan sequences.

In arguing that harm is not reasonably avoidable, commenters noted that the 2019 NPRM did not address seller behavior that can hinder understanding and consumer choice. Such conduct cited by these commenters includes deceptive advertising and marketing, providing misleading or incomplete information, failing to comply with State small-dollar lending laws, such as disclosures rules and rollover limits, preventing borrowers from self-amortizing, and coercing or steering borrowers into unaffordable reborrowing.

Several commenters stated that lack of understanding need not always be present to establish that harm is not reasonably avoidable and that the pervasiveness and widespread substantial injury is itself significant evidence of unavoidable harm. At least one commenter suggested that the fact that consumers experience payday lending problems and continue using them is evidence that the harm is not reasonably avoidable.

Several commenters also discussed how behavioral factors—such as financial distress and optimism bias—impair understanding and skew consumer perception of risk. A commenter noted that storefront loan borrowers frequently have unrealistic expectations about their ability to repay loans because they focus on short-term, emergency needs over potentially devastating future long-term losses. Another commenter stated that consumers cannot reasonably understand the dramatically higher levels of risk involved with covered loans compared to conventional credit, given the open-ended costs associated with long loan sequences.

Comments Received—Means To Avoid Harm

With respect to whether consumers have the means to avoid harm, consumer group commenters and 25 State attorneys general stated that consumers have alternatives to payday loans. Alternatives identified by these and other commenters include credit cards, non-recourse pawn loans, payday loan alternatives (*e.g.,* wage access products), fintech offerings, borrowing from friends, family, and community organizations, and cutting back on expenses.[145] Commenters cited the millions of consumers living in States where payday lending is banned or restricted as evidence that consumers have alternatives to covered loans. In the absence of payday loans, consumer group commenters and 25 State attorneys general stated that consumers do not turn to illegal loans—a point with which some industry commenters disagreed. At least one commenter stated that access to more reliable and transparent credit options—like low-cost personal loans, payday loan alternatives, and safer products from mainstream financial institutions—exist for most consumers and are consistently expanding. Another commenter stated that banks and credit unions are well-positioned to responsibly issue small-dollar loans if they are provided with proper guidelines.

Notwithstanding a general consensus reflected in the comments that payday loan alternatives exist, some commenters stated that consumers lack

[142] *See* Ronald J. Mann, *Assessing the Optimism of Payday Loan Borrowers,* 21 Supreme Court Econ. Rev. 105 (2013) (60 percent of borrowers can accurately predict how long they would take to repay their loan); Thomas W. Miller, Jr., *Differences in Consumer Credit Choices Made by Banked and Unbanked Mississippians,* 11 J.L. Econ. & Pol'y 367 (2015) (60 percent of unbanked borrowers understand the loans terms that they had taken out).

[143] In 2017, the Bureau found "evidence showing that a significant proportion of consumers do not understand the kinds of harms that flow from unaffordable loans, including those imposed by default, delinquency, re-borrowing, and the collateral consequences of making unaffordable payments to attempt to avoid these other injuries." 82 FR 54472, 54617.

[144] Nathalie Martin, *1,000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions,* 52 Ariz. L. Rev. 563 (2010) (Martin study), *https://www.regulations.gov/contentStreamer?documentId=CFPB-2019-0006-27713&attachmentNumber=3&contentType=pdf* (interviews with approximately 130 payday loan users in Albuquerque found that 60 percent of consumers who had just taken out loans could not accurately estimate their APR and 52 percent could not accurately describe the dollar costs of their loans).

[145] *See, e.g.,* Nat'l Consumer Law Ctr., *After Payday Loans: How do Consumers Fare When States Restrict High-Cost Loans?* (Oct. 2018), *https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/ib_how-consumers-fare-restrict-high-cost-loans-oct2018.pdf;* Southern Bancorp Community Partners, *Into the Light: A Survey of Arkansas Borrowers Seven Years after State Supreme Court Bans Usurious Payday Lending Rates* (Apr. 2016), *https://southernpartners.org/pp/PP_V43_2016.pdf.*

the means to avoid harm. Some consumer groups stated that the 2017 Final Rule had found limited alternatives and borrowers' perceptions of their alternatives. At least one commenter stated that borrowers using covered loans have limited options and limited time in which to assess them and that most do not have access to other formal sources of credit and informal sources of credit have high search costs. Other commenters stated that even when alternatives do exist, consumers do not pursue lower-cost credit because of the ubiquity and convenience of payday lenders.

A consumer group and an academic commenter commented that the fact that a consumer can avoid harm by not using covered loans is not sufficient. Citing *AFSA* v. *FTC,* commenters stated that consumers can generally decline a product or service, and ''if the mere existence of that right'' were the end of the inquiry, then no practice would be subject to unfairness regulation.[146] As articulated by another commenter, the ''just say no'' option does not constitute reasonable avoidability.

Numerous commenters, including consumer groups, community financial service institutions, and faith groups, stated that consumers cannot avoid injury once they have taken out a covered loan and are unable to repay. According to a consumer group and an academic commenter, once a borrower takes out an initial unaffordable loan, the only options are to choose between the harms associated with default, reborrowing, or forgoing other major financial obligations or basic living expenses.

Final Rule

After reviewing the comments, the Bureau is finalizing its interpretation of the standard for reasonable avoidability under section 1031(c)(1)(A) of the Dodd-Frank Act as proposed, with some clarification. Under this standard, the facts and the law in the record do not support the 2017 Final Rule's conclusion that the assumed substantial injury from making covered short-term or longer-term balloon-payment loans without reasonably assessing a borrower's ability to repay the loan according to its terms was not reasonably avoidable.

Final Rule—Reasonable Avoidability Standard

Pursuant to section 1031(c)(1)(A) of the Dodd-Frank Act, the Bureau determines that injury from making covered short-term or longer-term balloon-payment loans without reasonably assessing a borrower's ability to repay the loan according to its terms is reasonably avoidable if payday borrowers have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms and understand the necessity of taking reasonable steps to prevent resulting injury. Specifically, this means consumers need only understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other reasonable arrangements they may either end up in extended loan sequences, default, or struggle to pay other bills after repaying their payday loan.

The interpretation of reasonable avoidability the Bureau is finalizing closely tracks FTC precedent.[147] The Bureau determines that FTC precedent is not inconsistent with the use of unfairness authority to prescribe what some commenters termed ''core economic terms.'' For instance, in *Katharine Gibbs,* the court did not strike down the FTC's tuition refund requirements based on the innate character of the remedy. Instead, the court faulted the FTC for attempting to create ''structural incentives for discriminate enrollment'' to address problematic sales and enrollment practices without finding that refund practices at issue were deceptive or unfair.[148] As the court noted, ''the Commission contented itself with treating violations of its 'requirements prescribed for the purpose of preventing' unfair practices as themselves the unfair practices.'' [149] Thus, the tuition refund requirement's flaw was not that it prescribed core economic terms. Further, the Bureau is aware of other examples of unfairness authority being used to establish substantive requirements in consumer financial transactions.[150] These examples include a Federal banking agency imposing requirements requiring that financial institutions make ability-to-repay determinations before making subprime mortgage loans.[151]

The Bureau also determines that, contrary to the suggestion of some comments, following the approach in *International Harvester* does not require that consumers understand their individualized risk in order for injury to be reasonably avoidable. As noted in that case, reasonable avoidability depends on whether risks are ''adequately disclosed.'' [152] The Commission did not base its reasonable avoidability determination on whether consumers knew the probability that they would personally experience fuel geysering.[153] Instead, the Commission found the harm not reasonably avoidable because consumers ''did not realize that a fuel geyser was possible'' and might engage in a dangerous practice (*i.e.,* loosening the fuel cap on farm equipment) ''without consciousness of any particular risk.'' [154] Thus, the Bureau's current application of reasonable avoidability is consistent with *International Harvester* as it requires consumers to be aware of the particular risks associated with payday lending (such as extended loan sequences, default, etc.) sufficient to

[146] *See AFSA,* 767 F.2d at 976–77 (holding that prohibited contract provisions were unavoidable in part because of industry-wide boilerplate that prevented consumers ''from making meaningful efforts to search, compare, and bargain'').

[147] *See Int'l Harvester,* 104 F.T.C. at 1066 (for an injury to be reasonably avoidable consumers must not only ''know the physical steps to take in order to prevent it'' but also ''understand the necessity of actually taking those steps.''); *Davis,* 691 F.3d at 1168 (''[A]n injury is reasonably avoidable if consumers have reason to anticipate the impending harm and the means to avoid it.'') (quoting *Orkin,* 849 F.2d at 1365–66).

[148] *Katharine Gibbs School,* 612 F.2d at 662–63 (''Instead of defining with specificity the advertising, sales, and enrollment practices it deemed unfair and deceptive and setting forth requirements for preventing them, the Commission decided to make it financially unattractive for schools covered by the Rule to accept a student who, for any reason whatever, was unlikely to finish the course in which he or she had enrolled.'').

[149] *Id.* at 662.

[150] *See Credit Card Rule,* 74 FR 5498 (Jan. 29, 2009) (Board, OTS, and NCUA concluded that it is an unfair act or practice to treat a payment on a consumer credit card account as late unless the consumer has been provided a reasonable amount of time to make that payment); *Credit Practices Rule,* 49 FR 7740 (Mar. 1, 1984) (prohibiting certain remedies that creditors frequently included in credit contracts for use when consumers defaulted on the loans were unfair, including confessions of judgments, irrevocable wage assignments, security interests in household goods, waivers of exemption, pyramiding of late charges, and cosigner liability).

[151] *Higher-Priced Mortgage Loan Rule,* 73 FR 44522 (July 30, 2008) (Board considered the FTC Act's unfairness standard when finding that extending credit without regard to borrowers' ability to repay was an unfair practice). *See also Credit Practices Rule,* 49 FR 7740 (Mar. 1, 1984) (prohibiting certain remedies that creditors frequently included in credit contracts for use when consumers defaulted on the loans were unfair, including confessions of judgments, irrevocable wage assignments, security interests in household goods, waivers of exemption, pyramiding of late charges, and cosigner liability).

[152] *Int'l Harvester,* 104 F.T.C. at 1066.

[153] *Id.*

[154] *Id.* (''Farmers may have known that loosening the fuel cap was generally a poor practice, but they did not know from the limited disclosures made, nor could they be expected to know from prior experience, the full consequences that might follow from it.'').

take steps to avoid or mitigate harm from those risks.

Moreover, aside from their criticisms of the Bureau's reading in the 2019 NPRM of certain FTC precedents (which the Bureau does not accept), commenters have not provided a compelling reason why the Bureau should interpret the reasonable avoidability element of section 1031(c)(1)(A) of the Dodd-Frank Act to require payday borrowers to have a specific understanding of their personal risks—such that they can accurately predict how long they will be in debt after taking out a covered short-term or longer-term balloon-payment loan. As the 2019 NPRM explained, the 2017 Final Rule's approach would mean that consumers cannot reasonably avoid injury even if they understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not take reasonable steps they may either end up in extended loan sequences, default, or struggle to pay other bills after repaying their payday loan. The ''focus on a consumer's ability to reasonably avoid injury 'stems from the Commission's general reliance on free and informed consumer choice as the best regulator of the market.' '' [155] The Bureau is not persuaded that, if consumers have that level of understanding, they should be viewed as unable to take reasonable steps to avoid that harm. Accordingly, the Bureau does not believe that it should rely upon a legal standard that would treat such consumers as not knowing that they should consider taking steps to reasonably avoid injury.

The Bureau also concludes, contrary to the suggestion of some commenters, that the 2019 NPRM did not mischaracterize the 2017 Final Rule's approach to reasonable avoidability. The Bureau acknowledges that the 2017 Final Rule at times used language that was similar to the 2019 NPRM when summarizing the reasonable avoidability standard at a high level of generality.[156] However, as explained in the 2019 NPRM, the 2017 Final Rule actually applied a different legal standard as it relates to payday borrowers. The 2017 Final Rule principally relied on the Bureau's interpretation of limited data from the Mann study regarding borrowers' abilities to predict personal likelihood of reborrowing in assessing whether consumers adequately understood the likelihood and severity of harms. The 2017 Final Rule determined that borrowers lacked requisite understanding because some borrowers were unable to predict their individual likelihood of reborrowing.[157] In other words, the 2017 Final Rule used the Bureau's interpretation of limited data from the Mann study about individual likelihood of reborrowing as a proxy for understanding that is sufficient to alert consumers of the need to take steps to protect themselves from potential payday loan harm. Thus, notwithstanding the 2017 Final Rule's use of some language similar to that used in the 2019 NPRM when generally summarizing the reasonable avoidability standard, in substance the 2017 Final Rule interpreted the standard to require all consumers to have a specific understanding of individualized risk.

Moreover, contrary to the suggestions of some commenters, the 2019 NPRM did not omit the standard's requirement that consumers must appreciate the ''likelihood and magnitude'' of risk. The 2019 NPRM stated that the Bureau preliminarily concluded that injury is reasonably avoidable if payday borrowers have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms and understand the necessity of taking reasonable steps to prevent resulting injury.[158] The 2019 NPRM elaborated that this requires that consumers understand that a *significant portion* of payday borrowers experience difficulty repaying and that if such borrowers do not make other arrangements they either end up in *extended loan sequences, default, or struggle to pay other bills after repaying their payday loan*.[159] The Bureau notes that if consumers understand that a significant portion of payday borrowers experience adverse outcomes, they grasp the likelihood of risk. If consumers understand the potential outcomes arising from difficulty repaying, they appreciate the magnitude of those risks.

However, the Bureau agrees with comments that consumers must not only have a sufficient awareness of the risk of significant injury, but they also must have reasonable steps they can take to avoid that injury. The 2019 NPRM recognized that the means to avoid injury is a necessary component of the reasonable avoidability standard.[160] The Bureau discusses its application to covered loans below.

The Bureau does not regard as significant the considerations of the efficacy of disclosures discussed in *International Harvester*.[161] What is significant is that *International Harvester* stands for the proposition that harm is reasonably avoidable if consumers have requisite understanding of risks related to a product. The Bureau's revised application of the reasonable avoidability standard is more consistent with *International Harvester* as it incorporates criteria that would indicate whether consumers have a requisite understanding.

Accordingly, the Bureau concludes that the 2017 Final Rule applied a problematic standard for reasonable avoidability under section 1031(c)(1)(A) of the Dodd-Frank Act and adopts the better interpretation of reasonable avoidability set forth in the 2019 NPRM.

Final Rule—Consumer Understanding of Risk of Harm

Applying the revised standard for reasonable avoidability pursuant to section 1031(c)(1)(A) of the Dodd-Frank Act, the Bureau concludes that there is not a sufficient evidentiary basis for the Bureau to conclude that consumers cannot reasonably avoid substantial injury from lenders making covered short-term and longer-term balloon-payment loans without assessing borrowers' ability to repay the loan according to its terms.

As discussed in part V.B.2 below of this preamble, the 2019 NPRM proposed and the Bureau finalizes a determination that evidence is only sufficient for purposes of finding that injury is not reasonably avoidable if that evidence is robust and reliable, in light of the dramatic impacts of the Rule on the payday market. Thus, the relevant question here is whether there is robust and reliable evidence for that finding, under the Bureau's revised standard for reasonable avoidability.[162]

[155] 84 FR 4252, 4271 n.242 (quoting *Orkin Exterminating Co.*, 849 F.2d at 1365 (quoting *AFSA*, 767 F.2d at 976)).

[156] *Compare* 82 FR 54472, 54596 (''[U]nless consumers have reason generally to anticipate the likelihood and severity of the injury, and the practical means to avoid it, the injury is not reasonably avoidable.''), *with* 84 FR 4252, 4270 (''[I]njury is reasonably avoidable if payday borrowers have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms and understand the necessity of taking reasonable steps to prevent resulting injury.'').

[157] *See* 82 FR 54472, 54597–98.

[158] 84 FR 4252, 4270.

[159] *Id.* (emphasis added).

[160] *See id.* at 4269 (citing *Davis*, 691 F.3d at 1168).

[161] *See* 104 F.T.C. at 1054. *International Harvester* is not entirely clear on whether the disclosure in question was efficacious. *See id.* at 1006 n.165 (the alternative disclosure ''would have been the most effective [ ] warning up to that time, had it been adequately disseminated . . . . It did communicate the fact that a hazard existed and the principal steps an operator should take to avoid it.'').

[162] The Bureau does not make any comment as to the appropriate evidentiary standard that would apply to unfairness citations or claims brought through the enforcement or the supervisory process.

The Bureau concludes that the 2019 NPRM provided a reasoned explanation for reconsidering the 2017 Final Rule's finding on reasonable avoidability. Specifically, the 2017 Final Rule's determination that a significant population of consumers do not understand the risks of substantial injury from covered loans is not adequately supported. The Bureau's determination was primarily extrapolated from its own interpretation of limited data from the Mann study. In support of its finding of lack of understanding, the 2017 Final Rule emphasized that ''consumers who experience long sequences of loans often do not expect those long sequences to occur when they make their initial borrowing decision.'' [163] In its reasonable avoidability analysis, the 2017 Final Rule did not significantly rely on other evidence of consumer understanding with respect to covered loans. The 2017 Final Rule's broad pronouncement about consumer understanding is based on evidence that goes to the different question of whether consumers can predict their individual likelihood of reborrowing, rather than to the question of whether consumers understand the magnitude and likelihood of risk of harm associated with covered loans sufficient for them to anticipate that harm and understand the necessity of taking reasonable steps to prevent resulting injury. Thus, the evidence that the 2017 Final Rule presented on consumer understanding does not satisfy the reasonable avoidability analysis pursuant to the Bureau's better interpretation of section 1031(c)(1)(A).

The Bureau concludes that other studies, such as the Martin study,[164] which found that most consumers cannot identify the precise APR or dollar cost of their payday loans, only suggest a lack of understanding as to specific features of payday loans. These studies do not ask the direct and relevant question of whether consumers understand the magnitude and likelihood of risk of harm associated with covered loans sufficient for them to anticipate that harm and understand the need to take steps to avoid injury.

Other lender behavior or structural or behavioral factors that can impact consumer understanding do not bear on the reasonable avoidability of the identified practice. Citing, among other things, Bureau enforcement and supervisory activities, numerous commenters identified covered lender behavior that may cause consumer harm or hinder consumer choice. The behavior that allegedly produces these effects included steering borrowers into unaffordable reborrowing, preventing borrowers from self-amortizing, engaging in deceptive advertising or marketing, and failing to comply with State laws. The Bureau notes that, depending on the facts and circumstances, some of this behavior could violate Federal consumer financial law. The Bureau has cited covered lenders for similar acts or practices in the past.[165] But there can be unlawful or harmful practices by some market participants in all markets, and that does not establish that other practices—specifically here lenders' failure to assess the ability to repay—in those markets is unlawful. The Bureau concludes that the existence of other practices in the markets for covered loans that could be harmful to consumers or violate other laws does not establish that the harm from a lender's decision to lend without assessing a borrower's ability to repay is itself not reasonably avoidable.

Further, the Bureau declines to infer from the conclusion that making payday loans without assessing the ability to repay causes or is likely to cause substantial injury (a conclusion from the 2017 Final Rule the Bureau assumed to be correct for purposes of the unfairness analysis in the 2019 NPRM) the further conclusion that consumers cannot reasonably avoid that injury. While the same facts in a rulemaking record may support conclusions as to each of the three elements of unfairness, to identify a practice as unfair the Bureau must separately analyze and find adequate support for each of these three elements. As discussed above, the Bureau based its conclusion on the evidence in the record that was the most direct and most probative on the question of reasonable avoidability. Having done so, the Bureau declines to rely on indirect and less probative evidence, including that drawn from inferences as some commenters have suggested.

The Bureau also declines to follow recommendations that it give further consideration to behavioral factors. The 2017 Final Rule considered whether behavioral economics factors make it difficult for consumers to understand the implications of taking out a covered loan.[166] However, these considerations did not form an independent basis for the 2017 Final Rule and, as set out in the 2019 NPRM, the Bureau need not address them.

With respect to the 2019 NPRM's preliminary determination that goes beyond withdrawing the 2017 Final Rule's reasonable avoidability determination and posited that consumers affirmatively have the requisite understanding of the likelihood and magnitude sufficient for any harm to be reasonably avoidable, the Bureau has decided it is not necessary to finalize this determination. As discussed above, the Bureau has concluded that robust and reliable evidence in the rulemaking record does not support the 2017 Final Rule's determination that payday borrowers cannot reasonably avoid substantial injury from lenders not assessing their ability to repay their loans.

Accordingly, the Bureau concludes that the Mandatory Underwriting Provisions at 12 CFR part 1041 must be revoked in light of the Bureau's determination to revoke the 2017 Final Rule's finding that consumers lack sufficient understanding of the likelihood and magnitude or risks of covered loans such that they cannot reasonably avoid substantial injury from lenders making covered short-term and longer-term balloon-payment loans without assessing borrowers' ability to repay.

Final Rule—Means To Avoid Harm

As explained above, the revised reasonable avoidability standard adopted by the Bureau in this final rule requires that covered loan borrowers have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms and understand the necessity of taking

[163] 82 FR 54472, 54617.

[164] Nathalie Martin, *1,000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions,* 52 Ariz. L. Rev. 563 (2010). This study is discussed further below.

[165] *See, e.g., Consumer Fin. Prot. Bureau* v. *Navient Corp.,* No. 3:17–cv–00101–RDM (M.D. Penn. Jan. 18, 2017), *https://www.consumerfinance.gov/documents/2297/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf.* The Bureau has also filed lawsuits against payday lenders for deceptive advertising. *See, e.g.,* Press Release, Bureau of Consumer Fin. Prot., *CFPB Takes Action Against Moneytree for Deceptive Advertising and Collection Practices* (Dec. 16, 2016), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-moneytree-deceptiveadvertising-and-collection-practices/.*

[166] The Bureau in the 2017 Final Rule cited research stating that certain consumer behaviors may make it difficult for them to predict accurately the future implications of taking out a covered short-term or longer-term balloon-payment loan. As the Bureau made clear, however, this research helped to explain the Bureau's findings from the Mann study but was not in itself an independent basis to conclude that consumers do not predict whether they will remain in reborrowing sequences. 82 FR 54472, 54571 (explaining that ''[r]egardless of the underlying explanation, the empirical evidence indicates that many borrowers who find themselves ending up in extended loan sequences did not expect that outcome'').

reasonable steps to prevent resulting injury. The requirement that consumers ''understand the necessity of taking reasonable steps to prevent injury'' presupposes that reasonable steps exist and are available to the consumer, *i.e.,* there are practical means to avoid harm. The Bureau concludes that the evidence in the record does not support the conclusion in the 2017 Final Rule that, even assuming consumers were adequately aware of the risk of substantial injury from the failure of lenders to assess their ability to repay, consumers could not take reasonable steps to prevent or mitigate that injury. The Bureau reaches this conclusion in part based on the fact that consumers continue to have access to short-term credit in States where covered loans are prohibited or severely restricted as well as on the expanding availability of alternatives to payday and other covered loans in the marketplace.

The 2017 Final Rule found that ''once borrowers find themselves obligated on a loan they cannot afford to repay,'' the resulting injury is ''generally not reasonably avoidable *at any point thereafter,*'' because after that point the relevant long-term borrowers lack the means to avoid injury.[167] The Bureau has not sought to reconsider that determination in this rulemaking. However, the 2017 Final Rule did not assert that that determination was by itself *sufficient* to support its finding that injury was not reasonably avoidable *overall.* It is well-established that consumers can reasonably avoid injury through either ''anticipatory avoidance'' or ''subsequent mitigation,'' so a finding that consumers lack the means to avoid injury at a later time is not generally sufficient if they could do so at an earlier time.[168] And the 2017 Final Rule did not rest its reasonable avoidability analysis on a finding that consumers lack the means to avoid injury before they have taken out any covered loans. Instead, the 2017 Final Rule explained that the ''heart of the matter here is consumer perception of risk,'' and whether borrowers are in a position before taking out covered loans ''to gauge the likelihood and severity of the risks they incur.'' [169] It is that critical issue from the 2017 Final Rule that the 2019 NPRM reconsidered.

The Bureau does not find persuasive these arguments in these comments that before consumers have taken out any payday loans they lacked the ability to take reasonable steps to avoid injury from the lenders' failure to assess their ability to repay.

Consumers generally have viable alternatives to payday loans, which is evidenced by the fact that millions of consumers live in States where covered loans are prohibited or severely restricted and these consumers obtain access to other alternative forms of credit.[170] Evidence submitted by commenters that payday loan alternatives are consistently expanding are persuasive and confirmed by the Bureau's market monitoring. These alternatives include credit offered by fintechs, credit unions, and other mainstream financial institutions.[171] Consistent with their incentive to make a profit, creditors who offer products that compete with payday loans engage in marketing and advertising to make consumers aware of the availability of their products.

Consumers do not lack the practical ability to take advantage of these alternatives. Arguments based on behavioral factors that attempt to explain why borrowers may not seek out readily available covered loan alternatives are hypothetical and do not compellingly rebut available real-world evidence to the contrary. Further, that consumers may choose payday and other covered loans over other credit options because payday loans are ubiquitous and convenient is not evidence of a lack of alternatives. It is consistent with some consumers preferring payday or other covered loans based on speed and convenience of the borrowing process, easy loan approval, the ability to take out a loan without a traditional credit check, or other considerations as some commenters suggested.

And contrary to some comments, the Bureau's approach would not make any harm reasonably avoidable simply because a consumer can decline a product or service. The small-dollar loan market is not comparable to the circumstances addressed in *AFSA,* where the court found that industry-wide use of boilerplate provisions prevented consumers from making meaningful efforts to identify alternatives that did not feature those provisions.[172] Consumers in the market for covered loans do not face a take-it-or-leave-it choice; they can potentially access formal credit options with varied terms and conditions and other informal credit options, such as borrowing from family and friends.[173]

Regarding comments that consumers cannot avoid injury after they take out a loan, are trapped in an extended sequence, and are unable to repay, the Bureau acknowledges, as it did in the 2017 Final Rule, that some borrowers in extended sequences suffer financial harm. But the identified unfair practice pertains to lender conduct when borrowers are making an initial decision to take out a new loan. The fact that some subgroup of borrowers may have limited options at a later point in a repayment cycle does not negate the fact that all consumers had alternatives to covered loans before taking out an initial loan, which is the relevant inquiry where the identified practice and related rule provisions apply to all covered loans to all consumers.

Conclusion

Accordingly, as discussed above, the Bureau is withdrawing the conclusion in the 2017 Final Rule that any substantial injury from lenders making covered short-term and longer-term balloon-payment loans without assessing borrowers' ability to repay the loan according to its terms is not reasonably avoidable.

2. Reconsidering the Evidence for the Factual Analysis of Reasonable Avoidability in Light of the Impacts of the Mandatory Underwriting Provisions

The Bureau has decided to adopt a different, better interpretation of the level of understanding that payday borrowers need in order to reasonably avoid injury, as discussed in part V.B.1.

[167] 82 FR 54472, 54598 (emphasis added).

[168] *Orkin Exterminating Co.,* 849 F.2d at 1365 (quoting *Orkin Exterminating Co.,* 108 F.T.C. at 366).

[169] 82 FR 54472, 54597.

[170] *See* discussion at part II.A.1. For example, Colorado is one State where payday loans are restricted. Following its reform, the number of payday lenders in Colorado substantially contracted, but the lending volume remained stable and the cost of loans dropped. *See* Pew Charitable Trusts, *Trial, Error, and Success in Colorado's Payday Lending Reforms* (Dec. 2014), *https://www.pewtrusts.org/~/media/assets/2014/12/pew_co_payday_law_comparison_dec2014.pdf.*

[171] *See, e.g.,* Fin. Health Network, *Financially Underserved Market Size Study 2019,* at 6 (2019), *https://finhealthnetwork.org/research/2019-financially-underserved-market-size-study/* (noting the transition in small-dollar credit markets away from payday and title loans toward installment loans); CURO Group, *Presentation at Jefferies Consumer Finance Summit,* at 9 (Dec. 2018), *https://ir.curo.com/events-and-presentations* (19 percent of a prominent payday lender's revenue came from multi-payment loans in 2010, but by the third quarter of 2018, that figure had quadrupled to 77 percent); Pew Charitable Trusts, *From Payday to Small Installment Loans: Risks, Opportunities, and Policy Proposals for Successful Markets* (Aug. 2016), *https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/from-payday-to-small-installment-loans* (noting that non-bank small-dollar lenders already offered installment loans in 26 of 39 States where they operated).

[172] *AFSA,* 767 F.2d at 977.

[173] *See* Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 16–28, *https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.*

But independent of that interpretive question, the Bureau has concluded that it should withdraw the 2017 Final Rule's determination regarding reasonable avoidability because it was supported by insufficiently robust and reliable evidence. The Bureau believes that more robust and reliable evidence for this key determination should be required, in light of the impacts of the Mandatory Underwriting Provisions would have on the market.

a. Background on the Impacts of the Mandatory Underwriting Provisions

Before reconsidering the evidence supporting the 2017 Final Rule's determinations below in parts V.B.2.c and V.B.2.d, the Bureau discusses the dramatic impacts of the Mandatory Underwriting Provisions that give rise to the Bureau's application of the robust and reliable evidence standard. The Bureau stated and explained in the 2019 NPRM its preliminary belief that the Mandatory Underwriting Provisions would have ''dramatic impacts'' on the market.[174] As the 2019 NPRM explained, the section 1022(b)(2) analysis for the 2017 Final Rule observed that the primary impacts of the Rule on covered persons derived mainly from the restrictions on who could obtain payday and single-payment vehicle title loans and the number of such loans that could be obtained. To simulate the impacts of the Mandatory Underwriting Provisions, the section 1022(b)(2) analysis for the 2017 Final Rule assumed, on the basis of a number of studies by the Bureau and outside researchers concerning payday borrowers, that only 33 percent of current payday and vehicle title borrowers would be able to satisfy the Rule's ability-to-repay requirements when initially applying for a loan and that for each succeeding loan in a sequence only one-third of borrowers would satisfy the mandatory underwriting requirement (*i.e.,* 11 percent of current borrowers for a second loan and 3.5 percent for a third loan).[175] Applying these assumptions to data with respect to current patterns of borrowing and reborrowing, the section 1022(b)(2) analysis estimated that, absent the principal step-down exemption in § 1041.6, the Mandatory Underwriting Provisions of the Rule would reduce payday loan volume and lender revenue by approximately 92 to 93 percent relative to lending volumes in 2017 and vehicle title volume and lender revenue by between 89 and 93 percent.[176] Factoring in the expected effects of the novel principal step-down exemption, and assuming that payday lenders would endeavor to take full advantage of that novel exemption before seeking to qualify consumers for a loan under the mandatory underwriting requirements of § 1041.5, the analysis estimated that the Mandatory Underwriting Provisions would result in a decrease in the number of payday loans of 55 to 62 percent and, because of the step-down feature of the principal step-down exemption, a decrease in payday lender revenue of between 71 and 76 percent.[177]

The section 1022(b)(2) analysis that accompanied the 2017 Final Rule stated that these revenue impacts would have a substantial effect on the market. The analysis projected that unless lenders were able to replace their reduction in revenue with other products, there would be a contraction in the number of storefronts of similar magnitude to the contraction in revenue, *i.e.,* a contraction of between 71 and 76 percent for storefront payday lenders and of between 89 and 93 percent for vehicle title lenders.[178]

The section 1022(b)(2) analysis for the 2017 Final Rule identified a number of impacts that the Mandatory Underwriting Provisions would have on consumers' ability to access credit. Specifically, the analysis estimated that approximately 6 percent of existing payday borrowers would be unable to initiate a new loan because they would have exhausted the loans permitted under the principal step-down exemption and would not be able to satisfy the ability-to-repay requirement.[179] The section 1022(b)(2) analysis that accompanied the 2017 Final Rule identified, but did not quantify, certain other potential impacts of the Mandatory Underwriting Provisions on consumers' access to credit. Consumers seeking to borrow more than $500 after the 2017 Final Rule's compliance date may find their ability to do so limited because of the cap on the initial loan amount under the principal step-down exemption and because of the impact of the Rule on vehicle title loans, which tend to be for larger amounts.[180] Additionally, because of the principal step-down feature of the exemption, consumers obtaining loans under that exemption would be forced to repay their loans more quickly than they are required to do today. The analysis stated that 40 percent of the reduction in payday revenue estimated to result from the Mandatory Underwriting Provisions would be the result of the cap on loan sizes under the principal step-down exemption and the remainder would be the result of the restriction on the number of loans available to consumers under that exemption coupled with the mandatory underwriting requirement for any additional loans.[181] Finally, the analysis concluded, based on research concerning the implementation of various State regulations, that although the reduction in the number of storefronts would not substantially affect consumers' geographic access to payday locations in most areas, a small share of potential borrowers would lose easy access to stores.[182]

The section 1022(b)(2) analysis that accompanied the 2017 Final Rule went on to observe that consumers who are unable to obtain a new loan because they cannot satisfy the Rule's mandatory underwriting requirement or cannot qualify for a loan under the principal step-down exemption will have reduced access to credit. They may be forced at least in the short term to forgo certain purchases, incur high costs from delayed payment of existing obligations, incur high costs and other negative impacts by defaulting on bills, or they may choose to borrow from sources that are more expensive or otherwise less desirable.[183] Some borrowers may overdraft their checking accounts; depending on the amount borrowed, an overdraft on a checking account may be more expensive than taking out a payday or single-payment vehicle title loan.[184] Similarly, ''borrowing'' by

[174] 84 FR 4252, 4264.

[175] 82 FR 54472, 54826–34.

[176] *Id.* at 54826, 54834.

[177] *Id.* at 54826. Given that short-term vehicle title loans are not eligible for the principal step-down exemption, the analysis estimated that the Mandatory Underwriting Provisions would result in a decrease in the number of short-term vehicle title loans of between 89 and 93 percent, with an equivalent reduction in loan volume and revenue. *Id.* at 54834.

[178] *Id.* at 54835.

[179] *Id.* at 54840. Vehicle title borrowers would be more likely to be unable to obtain an initial loan because the principal step-down exemption does not extend to such loans. *Id.* The analysis noted that while those borrowers could pursue a payday loan, there are three States that permit some form of vehicle title loans (either single-payment or installment) but not payday loans and that 15 percent of vehicle title borrowers do not have a checking account and thus may not be eligible for a payday loan. *Id.*

[180] *Id.* at 54841.

[181] *Id.*

[182] *Id.* at 54842 & n.1224. Research conducted by the Bureau had found that in one State where regulatory restrictions resulted in a substantial contraction of payday stores, the median distance between stores in counties outside of metropolitan areas increased from 0.2 miles to 13.9 miles. Supplemental Findings at 87.

[183] *See* 82 FR 54472, 54841.

[184] *Id.*

paying a bill late may lead to late fees or other negative consequences like the loss of utility service.[185]

b. The Bureau's Decision To Require Robust and Reliable Evidence of the Reasonable Avoidability Element in Light of the Potential Dramatic Impacts of the Mandatory Underwriting Provisions at 12 CFR Part 1041

The Bureau's Proposal

As explained above, were compliance with the Mandatory Underwriting Provisions of the 2017 Final Rule to become mandatory,[186] the provisions would have the effect of eliminating most covered short-term and longer-term balloon-payment loans. In the 2019 NPRM, the Bureau stated its preliminary view that if a rule could have such dramatic impacts on consumer choice and access to credit, then it would be reasonable under the Dodd-Frank Act and prudent to have robust and reliable evidence to support the key finding that consumers cannot reasonably avoid injury (for purposes of the unfairness standard in Dodd-Frank Act section 1031(c)).[187] Similarly, the 2019 NPRM set forth the Bureau's preliminary view that it would be reasonable under the Dodd-Frank Act and prudent to have robust and reliable evidence to support key findings of consumers' lack of understanding (for purposes of the abusiveness standard in Dodd-Frank Act section 1031(d)(2)(A)) and inability to protect their own interests (for purposes of the abusiveness standard in section 1031(d)(2)(B)).[188]

Comments Received

In comments on the 2019 NPRM, consumer groups and others stated that the 2017 Final Rule will not have a dramatic impact on consumers' access to credit, because loan providers will respond to the rule by shifting from providing short-term loans to providing longer-term installment loans, which are not covered by the 2017 Final Rule's Mandatory Underwriting Provisions.[189]

Industry commenters and others stated that a shift from short-term loans to longer-term installment loans would itself be a dramatic impact on how credit is provided, consumer choice, and consumer access to credit, sufficient to justify the Bureau's policy decision to adopt the robust and reliable standard. These commenters also noted that payday loans have traditionally been regulated by State law, and the 2017 Final Rule therefore raises federalism issues. These commenters stated that these federalism issues constitute another reason to require robust and reliable evidence in support of the 2017 Final Rule.

Consumer group commenters and others stated that the 2017 Final Rule is a final rule adopted by the Bureau and, as such, is now the baseline for determining the impact of Bureau rulemakings on a going-forward basis. And, they stated, revoking the 2017 Final Rule is itself a full rulemaking action that has the same magnitude of impact as the 2017 Final Rule, except in the opposite direction. They reason that the Bureau cannot finalize the 2019 NPRM unless the evidence on which the Bureau now relies satisfies the ''robust and reliable'' standard the Bureau cited in the 2019 NPRM for re-evaluating the evidence supporting the 2017 Final Rule. Further, these commenters stated, the 2019 NPRM did not provide evidence sufficient to support revocation of the Mandatory Underwriting Provisions pursuant to the rulemaking requirements of the APA, and that action would, if finalized, be arbitrary and capricious under the APA.

Consumer groups and others also stated that a Bureau determination to require robust and reliable evidence for rules that have a dramatic impact on consumer choice and access to credit will make it harder for the Bureau to adopt consequential rules addressing consumer harm in the future.

Final Rule

After reviewing the comments received, the Bureau finds that its preliminary determination that the Mandatory Underwriting Provisions of 12 CFR part 1041 would eliminate most covered short-term and longer-term balloon-payment loans was correct. The Bureau also concludes that eliminating such loans would have a dramatic impact on consumer choice and access to credit. Accordingly, the Bureau determines that the 2017 Final Rule would have a dramatic impact on consumer choice and access to credit that consumers prefer.

In light of this dramatic impact, the Bureau determines that it is reasonable and prudent to have robust and reliable evidence to support the key finding that consumers cannot reasonably avoid injury (for purposes of the unfairness standard in Dodd-Frank Act section 1031(c)). Similarly, the Bureau determines that it is reasonable and prudent to have robust and reliable evidence to support key findings of about consumers' lack of understanding (for purposes of the abusiveness standard in Dodd-Frank Act section 1031(d)(2)(A)) and inability to protect their own interests (for purposes of the abusiveness standard in section 1031(d)(2)(B)). Those abusiveness determinations are further addressed in part VI below.

In making these determinations, the Bureau has not relied upon the federalism concerns about the 2017 Final Rule raised by some commenters. (Of course, the effect of the Bureau's decision to revoke the Mandatory Underwriting Provisions for the reasons set forth herein is to leave existing State approaches in place, some of which reflect a preference to allow their citizens' access to payday loans.)

The Bureau does not agree with some commenters' characterization of the Bureau's policy choice in requiring robust and reliable evidence as being arbitrary and capricious. The Bureau makes this policy choice in the context of Dodd-Frank Act section 1031(c)(1)(A), which provides that the Bureau cannot identify an unfair practice unless there is substantial injury that is ''not reasonably avoidable by consumers.'' As the 2019 NPRM notes, this element is premised on the fact that ''[n]ormally we expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market.''[190] As a policy matter, the Bureau believes that this principle of respecting consumer choice is especially important where, as here, regulatory action by the Bureau could result in dramatic impacts on consumer choice and access to the credit that consumers prefer. Thus, in exercising the Bureau's discretion to determine whether there is sufficient evidence that consumers cannot reasonably avoid injury here, the Bureau believes that such evidence should be robust and reliable. (And, although abusiveness is a much newer standard than unfairness, the Bureau believes that similar reasoning applies in this rulemaking to abusiveness' ''lack of understanding'' and ''inability to protect'' elements. Those abusiveness elements are similarly threshold determinations of consumer vulnerability that must be made before regulatory intervention is

[185] *Id.*

[186] As noted above, the Bureau published in June 2019 a final rule delaying the compliance date for the Mandatory Underwriting Provisions to November 19, 2020. *See* 84 FR 27907.

[187] 84 FR 4252, 4264.

[188] *Id.*

[189] Notably, these comments from consumer groups support the Bureau's point in part V.B.1 above that consumers in these markets have alternatives to payday loans and as a result have the means to avoid any harm from the loans.

[190] *See* FTC Unfairness Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1074.

appropriate. The Bureau discusses those abusiveness elements in part VI.C below.) In doing so, the Bureau need not and has not attempted to provide an abstract definition of the terms ''robust'' or ''reliable'' beyond their commonly understood meanings. The measure of whether evidence is robust and reliable is whether, as a practical matter, the evidence gives the Bureau a level of confidence in the Bureau's conclusion that is commensurate with the dramatic impacts on consumer choice and access to credit that are at stake here.

The Bureau disagrees with the argument by some commenters that requiring robust and reliable evidence in this context will make it harder for it to adopt consequential rules addressing consumer harm in the future. In this final rule, the Bureau has made a determination to require robust and reliable evidence to satisfy the ''not reasonably avoidable,'' ''lack of understanding,'' and ''inability to protect'' elements in the context of regulatory provisions that would have a dramatic impact on consumer choice and access to credit. The policy considerations underpinning this rulemaking might, or might not, be relevant to evaluation of the evidence in future Bureau rules. The Bureau has made this determination consistent with the requirements of the Administrative Procedure Act and the evidentiary record and is explaining its basis for that determination after a full notice-and-comment process.

The comments suggesting that the Bureau needs to have robust and reliable evidence to prove that consumers *can* reasonably avoid injury in order to finalize this rule misunderstand the Bureau's approach. The Bureau is reconsidering the evidentiary basis for its prior determination that consumers cannot reasonably avoid injury, not seeking to establish that consumers can reasonably avoid injury. Further, this approach is entirely consistent with the statutory scheme. Under that scheme, consumers' choices in the marketplace are respected, absent a determination that they cannot reasonably avoid injury. And the Bureau's policy of requiring robust and reliable evidence is based on caution about potentially interfering with consumers' decision-making in the payday market on a massive scale.

Nor are commenters correct that the Bureau is violating the APA by not offering sufficient *new* evidence in support of this final rule. The Bureau is reconsidering the conclusions regarding unfairness (and abusiveness) that it previously drew from the evidentiary record, and the Bureau is explaining the basis for that reconsideration after a full notice-and-comment process, consistent with the APA. Under section 1031 of the Dodd-Frank Act, consumers' choices in the marketplace are respected, absent a threshold determination that they cannot reasonably avoid injury (or lack understanding or are unable to protect their own interests).

c. The Mann Study and the Findings Based On It

The Bureau's Proposal

In the 2019 NPRM, the Bureau preliminarily found that the 2017 Final Rule's interpretation of limited data from the Mann study was not sufficiently robust and reliable, in light of the 2017 Final Rule's dramatic impacts in restricting consumer access to payday loans, to be the linchpin for the 2017 Final Rule's conclusion that consumers could not reasonably avoid harm. Specifically, this limited data does not support the determination that many payday loan consumers lack a specific understanding of their personal risks and cannot accurately predict how long they will be in debt after taking out covered short-term or longer-term balloon-payment loans.[191]

The 2019 NPRM preliminarily found that the Bureau's interpretation of limited data from the Mann study was not sufficiently reliable because the Mann study involved a single payday lender in just five States and was administered at a limited number of locations.[192] The 2019 NPRM stated that a study focusing on a single lender or limited number of lenders may not be representative of the variety of payday lenders across the United States. In addition, it stated, these five States also are not necessarily representative of payday lending nationally.[193] Because consumer understanding and expectations may be informed by the information consumers are provided—and because that information can vary from lender to lender and State to State[194]—the 2019 NPRM preliminarily concluded that the Bureau's interpretation of limited data from the Mann study is not a sufficiently robust and reliable basis to make general findings about all lenders making payday loans to all borrowers in all States.

Comments Received

Industry commenters and others stated that the single lender and the five States represented in the limited data from the Mann study are not representative of payday lending nationally and that the Bureau's interpretation of that data is not sufficiently robust and reliable to serve as the basis for findings about all lenders and all borrowers in all States. These commenters (including Professor Mann himself) also stated that the 2019 NPRM correctly interpreted the Mann study as indicating that most payday loan consumers have a reasonable understanding of their loans. They also stated that, because longer-term reborrowers are typically more financially distressed consumers, it is plausible that they are more constrained in their credit options and less able to accurately predict when or if they can repay a loan. Thus, even if longer-term borrowers generally have the same level of understanding of the costs and risks of payday loans as shorter-term borrowers, their predictions of their loan-sequence length will reflect a greater amount of error than will those of shorter-term borrowers.[195]

Consumer group commenters and others stated that the Mann study is

[191] The 2017 Final Rule's finding that consumers do not have a specific understanding of their personal risks of reborrowing was a necessary predicate to its determination that consumers cannot reasonably avoid the substantial injury that the 2017 Final Rule asserted that consumers incur from payday loans (per the unfairness standard set forth in Dodd-Frank Act section 1031(c)(1)(A)). The finding was also a necessary predicate to the 2017 Final Rule's determination that consumers do not understand the material risks, costs, or conditions of such loans (per the abusiveness standard set forth in Dodd-Frank Act section 1031(d)(2)(A)).

[192] *See* Mann study at 116.

[193] The Mann study noted that rollover loans are technically prohibited in all five of the States in which payday borrowers were surveyed. *Id.* at 114. Further, same-day rollover transactions are not possible in Florida, which has a 24-hour cooling-off period, and are limited in Louisiana, which permitted rollovers only upon partial payment of the principal. *Id.* Over half of the survey participants were in Florida and Louisiana alone. *Id.* at 117 & tbl. 1.

[194] 82 FR 54472, 54486 (identifying detailed disclosures required of payday lenders under Texas law), and *id.* at 54577 (noting that some jurisdictions require lenders to provide specific disclosures in order to alert borrowers of potential risks).

[195] Additionally, at least one commenter stated that the Mann study participants with long loan sequences were only 12 percent of sampled borrowers, or 62 people, and that that number was not an adequate sample to support the 2017 Final Rule's position that consumers lack understanding of payday loans. However, the share of borrowers who gave an answer to how long they expected to borrow is not relevant, because all consumers who ended up in sequences more than 200 days long failed to make a numeric prediction at the beginning of their debt cycle. Further, these commenters were incorrect as factual matter. Specifically, the actual number of borrowers in question was 12 percent of the 1,300 borrowers sampled, or about 156 borrowers (plus the consumers in sequences more than 200 days long, none of whom provided responses). The commenter improperly multiplied that 12 percent of 1,300 (or 156) by 40 percent, which was the 40 percent of borrowers who said they expected to continue borrowing after their current loan's initial due date.

sufficiently robust and reliable to support the conclusion that consumers cannot reasonably avoid harm from the identified practice, for the following reasons. First, lenders tend to be uniform in relevant ways: Loan structure, marketing, encouragement of rollovers, and concentration of revenue from those borrowers who engage in extended loan sequences. Also, these commenters stated, the Mann study itself notes that the payday loan products of the one lender the study involved are typical of large storefront lenders. Thus, they said, the fact that the Mann study involved a single lender is not necessarily problematic. Second, the five States included in the study comprise over a quarter of the nation's payday loan market. The five States account for over $1 billion in payday fees annually or roughly 27 percent of total fees collected by payday lenders each year. Further, the population of these five States represents 32 percent of the population of the States that authorize payday lending. Third, the Mann study itself discusses the five States' rollover bans and crafts its survey question to control for the fact that the States prohibited rollovers. Fourth, rollover bans are common in payday loan States and the bans do not change consumer behavior; [196] it is therefore unlikely that they would affect the accuracy of consumers' predictions. And fifth, consumer group commenters stated that the Bureau could have tested the representativeness of the data from the Mann study by reviewing data in its possession. Specifically, these commenters said, the Bureau has loan-level data from multiple lenders and should have analyzed whether or not sequence lengths or renewal rates vary significantly across lenders before asserting that consumer outcomes at one lender's outlets are not representative. These commenters noted that the Bureau's March 2014 payday lending data point analyzed borrower outcomes across States with different restrictions on rollovers and found virtually no difference in renewal rates between States that had no restrictions and those that either prohibited rollovers or required waiting periods between loans. These findings, the commenters stated, indicate that greater geographic coverage beyond the five States in question would not have led to different findings than using the data from the Mann study.

With respect to the substantive question at issue—whether the Bureau's interpretation of data from the Mann study indicates that payday loan consumers do not have a specific understanding of their personal risks and cannot accurately predict how long they will be in debt—consumer group commenters acknowledged that the Mann study found that consumers of payday loans are generally able to predict in advance the length of the payday loan sequence that they are entering into, a finding they stated is largely driven by the fact that many study participants accurately predicted that they would not remain in debt for longer than one or two loans. Consumer groups stated, however, that the 2017 Final Rule's analysis relied on a portion of the Mann study data that, they stated, indicates that consumers with long payday loan sequences did not accurately predict those sequences in advance. That is, consumer groups argued that it was proper for the Bureau's interpretation of data from the Mann study to focus on a portion of the data as evidence that consumers with long loan sequences do not have a specific understanding of the risks posed to them by payday loans.

Finally, consumer group commenters stated that the other evidence cited by the 2019 NPRM as casting doubt on the Bureau's interpretation of data from the Mann study was itself dubious or not applicable to payday borrowers. These commenters also sought to rebut the other evidence cited by the 2019 NPRM. Even if this other evidence were valid, these commenters asserted that it does not undermine the 2017 Final Rule's findings based on the Bureau's interpretation of data from the Mann study.

Final Rule

The Bureau has determined that the interpretation of the limited data from the Mann study in the 2017 Final Rule is not sufficiently robust and reliable to serve as the primary factual support for the Bureau's determination in that Rule that many payday loan consumers do not have a specific understanding of their personal risks and cannot accurately predict how long they will be in debt when they take out covered short-term or longer-term balloon-payment loans. In light of the dramatic impacts the Mandatory Underwriting Provisions would have in restricting consumer access to payday loans, the Bureau has determined that a more solid foundation is needed.

As a preliminary matter, the Bureau does not dispute, and did not dispute in the 2019 NPRM, that the 2017 Final Rule relied on limited data from the Mann study that pertained to the predictions of consumers who engage in long sequences of payday loans, and that the Bureau's interpretation of that data suggests that some of those consumers may not accurately predict their outcomes. At the same time, the Bureau also believes that the Mann study's data overall indicates that payday borrowers in general—*i.e.,* including consumers who engage in short sequences of payday loans—are able to predict the length of their loan sequences with reasonable accuracy. Again, as discussed above, the identified practice and the corresponding Mandatory Underwriting Provisions apply to payday borrowers in general, not just payday borrowers who engage in long sequences of payday loans.

It may be true, as industry commenters argued, that borrowers who engage in long sequences of payday loans generally have the same level of understanding of the costs and risks of payday loans as shorter-term borrowers, but that these borrowers' predictions of their loan-sequence length nonetheless are less accurate than those of shorter-term borrowers. This would be because, in essence, the level of difficulty of predicting loan-sequence length is higher for borrowers who turn out to be longer-sequence borrowers than it is for borrowers who turn out to be shorter-sequence borrowers. Nonetheless, accepting the 2017 Final Rule's approach to the legal standard for reasonable avoidability for present purposes (although the Bureau reconsiders that issue in part V.B.1), the relevant issue here is whether these consumers lack a *specific* understanding of their personal risks. That they may have the same general understanding of the loans' costs and risks as shorter-term payday loan borrowers would not affect the 2017 Final Rule's interpretation of limited data from the Mann study to find that longer-term reborrowers were not accurately predicting their outcomes, which may suggest they lack specific understanding of their personal risks from payday loans.[197]

[196] The commenters stated that approximately 16 States ban rollovers (approximately half of the States that permit short-term payday lending) while approximately another 10 States limit rollovers or have similar restrictions. They further stated that rollover bans and short cooling-off periods between loans demonstrably have little impact on reborrowing rates. And, rollover bans are particularly irrelevant in the five States in the Mann study, because none of those States has a meaningful cooling-off period, meaning that their ban on rollovers has particularly little effect limiting long loan sequences.

[197] The issue of whether the 2017 Final Rule's used the best legal standard is discussed in part V.B.1. As stated there, the Bureau has determined that the best legal standard is whether consumers lack an understanding of the magnitude and likelihood of risk that is sufficient to alert them of

Continued

The Bureau has determined that the Mann study, based on a single lender operating in only five States, is not sufficiently robust and reliable to serve as the basis for making findings of unfair practices that are applicable nationwide to all lenders making payday loans to borrowers in all States. Moreover, the Bureau's interpretation of the data from the Mann study was based on 156 respondents plus the 19 percent of the 1,326 surveyed borrowers who did not respond to the relevant question, which was 254 respondents, for a total of 410 respondents. These figures represent a miniscule portion of the up to approximately 12 million consumers in the United States who take out a payday loan in a given year.[198] Consumer groups' assertions about the single lender being a typical lender and about the five States being significant payday lending States do not indicate that the limited data from the Mann study the Bureau used is nationally representative. Instead, the comments merely suggest it is possible that the Bureau's interpretation of limited data from the Mann study is not *un*representative. In light of the dramatic impacts of the 2017 Final Rule, the Bureau has concluded that its determination of lack of understanding as a predicate to finding that harm is not reasonably avoidable should be based on data and analysis thereof that is nationally representative.[199]

Consumer group commenters argued that data the Bureau analyzed and reported on in its March 2014 data point should enable the Bureau to ascertain whether consumer outcomes at the one lender's outlets are representative. However, these consumer outcomes are not relevant to the issue of whether the limited data at issue are sufficiently nationally representative concerning consumers' understanding of the magnitude and likelihood of risks associated with their loans (as opposed to predicting their ultimate outcomes with those loans, such as length of reborrowing). And, for the reasons stated above, the Bureau has determined that its prior interpretation of limited data from the Mann study was based on data that is not sufficiently nationally representative. As the 2019 NPRM explained, consumers using loans from other lenders or in other places might not have the same understanding as those in the Mann study. Because consumer understandings and expectations may be informed by the information consumers are provided—and because that information can vary from lender to lender and State to State—the Bureau has concluded that the 2017 Final Rule's interpretation of limited data from the Mann study is not a sufficiently robust and reliable basis to make nationwide findings about consumer understanding at all lenders making payday loans to all borrowers in all States.

Finally, regarding consumer group commenters' criticisms of the other evidence the 2019 NPRM cited as casting doubt on the 2017 Final Rule's Mann data analysis, the 2019 NPRM cited this evidence merely to corroborate the Bureau's concerns about its interpretation of limited data from the Mann study. However, the Bureau would reach the same conclusion about its prior use of the limited data from the Mann study without that evidence. The Bureau's determination regarding the lack of robustness and reliability of how the 2017 Final Rule used the Mann study is not dependent upon the other evidence cited by the 2019 NPRM.

d. Other Evidence on the Consumer Understanding of Risk

The Bureau's Proposal

The 2017 Final Rule pointed to certain other evidence—*i.e.,* evidence other than the Bureau's interpretation of limited data from the Mann study—that it said showed that consumers were not able to accurately predict the specific likelihood of their individual risk of entering a long reborrowing sequence from taking out a covered short-term or longer-term balloon-payment loan. In part V.B.2 of the 2019 NPRM, the Bureau preliminarily found that this other evidence did not suffice to compensate for the insufficient robustness and reliability of the Bureau's prior use of the Mann study in the 2017 Final Rule.

Comments Received

Industry commenters and others stated that the studies, other than the Mann study, cited by the 2017 Final Rule did not address the issue of whether consumers were able to predict their specific risk from payday loans. They further noted that even if some studies were in part suggestive that consumers do not have a complete understanding of their loans, other aspects of the studies indicated that consumers do have a reasonable understanding of the risks associated with their loans.

In addition, these commenters noted that the rate of consumer complaints about payday loans is low relative to other consumer financial products, which indicates that consumers' experience with payday loans is not unexpected. Further, of the payday loan complaints that are submitted, many are about unregulated offshore lenders and illegal operators, and others do not actually relate to payday lenders but are in fact about debt collection or other issues. Finally, these commenters noted, the Bureau has acknowledged that consumer complaints related to payday loans have been declining for the past several years.

Consumer group commenters and others stated that there was a substantial amount of what they considered to be robust and reliable evidence, other than the Mann study, that the 2017 Final Rule pointed to as showing that payday loan consumers do not have a specific understanding of their personal risks from payday loans sufficient to allow them to take reasonable steps to prevent or mitigate the injury from those risks. And, these commenters said, the 2019 NPRM did not address or consider this evidence. Specifically, consumer group commenters asserted, the evidence in the 2017 Final Rule record, which the 2019 NPRM did not address, and which robustly shows consumer lack of understanding, includes the following:

(1) Data showing that substantial numbers of payday loan consumers reborrow repeatedly prior to defaulting on their loans.[200] Consumer group commenters said that this pattern indicates that consumers do not understand their specific risk of defaulting, because, if they had such understanding, they would default earlier in the loan sequences. That is, the consumers could have avoided rollover fees from which they received no benefit if they had defaulted earlier in the loan sequences.

the need to take steps to protect themselves from the harm from taking out such loans. The 2017 Final Rule did not use that better standard—it required only finding a lack of specific ability to predict their individual likelihood of risk of lengthy reborrowing, rather than finding that consumers lack a sufficient understanding to alert them of the need to take steps to protect themselves from the harm from taking out such loans. The use of the other legal standard is an independent basis for the Bureau's present determination to revoke the 2017 Final Rule; *i.e.,* it is separate from the basis for revocation that is discussed here.

[198] *See* Pew Charitable Trusts May 2016 Factsheet, *Payday Loan Facts and the CFPB's Impact, https://www.pewtrusts.org/-/media/assets/2016/06/payday_loan_facts_and_the_cfpbs_impact.pdf.*

[199] As stated in part VI.C.1.b.(2) below, the Bureau has reached the same conclusion regarding its evidentiary basis for determining lack of understanding in the abusiveness context.

[200] *See* 82 FR 54472, 54620. *See also id.* at 54572, where the 2017 Final Rule cited to a June 2016 CFPB *Report on Supplemental Findings, https://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/.*

(2) Data showing consumer harm from payday loans and that a large percentage of payday loans are made to consumers who take out the loans repeatedly. Consumer group commenters argued that consumers' recurring use of loans that harm them shows that the consumers cannot reasonably avoid the harm from the loans.[201]

(3) One hundred and fifty studies mentioned by the 2017 Final Rule, of which, commenters said, the 2019 NPRM reconsidered only the Mann study and the Pew study.

(4) Additionally, consumer group commenters pointed to other miscellaneous evidentiary sources discussed in the 2017 Final Rule. Specifically, they pointed to: Lenders marketing of payday loans as bridges for short-term cash shortfalls, whereas the loans actually function as longer-term, high-cost sources of credit; lenders encouraging consumers to reborrow the full amount of the loan—*i.e.,* to rollover the loan at the end of its term—rather than offering a repayment plan; lenders not evaluating consumers' ability to repay their loans, notwithstanding what commenters describe as consumer expectations that lenders would not permit consumers to take out loans they cannot afford; evidence from the Bureau's supervision, enforcement, and market monitoring activities; consumer complaints submitted to the Bureau's consumer complaints function; the Bureau's stakeholder outreach during the course of its rulemaking that led to the 2017 Final Rule; the 1.4 million public comments submitted in response to the Bureau's 2016 NPRM; the effects of financial distress on consumers' decision-making; and the Bureau's expertise generally.

(5) Finally, consumer group commenters pointed to the Martin study as particularly indicative of consumer lack of understanding.[202] The Martin study reflects the results of interviews with 109 borrowers at New Mexico storefront payday locations. The study found that nearly 60 percent of borrowers who had just exited a payday storefront location after completing their transactions did not know the APR of their loans, while another 16 percent made estimates of their APRs that were incorrect by a substantial margin. Further, nearly a fifth of respondents could not describe the dollar cost of their loans, while nearly 40 percent inaccurately described the dollar cost. Additionally, nearly 80 percent of borrowers in the study did not shop around for loan terms, and choice of lender was driven more by the convenience of a storefront location than by any other factor; almost no respondents cited the economic terms of the loans as being a factor in their choice of lender.

Additional Evidence Available Subsequent to Publication of the 2019 NPRM

Since publication of the NPRM in February 2019, information about two relevant studies has become available. The first study is a working paper concerning a study of payday lending in Iceland, published in September 2019 (Carvalho study).[203] The study authors use two sources of data to distinguish poor financial conditions from ''imperfect decision-making'' for consumers. The authors find that 53 percent of the payday loan dollars lent go to consumers in the lowest 20 percent of decision-making ability, which is estimated according to a scale developed by the authors. The study's findings hold in regressions if the authors control for experimental assessments regarding impatience, present bias, risk aversion, financial resources and available demographics. Further, the authors state that low decision-making ability can accurately be characterized as driving payday borrowing mistakes. Finally, the authors suggest that their analysis could likely provide information relevant to U.S. borrowers, offering as support how various characteristics align between their sample and a representative sample of those in the United States. While the authors do not have controls for liquidity for U.S. consumers, after controlling for other characteristics (risk preferences, income, and demographics), their study predicts the same increase in payday loan usage for a given change in decision-making ability.

The second study is a working paper publicly released in March 2020 of a study that surveyed borrowers at a lender in Indiana to evaluate their borrowing expectations and attitudes toward restrictions on payday lending (Allcott study).[204] After exiting a payday storefront, 2,122 borrowers were asked survey questions about their expected probability of borrowing another loan within the next eight weeks and, after the application of several pre-registered sample restrictions, 1,205 of these borrowers were used in the analysis. On average, the study participants predicted they had a 70 percent chance of reborrowing, not far from the actual 74 percent reborrowing rate for the sample. On the other hand, borrowers who used payday loans less frequently in the six months prior to the survey were much more likely to underestimate their likelihood of reborrowing.

Most surveyed borrowers said they would ''very much'' like to give themselves extra motivation to avoid payday loan debt and a supermajority (about 90 percent) would at least somewhat like to give themselves extra motivation. Consistent with this response, borrowers were also willing to pay a large premium for an incentive to avoid reborrowing. Finally, the authors use the survey responses as inputs to a model to estimate borrower awareness of present bias and consumer welfare responses to potential policy interventions. They find borrowers in their sample do put more weight on near-term payoffs, but that borrowers are also aware of this.[205] The authors use simulations to predict the effect of different restrictions on payday lending, finding that consumer welfare decreases under full payday loan bans or under caps on loan sizes, but consumer welfare slightly increases in many scenarios under a three-loan rollover restriction.

Final Rule

The Bureau has considered all of the applicable evidence, including all of the evidence raised by commenters. For the following reasons, the Bureau determines that the evidence does not provide a sufficiently robust and reliable basis to conclude that consumers who use covered short-term or longer-term balloon-payment loans do not have an adequate understanding of their risk of substantial injury from taking out payday loans where lenders have not determined they have the ability to repay them.

[201] Consumer group commenters made this comment in a July 2019 *ex parte* meeting with Bureau staff. The *ex parte* memo prepared by Bureau staff setting forth the comments made during the meeting is available at *https://www.regulations.gov/document?D=CFPB-2019-0006-52033.*

[202] The Martin study was attached to two comments submitted in response to the Bureau's 2016 NPRM, but was not cited by the 2017 Final Rule.

[203] Leandro Carvalho *et al., Misfortune and Mistake: Financial Conditions and Decision-making Ability of High-Cost Loan Borrowers,* NBER Working Paper No. 26328 (Sept. 2019), *https://www.nber.org/papers/w26328.*

[204] Hunt Allcott *et al., Are High Interest Loans Predatory? Theory and Evidence from Payday Lending,* working paper (Mar. 2020), *https://www.dropbox.com/s/ibavoq0pvr8p9ww/Payday.pdf?dl=0.*

[205] In an appendix, the study authors allow that a different interpretation of the motivation-related survey parameter is possible. If this alternative interpretation is more accurate, it dramatically increases the weight consumers place on near term payoffs and decreases their awareness of it.

Evidence of Repeated Borrowing Prior to Default

The Bureau turns first to the evidence showing that substantial numbers of payday loan consumers reborrow repeatedly prior to defaulting on their loans. This evidence arguably indicates that, with hindsight, the actions that the consumers took turned out not to have been optimal. That is, the consumers could have made themselves better off (than they ended up being) by defaulting earlier in their loan sequences. Nonetheless, the Bureau does not believe that whenever a consumer makes a choice that turns out to have been suboptimal it follows that the consumer lacked understanding of the risk at the time the choice was made. Consumers often make decisions in conditions of uncertainty—uncertainty of which the consumers are aware—and those decisions sometimes turn out to be suboptimal. It does not follow that the consumers at the time of their decisions lacked adequate understanding of their risk of substantial injury from the relevant practice. Moreover, the Bureau has determined that more direct evidence of lack of understanding is necessary in order for the evidence to be robust and reliable.

Evidence of Harmed Consumers Initiating Payday Loan Sequences Recurringly

Regarding the evidence that consumer group commenters asserted shows consumer harm from payday loans and that many initial loans go to consumers who enter into loan sequences repeatedly, the Bureau concludes that that evidence does not in any way suggest that consumers lack adequate understanding of their risk of substantial injury from taking out payday loans if lenders have not determined that they have the ability to repay them. The evidence does not suggest that consumers have inadequate information about, or lack understanding of, or do not have alternatives to, payday loans. Indeed, the Bureau believes the evidence indicates that the consumers, making their own choices, have decided that payday loans are the best option among the alternatives available to them. That is, this evidence does not suggest that consumers lack understanding of any of the options available to them or of the option they have chosen, which is a payday loan.

Other Studies Mentioned by the 2017 Final Rule

In addition, the Bureau has determined that the other studies—*e.g.,* the ''150 studies'' pointed to by consumer group commenters—mentioned by the 2017 Final Rule are not relevant to the specific issue at hand here. The number of studies is not the point when it comes to the merits of an issue (just like the number of comments on a given issue is not the point). Instead, the Bureau relies on the relevance, rigor, and consistency of findings across studies. The large set of studies discussed in the 2017 Final Rule concerned the experiences of low-income consumers, State reports on payday and vehicle title lending, and responses to changes in State regulations for small dollar lending, all of which provide useful context and evidence on how the market functions and how consumers engage with these products. But these studies do not constitute evidence, let alone robust and reliable evidence, regarding the point at issue here: Whether consumers lack adequate understanding of their risk of substantial injury from taking out payday loans where lenders have not determined they have the ability to repay them.

Other Miscellaneous Sources of Evidence Cited by Commenters

The other miscellaneous evidence pointed to by consumer group commenters—*i.e.,* the evidence summarized under (4) above—does not robustly and reliably indicate that consumers lack specific understanding of their personal risks from payday loans. Some of these sources of information were cited by the 2017 Final Rule for various purposes, but they were not the basis for the 2017 Final Rule's determination that consumers lack the required level of understanding. This is because these sources are even less probative of this issue than the limited data from the Mann study that the Bureau focused on in the 2017 Final Rule and has now determined to be insufficient to support the conclusion in the 2017 Final Rule. As the 2017 Final Rule noted: ''Measuring consumers' expectations about re-borrowing is inherently challenging.'' [206] Contrary to some commenters' suggestions, the Bureau did not have, and does not have, easy access to robust and reliable information on this subject. The miscellaneous sources cited by commenters provide no specific, direct insights into consumers' level of understanding. Commenters instead invite the Bureau to draw indirect inferences from some lenders' behavior; from the Bureau's past activities related to the payday market; from outreach and public comments associated with the Bureau's rulemaking; from consumers' financial situations; and from the Bureau's general expertise. But commenters have not pointed to specific, direct evidence about consumers' understanding that is shown to be scientifically rigorous and representative and therefore robust and reliable.[207]

The Martin Study

The Bureau did not rely on the Martin study in the 2017 Final Rule and does not rely upon it in this rulemaking. The Bureau does not believe that commenters' arguments regarding the Martin study suggest that consumers lack the requisite understanding of their risks from payday loans, for the following reasons.

The Martin study showed that 60 percent of payday loan borrowers did not know the APR of their loans and 52 percent could not provide a reasonable dollar cost of their loans. Even if the Bureau were to grant that this study suggests that some consumers might not know the exact price of their payday loans in APR or dollar terms, the Bureau believes that such lack of knowledge does not indicate that consumers lack adequate understanding of their risk of substantial injury from taking out a payday loan where lenders have not determined that they have the ability to repay them. A consumer can be familiar with payday loans, understand that they are a relatively expensive source of credit,[208] and understand the risks and costs of reborrowing and default, even if the consumer does not know the APR or dollar cost of a payday loan. For example, the consumer might have prior experience using payday loans or might have family, friends, or neighbors who

[206] 82 FR 54472, 54568.

[207] For this reason, these sources are also not sufficiently robust and reliable to supply evidence under the revised standard for reasonable avoidability that the Bureau adopts in part V.B.2.

[208] Evidence overall is mixed as to whether consumers understand the price of their loans in dollar-cost terms (*e.g.,* $15 for $100 for 2 weeks), even if they might not remember or understand the loans' APR. For example, a 2009 study by Gregory Elliehausen (Elliehausen study) states that most payday loan consumers say they are aware of the finance charge of their payday loans and report plausible finance charges for their loans. Gregory Elliehausen, *An Analysis of Consumers' Use of Payday Loans,* at 36–37 (Geo. Wash. Sch. of Bus., Monograph No. 41, 2009), *https://www.researchgate.net/profile/Gregory_Elliehausen/publication/237554300_AN_ANALYSIS_OF_CONSUMERS'_USE_OF_PAYDAY_LOANS/links/00b7d5362429f9db10000000/AN-ANALYSIS-OF-CONSUMERS-USE-OF-PAYDAY-LOANS.pdf.*

have used payday loans and other forms of credit and from whom the consumer might have developed a reasonable sense of the desirability and risks, and relative expensiveness, of payday loans relative to other forms of credit, even if the consumer does not know the specific APR or dollar cost of the payday loan the consumer received. The Bureau therefore determines that the information from the Martin study about consumer awareness of APRs or dollar costs on payday loans does not indicate that consumers lack understanding of their risk of substantial injury from taking out a payday loan where lenders have not determined they have the ability to repay them.

Evidence Available Subsequent to Publication of the 2019 NPRM

Finally, the Bureau is not relying on the Carvalho study and the Allcott study because they do not show that consumers lack the requisite understanding of their risks of substantial injury from taking out a payday loan where lenders have not determined they have the ability to repay them.

The Carvalho study, as noted above, pertained to Icelandic consumers and found that about half of payday loan dollars go to consumers in the bottom 20 percent of decision-making ability. The primary data from the study concerns Icelandic consumers, which makes its usefulness unclear when considering a regulatory intervention for payday loan borrowers in the United States—absent further research demonstrating that additional key characteristics (such as the liquidity of Icelandic and U.S. borrowers) that could affect their decisionmaking are comparable. In any event, even if Icelandic and United States consumers are comparable in key characteristics, the Bureau concludes that this study does not demonstrate, let alone robustly and reliably demonstrate, that payday loan consumers lack the requisite understanding of their risks of substantial injury from taking out payday loans where lenders have not determined that they have the ability to repay them. While consumers with low decision-making ability could have more difficulty than other consumers in general understanding any credit, financial, or other product, it does not necessarily follow that if these consumers take out payday loans they lack an adequate understanding of their substantial risks of injury from taking out payday loans where lenders have not determined that they have the ability to repay them. The Carvalho study does not show that these consumers do not understand the costs and risks of their payday loan transactions. The consumers in question can be familiar with payday loans and understand that they are a relatively expensive source of credit, even if the consumers generally have low decision-making ability. Moreover, even assuming for the sake of the argument that the subset of payday borrowers in the lowest 20 percent of decision-making ability do not have the requisite understanding of the risks of harm from the practice at issue, roughly one-half of the consumers in the Carvalho study are not in the lowest 20 percent of decision-making ability and so any such conclusion would not be applicable to them. For all of the reasons discussed above, the Carvalho study does not support the conclusions in the 2017 Final Rule that consumers could not reasonably avoid substantial injury from the identified practice.

The Allcott study, as described above, indicates that on average payday borrowers are able to predict their likelihood of reborrowing, but that infrequent borrowers are much more likely to underestimate their likelihood of reborrowing. The Bureau believes that the study does not demonstrate, let alone robustly and reliably demonstrate, that consumers lack the requisite understanding of their risk of substantial injury from taking out payday loans where lenders have not determined that they have the ability to repay them. In the study borrowers were able to predict their probability of reborrowing on average, but the authors did not establish whether the lender determined borrowers' ability to repay their loans and they did not estimate the net costs to consumers of requiring such an assessment. As an additional reason, the study involves a single lender in a single State (Indiana). The Bureau therefore believes that the study is not sufficiently representative to serve as the basis for making findings applicable nationwide about all lenders making payday loans to borrowers in all States. For these reasons, the Bureau is not relying on the Allcott study to support any conclusions in this rulemaking about reasonable avoidability.

For the reasons described above, the Bureau determines that the available evidence does not provide a sufficiently robust and reliable basis to conclude that consumers who use covered short-term or longer-term balloon-payment loans lack an adequate understanding of their risk of substantial injury from taking out payday loans where lenders have not determined that they have the ability to repay them. Accordingly, the Bureau determines to revoke the 2017 Final Rule's findings that any consumer harm from payday loans is not reasonably avoidable and that consumers lack adequate understanding of their risk of substantial injury from taking out payday loans where lenders have not determined that they have the ability to repay them.

C. Countervailing Benefits to Consumers and to Competition

The 2019 NPRM reconsidered whether the identified practice's substantial injury to consumers which is not reasonably avoidable was outweighed by countervailing benefits to consumers or to competition pursuant to section 1031(c)(1)(B) of the Dodd-Frank Act. The Bureau revisited the 2017 Final Rule's determination regarding this element and preliminarily determined that certain countervailing benefits from the identified practice were greater than the Bureau found in the 2017 Final Rule. The Bureau preliminarily revalued the countervailing benefits, proposed to find that they were greater than the Bureau found in the 2017 Final Rule, and proposed to find that the benefits to consumers and competition from the practice outweigh any such injury.

1. Reconsideration of the Dependence of the Unfairness Identification on the Principal Step-Down Exemption

Section 1031(b) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''identifying as unlawful unfair, deceptive, or abusive acts or practices'' if the Bureau makes the requisite findings with respect to such acts or practices.[209] The Bureau exercised this authority in § 1041.4 to determine that it is unfair and abusive for a lender to make covered loans ''*without reasonably determining that the consumers will have the ability to repay the loans according to their terms.*'' [210] The Bureau also exercised its authority under section 1031(b) of the Dodd-Frank Act to impose ''requirements for the purpose of preventing such acts or practices'' by adopting requirements in § 1041.5 for how lenders should go about making such an ability-to-repay determination.[211]

In the section 1022(b)(2) analysis of the 2017 Final Rule, the Bureau estimated that if lenders ceased to engage in the identified practice and instead followed the mandatory underwriting requirements designed to prevent that practice, only one-third of current borrowers would be able to

[209] 12 U.S.C. 5531(b).

[210] 12 CFR 1041.4 (emphasis added).

[211] 12 U.S.C. 5531(b); 12 CFR 1041.5.

obtain any loans and, of those who obtained a loan, only one-third would be able to obtain a subsequent loan.[212] The end result, the Bureau estimated, would be to eliminate between 89 and 93 percent of all loans.[213]

In conducting its countervailing benefits analysis, the 2019 NPRM stated that the Bureau in the 2017 Final Rule did not address the benefits to consumers or competition from lenders making covered short-term and longer-term balloon-payment loans without an ability-to-repay determination. Rather than focusing on the effects of the identified practice itself, the 2019 NPRM stated that the Bureau interjected into its analysis the effect of Rule provisions that were intended to mitigate the general effects of the requirement that lenders make an ability-to-repay determination.

Specifically, the Bureau included in its countervailing benefits analysis the principal step-down exemption in § 1041.6. The principal step-down exemption permits a certain number of covered short-term and longer-term balloon-payment loans to be made without assessing the consumer's ability to repay so long as the loans meet a series of other conditions, including a requirement that the loan amount is amortized over successive loans by stepping down the principal over such loans. None of these conditions involve any ability-to-repay determination by the lender. Rather, the conditions generally focus on whether the loan amount is amortized (stepped down) over successive loans. The Bureau predicted that the novel principal step-down exemption would actually be the predominant approach that payday lenders would use to comply with the Mandatory Underwriting Provisions, because of the substantial burdens the Mandatory Underwriting Provisions would impose on lenders.

The principal step-down exemption was not part of the identified practice. Rather, the exemption was added pursuant to the Bureau's authority to create exemptions which the Bureau deems ''necessary or appropriate to carry out the purposes and objectives of'' title X of the Dodd-Frank Act.[214]

The 2019 NPRM proposed to find that the Bureau in the 2017 Final Rule did not consider in the countervailing benefits analysis the full benefits to consumers and competition from the identified practice of lenders making covered loans without making an ability-to-repay determination. As the 2017 Final Rule stated, the combination of the mandatory underwriting requirements plus the principal step-down exemption meant that only a ''relatively limited number of consumers'' would face a ''restriction on covered loans'' which ''decreases the cost of the remedy, which in turn reduces the weight on the countervailing benefits side of the scale.''[215] This weight would have been much greater had the Bureau properly considered the full benefits from lenders engaging in the identified practice.

The 2019 NPRM observed that the approach taken by the Bureau in the 2017 Final Rule puts the proverbial cart before the horse. A predicate for the exemption is the existence of an act or practice which is unfair—which is to say, the existence of an act or practice for which the substantial injury that consumers cannot reasonably avoid outweighs countervailing benefits to consumers or to competition. According to the 2019 NPRM, it follows that an exemption predicated on the existence of an unfair practice should not be taken into account in determining whether a particular act or practice is unfair (*i.e.,* in assessing the countervailing benefits of the act or practice at issue).

As the FTC Unfairness Policy Statement explains, ''[m]ost business practices entail a mixture of economic and other costs and benefits for purchasers. . . . The [FTC] is aware of these tradeoffs and will not find that a practice unfairly injures consumers unless it is injurious in its net effects.''[216] In the 2017 Final Rule, the Bureau declared a practice unfair based on its net aggregate costs to consumers, but in doing so it relied analytically on a large-scale exemption to avoid fully considering the practice's benefits, thereby discounting the benefits of the practice relative to its costs. Because the 2017 Final Rule did not confront the total tradeoffs between the benefits and costs of the identified practice, the 2019 NPRM preliminarily determined that the 2017 Final Rule undervalued countervailing benefits. Doing so may result in business practices being treated as unfair even though they in fact are beneficial on net to consumers or competition.

Accordingly, the Bureau preliminarily determined that when evaluating the countervailing benefits of the identified practice, the Bureau should have accounted for the complete benefits from that practice. The complete benefits to consumers and competition should reflect the benefits that would be lost if the identified practice were prohibited. Otherwise, it is not possible to accurately assess (as the Bureau now preliminarily interprets the unfairness test as requiring) whether the benefits of making such loans without determining ability to repay outweigh the injury from doing so.

Comments Received

Twelve State attorneys general commented that the 2017 Final Rule improperly considered the principal step-down exemption. According to this comment, this led the Bureau to artificially reduce the costs of the Mandatory Underwriting Provisions and incorrectly determine that countervailing benefits did not offset substantial injury.

Other commenters stated that it was appropriate to consider the principal step-down exemption in the countervailing benefits analysis. Commenters stated that the principal step-down exemption was part of the remedy and consideration of the remedy in a countervailing benefits analysis is appropriate. In support of this proposition, commenters cited the FTC Unfairness Policy Statement, which provides that an agency must ''take account of the various costs that a remedy would entail,'' which includes compliance costs and costs to society more broadly.[217] At least one commenter cited examples of remedies being considered in other unfairness rules, including the FTC's Credit Practices Rule and the FRB's Credit Cards Rule.[218] The commenter stated that these rules provide examples of agencies assessing the real-world benefits and costs and demonstrate that the countervailing benefits analysis should not assess the prohibition they design in isolation.

A commenter stated that to exclude the remedy is irrational because the unfair practice could be reframed to incorporate the remedy. The commenter stated that the Bureau could have defined the unfair practice to incorporate the principal step-down exemption in the following manner: The practice of making covered loans without making a reasonable determination that a borrower will have the ability to repay the loans according their terms or without providing a means to pay off the loans in a reasonable number of installments when it becomes evident that a borrower

[212] 82 FR 54472, 54833.

[213] *Id.* at 54826 (storefront payday), 54834 (vehicle title).

[214] 12 U.S.C. 5512(b)(3).

[215] 82 FR 54472, 54609, 54603.

[216] *See* FTC Unfairness Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1074.

[217] *Int'l Harvester,* 104 F.T.C. at 1073.

[218] *See* 49 FR 7740, 7766, 7759; 74 FR 5498, 5515, 5524.

cannot repay the loans according to their terms.

Some commenters asserted that the countervailing benefits determination did not depend on the principal step-down exemption. At least one commenter noted that the 2017 Final Rule concluded that the countervailing assessment based on the 2016 NPRM—which the commenter suggested (erroneously) did not propose a principal step-down exemption—was correct. This commenter states that the Bureau implemented the principal step-down exemption to not overly restrict access to credit—not because the principal step-down exemption was essential to the countervailing benefits analysis.[219] Further, the commenter asserted that the 2017 Final Rule could not have taken the principal step-down exemption into account for vehicle title loans, for which no conditional exemption is available.

Final Rule

After reviewing the comments received, the Bureau concludes that it should not have relied upon the principal step-down exemption when evaluating the countervailing benefits of the identified practice.

As an initial matter, the Bureau concludes that remedies are a proper consideration in the countervailing benefits analysis. As the FTC Unfairness Policy Statement states, it is proper to take ''account of the various costs that a remedy would entail.'' [220] However, the principal step-down exemption simply does not represent a remedy for the identified unfair practice of making covered loans ''without reasonably determining that the consumers will have the ability to repay the loans according to their terms.'' [221] The principal step-down exemption establishes approximately sixteen conditions devised by the Bureau, *none* of which call upon the lender to make any determination of the consumer's ability to repay.[222] And as the 2019 NPRM noted, the 2017 Final Rule anticipated that the principal step-down exemption would be the predominant approach that payday lenders would use to comply. In other words, the principal step-down exemption was expected to create a situation in which most lenders engage in the identified unfair practice, that is, making payday loans to consumers where lenders have not determined they have the ability to repay them. Certainly, the conditions imposed by the principal step-down exemption created a financial product that the Bureau considered to be more desirable than a product without those conditions, but only by permitting most lenders to continue to engage in the purportedly unfair practice of making payday loans to consumers where lenders have not determined that they have the ability to repay them. The logical remedy to consider when evaluating whether not making a reasonable ability-to-repay determination is unfair is the remedy of requiring lenders to make a reasonable ability-to-repay determination.[223]

The FTC precedents cited by some commenters are not inconsistent with this conclusion. For example, the FTC Credit Practices Rule prohibited wage assignments in consumer contracts with some exceptions, such as revocable wage assignments, that were deemed ''noninjurious.'' [224] The FTC Credit Practices Rule also prohibited non-purchase money security interests in household goods, but allowed purchase money loans and security interests in valuable possessions because, unlike blanket security interests, they were necessary to preserve the commercial viability of lenders.[225] The FTC Credit Practices Rule simply provides an example of an agency defining the appropriate scope of an unfair practice, which is not comparable to the 2017 Final Rule's use of the principal step-down exemption. For instance, the FTC Credit Practices Rule did not declare that purchase money loans and security interests in valuable possessions were within the unfair practice, then exempt them if they satisfied various conditions specified by the agency, and then disregard their countervailing benefits in evaluating the overall countervailing benefits of the unfair practice. Instead, the FTC Credit Practices Rule excluded certain transactions from the scope of the unfair practice, and it did not attempt to rely upon them in conducting the countervailing benefits analysis that was necessary to establish an unfair practice. Revocable wage assignments were allowed because they were non-injurious. Security interests in valuable possessions were deemed to pose limited consumer risk but provided significant benefit to competition.

Another rule cited by commenters, the Federal Reserve's Credit Card Rule, identified applying excess payments to different balances on a consumer credit card ''in a manner that does not apply a significant portion of the amount to the balance with the highest annual percentage rate'' as an unfair practice under the FTC Act.[226] When assessing countervailing benefits, the Federal Reserve recognized that the rule would reduce lender revenue and potentially increase interest rates on all loans. But the Federal Reserve determined that these costs would be muted because lenders could choose between two specified methodologies for applying excess payments.[227] These permitted methodologies (*i.e.,* specific methods about how to apply excess payments) were both effective in remedying the identified unfair practice (*i.e.,* not applying a significant amount of an excess payment to the balance with the highest APR).

A commenter argued that the Bureau should reframe the identified unfair practice to incorporate the principal step-down exemption. This commenter argued that the Bureau should add the following words to the identified unfair practice: ''or without providing a means to pay off the loans in a reasonable number of installments when it becomes evident that a borrower cannot repay the loans according to their terms.'' In the commenter's view, this would provide a basis for the principal step-down exemption as a remedy for the modified unfair practice. But if the identified practice were redefined, then the Bureau would have to reassess each of the elements of unfairness for that identified practice, not just reassess countervailing benefits. The approach proposed by the commenter would do nothing to address the Bureau's separate conclusions regarding the reasonable avoidability element of unfairness in part V.B. Such a fundamental change would entail an additional complex rulemaking, which as the Bureau explains in part VII on consideration of alternatives is not consistent with the Bureau's rulemaking priorities. Moreover, even if the Bureau was to modify the unfair practice in the manner suggested by the commenter, the principal step-down exemption includes various conditions that are unrelated to remedying such a modified unfair practice, such as the principal limit of $500.

[219] *See* 82 FR 54472, 54603.

[220] *Int'l Harvester,* 104 F.T.C. at 1073.

[221] 12 CFR 1041.4.

[222] 12 CFR 1041.6; *see also* 12 CFR part 1041, supp. I, section 1041.6.

[223] The agency's chosen remedy can, of course, include additional preventative requirements so long as those have a ''reasonable relation'' to the identified unfair practice. 82 FR 54472, 54519 (citing *Am. Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 988 (D.C. Cir. 1985)).

[224] 49 FR 7740, 7760–61.

[225] *Id.* at 7766.

[226] 74 FR 5498, 5514.

[227] *Id.* at 5515. Among other prohibitions, the Rule also found it unfair for lenders to increase APR applicable to an outstanding balance on consumer credit card, except in certain prescribed circumstances. *See id.* at 5521.

Some commenters pointed to statements in the 2017 Final Rule that they claim indicate that the Bureau did not rely upon the principal step-down exemption in its countervailing benefits analysis. As background, in the 2016 NPRM, the Bureau had not proposed to include the principal step-down exemption in its countervailing benefits analysis.[228] The 2017 Final Rule does contain a statement that the 2016 NPRM's preliminary determination that countervailing benefits element was satisfied ''was correct,'' [229] and it contains some other positive language about the 2016 NPRM's proposed countervailing benefits analysis.[230] But these summary statements do not mean that the 2017 Final Rule was based upon and relied upon everything in the 2016 NPRM's proposed analysis, as commenters suggest.

And in fact, in both its description of its countervailing benefits analysis and in the substance of that analysis, the 2017 Final Rule relied upon the principal step-down exemption. The Bureau referred to the principal step-down exemption's impact on credit access several times in the preamble to § 1041.4.[231] In particular, in assessing the countervailing benefits to a particular group of covered loan users—reborrowers—the Bureau explicitly invoked the principal step-down exemption's mitigating effect.[232] Further, when considering the 2017 Final Rule's major impacts in the section 1022(b)(2) analysis, the Bureau cited a simulation that accounted for the principal step-down exemption.[233] Thus, the countervailing benefits analysis did rely upon the conditional exemption.

Finally, the Bureau does not agree with the comment suggesting that the fact that vehicle title loans cannot qualify for the principal step-down exemption but are included in the definition of covered loan indicates that the exemption did not affect the countervailing benefits analysis; borrowers' and lenders' activities across the covered loan markets were incorporated into the Bureau's analysis. As both the 2017 Final Rule and the 2019 NPRM noted, the relevant injuries and countervailing benefits of the identified unfair practice are considered in the *aggregate*.[234]

The Bureau now determines that, by relying upon the principal step-down exemption in its countervailing benefits analysis, the 2017 Final Rule failed to acknowledge the full measure of the Mandatory Underwriting Provisions' costs to consumers and competition. Based on the 2017 Final Rule's simulations, these unacknowledged costs may have dramatic effects.[235] Accordingly, the Bureau concludes that the 2017 Final Rule should not have relied on the principal step-down exemption in its assessment of countervailing benefits to consumers and competition, and therefore the 2017 Final Rule undervalued the identified practice's benefits to consumers and competition.

2. Effect of Undervaluing Countervailing Benefits

In the 2019 NPRM the Bureau preliminarily determined that after fully accounting for the countervailing benefits—including benefits it disregarded in the 2017 Final Rule because of its reliance on the principal step-down exemption and also other benefits that the 2017 Final Rule undervalued—that the substantial injury from the identified practice that consumers cannot reasonably avoid is outweighed by the aggregate countervailing benefits to consumers and competition of that practice.

As the 2017 Final Rule noted and the 2019 NPRM reiterated, the relevant question under section 1031(c)(1)(B) of the Dodd-Frank Act is whether the countervailing benefits ''outweigh the substantial injury *that consumers are unable reasonably to avoid* and that stems from the identified practice.'' [236] For purposes of the countervailing benefits analysis, the 2019 NPRM accepted the 2017 Final Rule's conclusion that there is injury that is not reasonably avoidable (although elsewhere the 2019 NPRM proposed to withdraw that conclusion regarding reasonable avoidability, and this rule withdraws that conclusion for the reasons described in part V.B). The 2019 NPRM noted that the 2017 Final Rule approached the countervailing benefits analysis by first weighing the relevant injury in the aggregate, then weighing countervailing benefits in the aggregate, and then assessing which of the two predominates.[237] As both the 2017 Final Rule and the 2019 NPRM explained, the substantial, not-reasonably-avoidable injury ''is weighed in the aggregate, rather than simply on a consumer-by-consumer basis,'' and conversely ''the countervailing benefits to consumers are also measured in the aggregate, and the Bureau includes the benefits even to those consumers who, on net, were injured.'' [238]

a. Countervailing Benefits to Consumers

The Bureau's Proposal

In the 2017 Final Rule and the 2019 NPRM, the Bureau analyzed the countervailing benefits separately for three segments of consumers, defined by their *ex post* behavior: Repayers (those who repay a covered short-term or longer-term balloon-payment loan when due without the need to reborrow within 30 days); reborrowers (those who eventually repay the loan but after one or more instances of reborrowing); and defaulters (those who default either on an initial loan or on a subsequent loan that is part of a sequence of loans).[239] In the 2019 NPRM, the Bureau requested comment on whether these were the appropriate categories to use to analyze the existence of countervailing benefits.

Repayers. In between 22 percent and 30 percent of payday loan sequences [240] and a smaller slice of vehicle title sequences,[241] borrowers obtain a single loan, repay it in full when first due, and do not reborrow again for a period of 14 to 30 days thereafter. In conducting the countervailing benefits analysis in the 2017 Final Rule with respect to repayers, the Bureau did not suggest that the identified practice was without benefit to these repayers. Rather, the Bureau's countervailing benefits analysis in the 2017 Final Rule

[228] *See* 81 FR 47863, 47939 n.540.

[229] 82 FR 54472, 54603.

[230] *Id.* (suggesting that certain improvements at the final rule stage resulted in the ''injury from the identified practice outweighing the countervailing benefits to consumers by even more than it did at the proposal stage'').

[231] *See, e.g., id.* at 54603, 54604, 54606.

[232] *Id.* at 54606 (''The Bureau concludes that this aggregate injury to many 'reborrowers' outweighs the countervailing access-to-credit benefits that other 're-borrowers' may receive as a result of lenders not reasonably assessing the borrower's ability to repay the loan according to its terms, in light of all the provisions of the final rule, *including the effect that § 1041.6 will have in reducing the magnitude of those benefits.*'') (emphasis added).

[233] *Id.* at 54817.

[234] *Id.* at 54602, 54591.

[235] In the 2017 Final Rule, when assuming the existence of the conditional exemption, the Bureau estimated that the Mandatory Underwriting Provisions would decrease total covered loan volume by 71 to 76 percent. But without the conditional exemption, the Bureau estimated a reduction of loan volume of approximately 92 to 93 percent. *Id.* at 54826.

[236] 82 FR 54472, 54602 (emphasis added).

[237] *Id.*

[238] *Id.* at 54591.

[239] *Id.* at 54599–600.

[240] *See* Supplemental Findings at 120. The higher number uses a 14-day definition of loan sequence and thus includes consumers who repay their first loan and do not borrow within the ensuing two weeks. The lower number uses a 30-day definition and thus counts only those who do not reborrow within 30 days after repayment.

[241] *See* Bureau of Consumer Fin. Prot., *Single-Payment Vehicle Title Lending,* at 11 (May 2016), *https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf* (11 to 13 percent).

effectively acknowledged the identified practice had benefits for some repayers because the Rule recognized that it was important to avoid ''false negatives,'' *i.e.,* consumers who in fact have the ability to repay but who could not establish it *ex ante*.[242] However, the Bureau determined that these countervailing benefits were ''minimal,'' in part because the Bureau anticipated that lenders would make substantially all the loans permitted by the Mandatory Underwriting Provisions of the 2017 Final Rule and in part because the Bureau believed that the principal step-down exemption would mitigate any false negative concerns.[243]

In the 2019 NPRM, the Bureau preliminarily determined that in the 2017 Final Rule it understated the risk that, under the mandatory underwriting requirements, some consumers who would be repayers and would benefit from receiving a loan would nonetheless be denied a loan. According to the 2019 NPRM, this risk arises in part from the difficulty some borrowers may have in proving their ability to repay and in part from the fact that some lenders may choose to ''over-comply'' in order to reduce their legal exposure. Although the 2017 Final Rule minimized the possibility that lenders would take a ''conservative approach . . . due to concerns about compliance risk,'' [244] the Bureau preliminarily concluded in the 2019 NPRM that somewhat greater weight should be placed on this risk. In reaching this preliminary determination, the Bureau cited its experience in other markets which indicates that some lenders generally seek to take steps to avoid pressing the limits of the law.

Moreover, from the perspective of the repayers, the 2019 NPRM stated there may also be significant effects of requiring lenders to make ability-to-repay determinations that might be termed ''system'' effects. As previously noted, the 2017 Final Rule's assessment of benefits and costs estimated that, if covered short-term or longer-term balloon-payment loans could be made only to those consumers with an ability to repay in a single installment without reborrowing, lenders would not make upwards of 90 percent of all loans and of course not receive revenue from loans that are not made. At a minimum, the 2019 NPRM stated that would lead to a vast constriction of supply. The Bureau in the 2019 NPRM preliminarily determined that a 90 percent reduction in revenue would produce at least a corresponding reduction in supply [245] and could have even a more profound effect if the remaining revenue were insufficient for lenders to remain in operation using their current business model. In other words, the Bureau preliminarily believed that one of the countervailing benefits of permitting lenders to engage in the identified practice is that it makes it possible to offer loans on a wide-scale basis to the repayers. According to the 2019 NPRM, prohibiting such lending will necessarily decrease the ability of the repayers to obtain covered short-term and longer-term balloon-payment loans.

Reborrowers. As the Bureau noted in the 2017 Final Rule, over 55 percent of both payday and vehicle title sequences result in the consumer reborrowing one or more times before finally repaying and not borrowing again for 30 days.[246] The Bureau acknowledged that some of these borrowers who are unable to repay in a single installment (*i.e.,* without reborrowing) may nonetheless benefit from having access to covered short-term and longer-term balloon-payment loans because the borrowers may be income-smoothing across a longer time span. These borrowers also may benefit because they may face eviction, overdue utility bills, or other types of expenses, with paying such expenses sometimes creating benefits for consumers that outweigh the costs associated with the payday loan sequence. But the Bureau in the 2017 Final Rule stated that the principal step-down exemption—which it said is ''worth emphasizing'' in this context—would ''reduc[e] the magnitude'' of the countervailing benefits flowing from the identified practice.[247] After taking into account this reduction, the Bureau in the 2017 Final Rule concluded, however, that the remaining countervailing benefits were outweighed by the injury to those reborrowers who find themselves ''unexpectedly trapped in extended loan sequences.'' [248]

The 2019 NPRM stated that, on its own terms, this reasoning has no applicability with respect to vehicle title reborrowers for whom the principal step-down exemption would not be available and who thus would lose the ability to income smooth over more than one vehicle title loan or deal with the expenses referenced above. According to the 2019 NPRM, this reasoning similarly does not apply to payday loan reborrowers who cannot qualify for the principal step-down exemption, for example, borrowers who find that they have a new need for funds but have already exhausted the various borrowing limits imposed by the exemption.[249] Moreover, the Bureau preliminarily determined that this reliance on the principal step-down exemption was inappropriately considered.

The Bureau in the 2019 NPRM preliminarily believed that the consequences of this reliance on the exemption are profound. Under an ability-to-repay regime, assuming the systemic effects did not eliminate the industry completely, the 2019 NPRM stated that most of the 58 percent of payday borrowers or 55 percent of vehicle title borrowers would lose access to covered short-term and longer-term balloon-payment loans because reborrowers lack the ability to repay the loans according to their terms. To the extent some consumers passed an ability-to-repay assessment and needed to reborrow, the 2019 NPRM stated that most would be precluded from taking out a second loan. In other words, the practice of making covered short-term or longer-term balloon-payment loans to consumers who cannot satisfy the mandatory underwriting requirement is the linchpin of enabling the reborrowers to access these types of loans.

The Bureau acknowledged in the 2019 NPRM that among reborrowers there is a sizable segment of consumers who end up in extended loan sequences before repaying and thus incur significant costs. But even for these borrowers, there is some countervailing benefit in being able to obtain access to credit, typically through the initial loan, that is used to meet what the Bureau acknowledged in the 2017 Final Rule to be an ''urgent need for funds'' [250]—for example, to pay rent and stave off an eviction or a utility bill and avoid a shutdown, or to pay for needed medical care or food for their family.[251] Moreover, over 35 percent of the reborrowers required only between one and three additional loans before being able to repay and stop borrowing for 30 days and an additional almost 20

[242] *See* 82 FR 54472, 54603–04.

[243] *Id.*

[244] *Id.* at 54603.

[245] *See id.* at 54817, 54842 (estimating that the 2017 Final Rule as a whole, including the principal step-down exemption, would reduce loan volume by between 62 and 68 percent and would result in a corresponding reduction in the number of retail outlets).

[246] *Id.* at 54605.

[247] *Id.* at 54606.

[248] *Id.* at 54605.

[249] 12 CFR 1041.6.

[250] 82 FR 54472, 54620.

[251] As discussed in the Rule, *id.* at 54538, surveys which ask borrowers about the reasons for borrowing may elicit answers regarding the immediate use to which the loan proceeds are put or about a past expense shock that caused the need to borrow, making interpretation of the survey results difficult. But what seems beyond dispute is that these borrowers have a pressing need for additional money.

percent of the reborrowers required between four and six additional loans before being able to repay.[252] The 2019 NPRM stated that these shorter-term reborrowers would forgo any benefits associated with these additional loans if lending was limited to those who can demonstrate an ability to repay in a single installment.

In sum, the Bureau preliminarily believed that there are substantial countervailing benefits for reborrowers that flow from the identified practice that the Bureau preliminarily determined should not have been discounted in the 2017 Final Rule by relying on the principal step-down exemption.

Defaulters. The third group of borrowers discussed in the 2017 Final Rule were those whose sequences end in default. As to this group, representing 20 percent of payday borrowers [253] and 32 percent of vehicle title borrowers,[254] the Bureau in the 2017 Final Rule acknowledged that ''these borrowers typically would not be able to obtain loans under the terms of the final rule'' (and thus the Bureau did not rely on the principal step-down exemption in assessing the effects on these consumers).[255] The Bureau went on to note that ''losing access to non-underwritten credit may have consequences for some consumers, including the ability to pay for other needs or obligations'' and the Bureau stated that this is ''not an insignificant countervailing benefit.'' [256] But the Bureau went on to state that these borrowers ''are merely substituting a payday lender or title lender for a preexisting creditor'' and obtaining ''a temporary reprieve.'' [257]

According to the 2019 NPRM, it is not necessarily true that all defaulters use their loan proceeds to pay off other outstanding loans; at least some use the money to purchase needed goods or services, such as medical care or food. Moreover, the Bureau expressed concern that in the 2017 Final Rule it minimized the value to consumers of substituting a payday lender for other creditors, such as a creditor with the power to initiate an eviction or shut off utility services or refuse medical care. The Bureau also expressed concern that the 2017 Final Rule minimized the value of a ''temporary reprieve'' which may enable defaulters to stave off more dire consequences than the consequences of defaulting on a payday loan.

Conclusion. In sum, the Bureau preliminarily concluded that the 2017 Final Rule's approach to its countervailing benefits analysis caused it to underestimate the countervailing benefits to consumers in terms of access to credit that flows from the identified practice. According to the 2019 NPRM, it is not just the benefit of access to credit for those payday loan consumers who would lose access under the principal step-down exemption that should be weighed; rather the systemic effects of ending the identified practice and eliminating over 90 percent of all payday and vehicle title loans would adversely affect the interests of all borrowers—including even those with the ability to repay. Furthermore, the Bureau preliminarily believed that it underestimated the benefits of access to credit for a large segment of reborrowers and even for some defaulters—including the benefits of a temporary reprieve, of substituting a payday or vehicle title lender for some other creditor and, for the reborrowers, the benefit of smoothing income over a period longer than a single two-week or 30-day loan. The Bureau preliminarily determined that after giving appropriate weight to the interests of all affected consumers, the countervailing benefits to consumers that flow from the practice of making covered short-term and longer-term balloon-payment loans without making an ability-to-repay determination outweigh the substantial injury that the Bureau considered in the 2017 Final Rule to not be reasonably avoidable by consumers. The Bureau invited comment on these preliminary conclusions.

Comments Received

Industry, trade association, tribal, and other commenters largely agreed that the 2017 Final Rule undervalued benefits to consumers. Commenters stated that the 2017 Final Rule will limit access to short-term credit, particularly for financially distressed consumers who lack access to traditional forms of credit, including credit from depository institutions. A commenter noted that lenders will not be able to obtain information for underwriting for ''unscorable'' consumers without credit files.

These commenters stated that the 2017 Final Rule would cause consumers to resort to unregulated or more expensive credit alternatives, including overdraft protection or pawnbrokers. Commenters stated that consumers may suffer financial harms, including overdrawing accounts, bouncing checks, missing payments, accruing late fees, or defaulting. Commenters cited studies of Georgia, North Carolina, and New York as evidence that consumers suffer adverse consequences where payday loans are restricted.[258]

These commenters also responded to the 2019 NPRM's preliminary reassessment of the 2017 Final Rule's effects on specific groups of consumers, including reborrowers and defaulters.[259] These commenters agreed that the 2017 Final Rule underestimated the benefit of covered loans to reborrowers, including hourly or gig economy workers with fluctuating incomes, who benefit from income smoothing and the ability to access credit in an emergency. These commenters agreed that the 2017 Final Rule minimized the value of the temporary reprieve to defaulters.

Other commenters stated that the 2019 NPRM appropriately emphasizes consumer sentiment and a balanced consideration of consumer sentiment measures, including complaints, which suggests that payday loans benefit consumers.

By contrast, some consumer groups and other commenters characterized covered loans as dangerous financial products that provide no productive economic value and trap vulnerable consumers in cycles of debt. These commenters stated that covered lenders do not provide access to productive credit that helps bridge a short-term financial shortfall—they flip borrowers from one unaffordable loan to another for as long as possible. Some other commenters similarly stated that payday loan use is often driven by insufficient income to cover expenses and that small-dollar loans do not fix this underlying problem—they exacerbate it by becoming an additional liability.

Other commenters stated that the 2019 NPRM mischaracterized the 2017 Final Rule's findings with respect to the Mandatory Underwriting Provisions'

[252] *See* Supplemental Findings at 122 (fig. 36).

[253] *See id.* at 120 (tbl. 23).

[254] *See* Bureau of Consumer Fin. Prot., *Single-Payment Vehicle Title Lending,* at 11 (May 2016), *https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.*

[255] 82 FR 54472, 54604.

[256] *Id.*

[257] *Id.* at 54604, 54590.

[258] *See* Donald P. Morgan & Michael R. Strain, *How Payday Credit Access Affects Overdrafts and Other Outcomes,* 44 J. Money Credit & Banking 519, 521 (2012), and *Payday Holiday: How Households Fare after Payday Credit Bans* (Feb. 2008), *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr309.pdf* (borrowers were more likely to experience an adverse change after a decrease in the number of payday lenders in Oregon); Piotr Danisewicz & Ilaf Elard, *The Real Effects of Financial Technology: Marketplace Lending and Personal Bankruptcy* (July 2018), *https://www.ssrn.com/abstract=3208908* (the reduction in marketplace credit following *Madden* v. *Midland Funding, LLC,* 786 F.3d 246 (2d Cir. 2015), led to an 8 percent increase in personal bankruptcies in New York and Connecticut).

[259] *See* 84 FR 4252, 4272–74.

impact on access to credit. They claimed that the 2019 NPRM paraphrased the 2017 Final Rule's calculations of reduced covered loan volume and lender revenue to imply a commensurate reduction in access to credit, but the 2017 Final Rule did not reach this conclusion.

Some commenters stated that the 2017 Final Rule would preserve appropriate access to covered loans. With respect to the specific covered loan consumers (*i.e.,* repayers, reborrowers, and defaulters) that the 2019 NPRM identified, at least one commenter stated that repayers would maintain access to covered loans. Another commenter stated that short-term reborrowers could continue to take out one or two loans to address a temporary financial hardship under the 2017 Final Rule. At least one commenter stated that the inability to access covered loans would be concentrated among consumers who lack the ability to repay and are most likely to be injured by covered loans.

Some commenters stated that the 2017 Final Rule would not prevent consumers from accessing credit and non-credit alternatives to covered loans. These commenters stated that the experience of consumers in States with payday loan restrictions evidence this fact. Some commenters stated that the 2019 NPRM failed to take into account that covered lenders can shift to installment or longer-term loans, which was the experience in some States after payday lending restrictions were adopted, including Colorado, Illinois, New Mexico, Ohio, Texas, Virginia, and Wisconsin.[260] For example, a commenter noted that a prominent payday lender recently disclosed that only 19 percent of its revenue came from multi-payment loans in 2010, but by the third quarter of 2018, that figure had quadrupled to 77 percent.[261] Another commenter stated that in at least 26 of the 32 States where payday and vehicle title lenders operate today, non-bank small-dollar lenders can already offer loans with terms beyond 45 days.[262]

A commenter faulted the 2019 NPRM for attempting to compare the number of consumers in specific groups who are benefitted and harmed by covered loans—*i.e.,* repayers, reborrowers, and defaulters—without considering the magnitude of harm across those groups. According to this commenter, even if the number of consumers that receive some benefit from covered loans exceeds the number of harmed consumers, the product may not produce a countervailing benefit if the harm experienced by consumers is sufficiently severe.

Some commenters stated that the 2019 NPRM did not introduce new evidence in support of the proposed reassessment of countervailing benefits to consumers. These commenters stated that the 2019 NPRM fails to provide any data to dispute the 2017 Final Rule's findings and instead speculates about alternative scenarios and differences in weights to hypothetical benefits. A commenter argued that the 2019 NPRM's approach to countervailing benefits is inconsistent with the proposal's emphasis on robust and reliable evidence in other contexts in within the 2019 NPRM.

Final Rule

After reviewing the comments, the Bureau concludes that the 2017 Final Rule underestimated the identified practice's countervailing benefits to consumers in terms of access to credit that flows from the identified practice.

At the outset, the Bureau reemphasizes one point made by the 2017 Final Rule regarding how evidence is considered in a countervailing benefits analysis. Consistent with the approach to unfairness under the FTC Act, the Bureau does not ''quantify the detrimental and beneficial effects of the practice in every case. In many instances, such a numerical benefit-cost analysis would be unnecessary; in other cases, it may be impossible.'' [263] The Bureau does ''carefully evaluate the benefits and costs of each exercise of its unfairness authority, gathering and considering reasonably available evidence.'' [264] But as case law regarding FTC unfairness rules has recognized, ''much of a cost-benefit analysis requires predictions and speculation.'' [265] The 2017 Final Rule's countervailing benefits analysis was indeed limited and qualitative in some respects, which compelled the Bureau in the 2017 Final Rule to make some predictions and speculations. Limitations in evidence may require prediction or speculation. Such prediction or speculation is a matter of degree based on the evidence available. The Bureau's reconsideration is based on the same record as the 2017 Final Rule.

The Bureau is not persuaded by commenters that the approach to evidence in the context of reasonable avoidability is inconsistent with the approach to evidence in the context of countervailing benefits. As explained in part V.B.2, the Bureau has decided to require robust and reliable evidence in order to conclude that consumers cannot reasonably avoid injury, in light of the dramatic impacts of the Mandatory Underwriting Provisions on the payday market and in turn consumer choice. But for purposes of this countervailing benefits analysis, the Bureau assumes that the relevant group of longer-term borrowers cannot reasonably avoid injury, and so those concerns about consumer choice are not determinative of the quality and quantity of evidence that is appropriate when weighing countervailing benefits. Instead, the Bureau must decide whether the relevant detrimental effects or beneficial effects of the identified practice predominate, including those effects that are significant without being quantifiable.

Turning to the substance of the countervailing benefits analysis, the Bureau notes that commenters disagreed on whether the 2017 Final Rule would result in reduced access to credit. Industry and consumer groups largely divided along this question. After considering the evidence cited in the 2019 NPRM and information submitted in comments to the proposal, the Bureau concludes that the 2017 Final Rule would dramatically reduce access to covered loans to the detriment of consumers. As the 2017 Final Rule explained, a Bureau simulation that excluded the principal step-down exemption estimated that the ability-to-repay requirement would reduce storefront and online payday loan volume and lender revenue by 92 to 93 percent.[266] The simulation also estimated that restrictions on short-term vehicle title lending will reduce loan volume and revenue by 89 and 93 percent.[267] Given these dramatic impacts, the Bureau has substantial concerns about the ongoing viability of the covered loan market more broadly and its effects on consumer access to credit.

[260] These comments tend to support the conclusion that consumers can turn to alternative products to avoid injury from taking out a covered loan.

[261] *See* CURO Group, *Presentation at Jefferies Consumer Finance Summit,* at 9 (Dec. 2018), *https://ir.curo.com/events-and-presentations.*

[262] *See* Pew Charitable Trusts, *From Payday to Small Installment Loans: Risks, opportunities, and Policy Proposals for Successful Markets* (Aug. 2016), *https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/from-payday-to-small-installment-loans.*

[263] S. Rep. No. 103–130, at 13 (1994) (quoted at 82 FR 54472, 54521 n.386).

[264] *Id.*

[265] *Pa. Funeral Dirs. Ass'n* v. *FTC,* 41 F.3d 81, 91 (3d Cir. 1994) (quoted at 82 FR 54472, 54521 n.386).

[266] 82 FR 54472, 54826, 54833.

[267] *Id.* at 54834.

As discussed in part V.B.1, the Bureau concludes that consumers would have access to credit and non-credit covered loan alternatives if the 2017 Final Rule went into effect. These would include a variety of payday loan alternatives and credit offered by fintechs, credit unions, and other mainstream financial institutions.

But the Bureau also concludes that the 2017 Final Rule's systemic impacts on the payday market, absent the principal step-down exemption, would prevent consumers who prefer covered loans from accessing them, notwithstanding the availability of other products that they may not prefer. For purposes of this countervailing benefits analysis, the Bureau accepts the 2017 Final Rule's conclusion that the longer-term borrowers identified by the Bureau cannot reasonably avoid taking out loans. Thus, for purposes of this analysis, the Bureau does not posit that these longer-term borrowers prefer payday loans. But the 2017 Final Rule also emphasized that it did not disagree with Professor Mann that there are also ''borrowers who remain in debt for a relatively short period, who constitute a majority of all borrowers, and who do not appear to systematically fail to appreciate what will happen to them when they re-borrow.'' [268] As the Rule noted, there are ''many individuals'' who ''appear to have anticipated short durations of use with reasonable accuracy.'' [269] Many borrowers appear to prefer payday loans to other products that are currently available to them. This could be for a number of reasons, depending upon the individual, including the speed and convenience of the borrowing process, easy loan approval, and the ability to take out a loan without a traditional credit check. The available data does not explain the precise characteristics of borrowers' preferences for payday loans compared to other current alternatives, and there is also some uncertainty about how those alternatives may evolve in the future. Nevertheless, the Bureau believes that the Rule's large impacts on the payday market, absent the principal step-down exemption, will deprive them of their preferred form of credit.

The Bureau also finalizes its more specific preliminary determinations regarding the 2017 Final Rule's effects on certain segments of covered loan users: Repayers, reborrowers, and defaulters. With respect to repayers, the Bureau concludes that the 2017 Final Rule understated the risk that repayers would be denied a loan and that a countervailing benefit of permitting lenders to engage in the identified practice is that it makes it possible to offer loans on a wide-scale basis to repayers. With respect to reborrowers, the Bureau concludes that there are substantial countervailing benefits that flow from the identified practice, such as income-smoothing and avoiding a greater harm (*e.g.,* eviction, overdue utility bills, or other types of expenses), which the 2017 Final Rule discounted. With respect to defaulters, the Bureau concludes that the 2017 Final Rule erroneously minimized the value of the temporary reprieve.

In support of these conclusions, the Bureau notes that industry commenters who provided feedback on the topic uniformly agreed with the proposed reassessment in the 2019 NPRM of the benefits to repayers, reborrowers, and defaulters. The Bureau acknowledges that consumer group commenters generally disagreed with the 2019 NPRM's reweighing of benefits to certain groups, but these commenters did not provide evidence or raise arguments that lead the Bureau to reconsider its preliminary determinations. In particular, the Bureau is unpersuaded by a comment that the 2017 Final Rule would preserve appropriate access to covered loans for repayers and reborrowers and only restrict covered loans among defaulters who are most likely to be injured by covered loans. Given the 2017 Final Rule's dramatic impacts—which itself estimated would extinguish 89 to 93 percent of covered loan volume—the Bureau does not believe that there would be a viable market to provide covered loans to repayers and reborrowers because most lenders (especially those that only offer covered loans) could not continue to provide covered loans in such a shrunken market.

With respect to a comment that the 2019 NPRM's proposed reassessment did not consider the magnitude of harm across groups (*i.e.,* the harm suffered by defaulters is greater than the benefit to repayers and reborrowers), the Bureau disagrees. The Bureau has consistently emphasized, in both the 2017 Final Rule and the 2019 NPRM, that the appropriate approach to this analysis is to compare the aggregate substantial injury that is not reasonably avoidable across all consumers experiencing such injury with the aggregate benefits to all consumers who are benefitted, quantifying aggregate injury and benefits if feasible but relying on qualitative analysis if it is not. This is different from simply counting the numbers of individual consumers who experienced a net harm or net benefit. The 2019 NPRM did not reconsider the 2017 Final Rule's characterization of the aggregate injury. In reconsidering the aggregate benefits, the 2019 NPRM provided a qualitative description of why the Bureau is reconsidering the magnitudes of the countervailing benefits to repayers, reborrowers, and defaulters.

The Bureau notes that although the 2017 Final Rule would reduce access to covered loans, commenters did not provide evidence that the rule would drive consumers toward unregulated or more expensive alternatives. The 2017 Final Rule determined that limiting the number of covered loans would not lead to more unregulated or illegal loans, and the Bureau concludes that the evidentiary record is not sufficient to revoke this specific finding.[270]

The Bureau is also unpersuaded by the specific argument that consumer sentiment measures, such as purportedly low volumes of consumer complaints about payday loans, which are typically made without an ability-to-repay assessment, are indicative of consumer benefit. As the Bureau has suggested before, this argument is based on a flawed premise. An absence of consumer complaints does not lead to an inference of consumer benefit. There are many reasons why consumers do not complain even though they may not benefit from a product, or, more specifically here, from a practice relating to a product.

The Bureau also disagrees with commenters that argued that the 2019 NPRM mischaracterized the 2017 Final Rule's findings. In asserting that the 2017 Final Rule would reduce payday loan revenue and volume by 89 to 93 percent of all loans, the Bureau based this statement on simulations from the 2017 Final Rule.[271] By using the phrase ''of all loans,'' the 2019 NPRM implicitly referred to all ''covered'' loans, which are at issue in this rulemaking, not access to credit

[268] 82 FR 54569.

[269] *Id.* at 54570. Research by the Bureau found that 80 percent to 85 percent of payday borrowers succeed in repaying their loans, of which between 22 percent and 30 percent do so after receiving a single loan while the remainder repaid after reborrowing one or more times. The Bureau found that borrowers end up taking out seven or more loans in a row 27 to 33 percent of the time. Bureau of Consumer Fin. Prot., *Supplemental findings on payday, payday installment, and vehicle title loans and deposit advance products,* at 120, 123 (June 2016), *https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf.*

[270] 82 FR 54472, 54610 (citing Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 19–24, *https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf*).

[271] *Id.* at 54817, 54834–35.

generally. Although the 2019 NPRM specifically discussed covered loans in this passage, the Bureau reiterates its broader concerns that the 2017 Final Rule's dramatic impacts on revenue and volume will critically undermine the viability of covered loans to the detriment of consumers.

Accordingly, the Bureau concludes that the 2017 Final Rule underestimated the identified practice's benefits to consumers. The 2017 Final Rule found that ''a substantial population of borrowers is harmed, many severely,'' by the identified unfair practice.[272] The Bureau is conscious of the 2017 Final Rule's findings regarding that injury and has not reconsidered them in this rulemaking. Nevertheless, the 2017 Final Rule believed that identifying an unfair practice with the goal of protecting longer-term borrowers would have relatively little cost for the broader population of borrowers who take out covered loans. But this analysis was reliant upon a principal step-down exemption that obscured the true impact on borrowers if the identified unfair practice were proscribed, and it placed too little weight on the benefits to borrowers from access to their preferred form of credit.

b. Countervailing Benefits to Competition

The Bureau's Proposal

As with its discussion of the countervailing benefits to consumers, the 2017 Final Rule analyzed the countervailing benefits to competition through the lens of the principal step-down exemption. Specifically, the 2017 Final Rule acknowledged that ''a certain amount of market consolidation may impact . . . competition'' but asserted that this effect would be modest and would not reduce meaningful access to credit because of the principal step-down exemption.[273] For the reasons previously discussed, in the 2019 NPRM the Bureau preliminarily determined that the Bureau should not have factored into its analysis this exemption but rather should have analyzed the effect on competition from the identified practice. Lenders would not be able to make upwards of 90 percent of the loans they would be able to make if the identified practice were not prohibited. The Bureau preliminarily determined in the 2019 NPRM that this decrease in lending activity would have a dramatic effect on competition, especially if lenders cannot stay in business in the face of such decreases in revenue from lending.

The Bureau recognized in the 2019 NPRM that because of State-law regulation of interest rates, the effect of reduced competition may not manifest itself in higher prices. However, according to the 2019 NPRM, payday and vehicle title lenders compete on non-price dimensions and a rule which caused at least a 90 percent reduction in lending would likely materially impact such competition.

The Bureau also noted that, as the 2017 Final Rule recognized, a number of innovative products are seeking to compete with traditional short-term lenders. Some of these products assist consumers in finding ways to draw on the accrued cash value of wages that have been earned but not yet paid, while other products take the form of extensions of credit.[274] Other innovators are also providing emergency assistance at no cost to consumers through a tip model.[275] The 2017 Final Rule included exclusions to accommodate these emerging products, thereby recognizing that providers offering these products were doing so without assessing the consumers' ability to repay without reborrowing. The Bureau therefore preliminarily believed that a prohibition of making short-term or longer-term balloon-payment loans without assessing consumers' ability to repay would constrain innovation in this market.

The Bureau preliminarily determined in the 2019 NPRM that these countervailing benefits to competition provide an additional reason to conclude that the countervailing benefits to consumers and to competition outweigh the substantial injury that the Bureau considered in the 2017 Final Rule to not be reasonably avoidable by consumers. The Bureau invited comment on these preliminary conclusions.

Comments Received

Some commenters stated that the 2017 Final Rule would negatively impact competition by reducing the number of covered lenders. At least one commenter stated that ability-to-repay determination requirements would impose burdensome manual administrative processes and information gathering requirements for income verification, which are not cost-efficient for small-dollar lending. A commenter stated that the 2017 Final Rule would be particularly burdensome for small entities. Some commenters criticized the Bureau for not adequately studying the economic impacts of the 2017 Final Rule. For example, a commenter asserted that the Bureau never conducted a ''profitability analysis'' to determine how many stores would stay in business if the Mandatory Underwriting Provisions went into effect.

Two academic commenters stated that fewer market participants may lead to a lower supply of credit and higher prices because loan prices and loan sizes do not invariably rise to State-level maximums. Other commenters agreed that the price of credit would increase and stated that lenders may limit credit approvals to borrowers with higher credit profiles.[276] Some commenters stated that fewer market participants would increase consumer search costs, particularly for rural consumers.[277]

Several commenters stated that the 2017 Final Rule would constrain innovation, particularly in credit risk models and underwriting strategies. Some commenters stated that the 2017 Final Rule could hinder innovation at community banks and credit unions, even though these institutions largely are exempt from the ability-to-repay requirements pursuant to 12 CFR 1041.3(e)(4) and (f), and that it is crucial that the Bureau provide these institutions with the flexibility to underwrite and structure small-dollar loans. A trade association stated that the elimination of the 2017 Final Rule's Mandatory Underwriting Provisions will likely encourage credit unions and banks to adopt short-term, small-dollar lending programs.

In contrast, other commenters stated that the 2017 Final Rule would have a limited impact on competition. As discussed above, some commenters

[272] *Id.* at 54591.

[273] *Id.* at 54611–12.

[274] 12 CFR 1041.3(d)(7).

[275] 12 CFR 1041.3(d)(8).

[276] A commenter noted that when the UK Financial Conduct Authority capped interest rates on payday loans in 2015, the ensuing 60 percent plunge in loan originations was accompanied by a decline in the share of low-borrowers, from 50 percent to 35 percent of loans. Fin. Conduct Auth., *High-Cost Credit: Including Review of the High-Cost Short-Term Credit Price Cap* (July 2017), *https://www.fca.org.uk/publication/feedback/fs17-02.pdf;* Social Market Foundation, *A Modern Credit Revolution: An Analysis of the Short-Term Credit Market* (2016), *https://cfa-uk.co.uk/wp-content/uploads/2016/11/SMF-Report-AKT10796.pdf.*

[277] Commenters cited several studies to suggest that lenders in rural areas would see a steeper revenue decline than those in urban areas. *See* Thomas Miller & Onyumbe Enumbe Ben Lukongo, *Adverse Consequences of the Binding Constitutional Interest Rate Cap in the State of Arkansas* (Oct. 2017), *https://www.mercatus.org/publications/constitutional-interest-rate-cap-arkansas;* Charles River Assocs., *Economic Impact on Small Lenders of the Payday Lending Rules under Consideration by the CFPB* (2015), *http://www.crai.com/publication/economic-impact-small-lenders-payday-lending-rules-under-consideration-cfpb.*

believed that the 2019 NPRM mischaracterized the 2017 Final Rule, which did not conclude that a decrease in covered loan volume and revenues would lead to a commensurate decrease in overall credit availability. Other commenters also stated that the 2019 NPRM adduced no new evidence regarding the number of storefront payday lenders that will be affected by the 2017 Final Rule.

Some commenters stated that, even if the 2017 Final Rule resulted in fewer covered lenders, consumers would not be negatively affected. In reaction to the 2019 NPRM, an academic commenter accused the Bureau of confusing ''competitors'' with ''competition.'' Some commenters stated that the 2017 Final Rule found that while consolidation may occur in the market, competitiveness would not be affected in the form of higher consumer prices—because lenders uniformly charge the maximum permitted by State law—or the distance that consumers would have to travel to procure loans.[278] One commenter stated that a decrease in the covered lenders and loan volume might actually lead to healthier competition that enhances consumer welfare. According to the commenter, payday lending is an unusual market in which low barriers to entry and few unique consumers per store result in cannibalistic competition that drives up prices. Citing the experience in Colorado, the commenter stated that with fewer lenders in the market, there would be more borrowers per store and lower prices per borrower as costs would be amortized over a larger borrower base.[279]

Some commenters stated that the 2017 Final Rule would benefit, not hinder, innovation. These commenters stated that payday lenders crowd out alternative forms of credit by disadvantaging lenders that underwrite or provide more fulsome disclosures. Some commenters state that restrictions on covered loans creates space for innovation for loans at various price points and durations greater than 45 days, expanding access to manageable credit, driving out inferior products, and improving consumer choice over time. A commenter cited a study to support the notion that borrowers desire alternatives to covered loans that can be repaid in longer terms and smaller installments.[280]

Other commenters noted that in the 2019 NPRM the Bureau did not offer evidence showing how not assessing ability-to-repay improves the availability of affordable products for consumers. A commenter stated that in unregulated States, there is no evidence that increased competition creates better products for consumers. A commenter stated that without guardrails and regulation, revoking the 2017 Final Rule would encourage new types of business models that harm consumers.

Final Rule

The Bureau concludes that the reduction in covered loan volume and revenue resulting from the Mandatory Underwriting Provisions would result in a corresponding reduction in competition in the covered loan market. The 2017 Final Rule's estimates predicted that without the conditional exemption covered loan revenue and volume would fall by 89 to 93 percent.[281] The Bureau determines that competition inevitably would suffer from a contraction in loan volume and revenues of this magnitude. The 2017 Final Rule itself compels a conclusion that this contraction will impact the size of the covered loan market. According to the 2017 Final Rule, ''[to] the extent that lenders cannot replace reductions in revenue by adapting their products and practices, Bureau research suggests that the ultimate net reduction in revenue will likely lead to contractions of storefronts of a similar magnitude, at least for stores that do not have substantial revenue from other lines of business. . . .'' [282]

The Bureau concludes that this reduction in covered loan providers would harm competition. As noted in the 2019 NPRM, the Bureau recognizes that higher loan prices may not necessarily result from reduced competition assuming that covered lenders typically charge State-level maximums so covered lenders generally are unable lawfully to raise prices for credit.[283] But the reduction in covered lenders may have effects on non-price competition among lenders, including competing on the basis of convenience through number of locations, thereby increasing consumer search costs when seeking covered loans. This increase will particularly affect rural consumers, especially those with limited internet access.

The Bureau also concludes that the 2017 Final Rule would constrain rapid innovation in the market. The 2017 Final Rule would stifle lender innovation, particularly in developing credit risk models and underwriting strategies that better meet both lenders' and consumers' needs. The Bureau points to the remarkable innovation in the short-term, small-dollar credit market that has occurred in the absence of the 2017 Final Rule's Mandatory Underwriting Provisions. The Bureau is concerned that, if not revoked, the Mandatory Underwriting Provisions may stifle this activity. For example, the Bureau determines that, as commenters suggested, not revoking the Mandatory Underwriting Provisions may hinder the adoption of short-term, small-dollar lending programs by lenders that adopt new credit risk models and strategies. These new methods do not appear to meet or be likely to meet the specific ability-to-repay requirements that were set forth in the Mandatory Underwriting Provisions of the 2017 Final Rule, and, therefore, consumers might not be able to choose these products if such requirements were applicable.

Accordingly, the Bureau concludes that the 2017 Final Rule undervalued the identified practice's benefits to competition. The 2017 Final Rule would reduce the number of lenders nationwide, which would have non-price effects, including increasing consumer search costs. This increase will particularly affect rural consumers, especially those without internet access. The Bureau also determines that the 2017 Final Rule would constrain innovation, including in the development of credit risk models and underwriting strategies.

3. Conclusion on Countervailing Benefits

Accordingly, the Bureau concludes that the identified practice's countervailing benefits to consumers and to competition must be reweighed. After doing so, the Bureau concludes that these countervailing benefits in the aggregate outweigh any substantial, not-reasonably-avoidable injury to consumers where lenders make covered loans to them without determining consumers' ability to repay those loans. The 2017 Final Rule found that ''a substantial population of borrowers is harmed, many severely,'' by the identified unfair practice.[284] The Bureau

[278] 82 FR 54472, 54601.

[279] Following its reform, the number of payday lenders in Colorado substantially contracted, but the lending volume remained stable and the cost of loans dropped. *See* Pew Charitable Trusts, *Trial, Error, and Success in Colorado's Payday Lending Reforms* (Dec. 2014), *https://www.pewtrusts.org/~/media/assets/2014/12/pew_co_payday_law_comparison_dec2014.pdf.*

[280] *See* Pew Charitable Trusts, *Payday Loan Customers Want More Protections, Access to Lower-Cost Credit From Banks* (Apr. 2017), *https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/payday-loan-customers-want-more-protections-access-to-lower-cost-credit-from-banks.*

[281] 82 FR 54472, 54817, 54834–35.

[282] *Id.* at 54835.

[283] 84 FR 4252, 4274.

[284] 82 FR 54472, 54591.

assumes for purposes of this countervailing benefits analysis the 2017 Final Rule's findings regarding that injury. Nevertheless, in its countervailing benefits analysis, the 2017 Final Rule determined that identifying an unfair practice with the goal of protecting longer-term borrowers would have relatively little cost for the broader population of covered loan users and for competition. But the 2017 Final Rule's analysis relied on a principal step-down exemption that obscured the true impact of proscribing the identified unfair practice, and it undervalued the benefits to borrowers from having access to their preferred form of credit and to the benefits to competition. Reconsidering these factors, the Bureau concludes that these countervailing benefits to consumers and to competition, in the aggregate, outweigh the relevant injury,[285] and, therefore, the identified practice does not satisfy the final prong of the test for unfairness under section 1031(c) of the Dodd-Frank Act.

D. Conclusion on Unfairness

Based on its analysis in parts V.B through V.C above, the Bureau concludes that it should no longer identify an unfair under section 1031(c) of the Dodd-Frank Act the practice set out in § 1041.4. Three discrete and independent grounds justify this conclusion. First, as set out in part V.B.1, the Bureau determined that the 2017 Final Rule should have applied a different interpretation of the reasonable avoidability element of unfairness under section 1031(c)(1)(A) of the Dodd-Frank Act. The Bureau concludes that the findings of an unfair practice as identified in § 1041.4 rested on applications of section 1031(c) of the Dodd-Frank Act that the Bureau should no longer use given the identification of better interpretations of these statutory provisions.

Second, as set out in part V.B.2, the Bureau determined that even under the 2017 Final Rule's interpretation of reasonable avoidability, the evidence underlying this finding is insufficiently robust and reliable.

Third, the Bureau also determines that countervailing benefits to consumers and to competition in the aggregate outweigh the substantial injury that is not reasonably avoidable as identified in the 2017 Final Rule, injury which the Bureau assumes for purposes of this analysis. That is, as set out in part V.C.1, the Bureau should have excluded the principal step-down exemption in its calculation of countervailing benefits in the 2017 Final Rule, and in light of this and other factors, as set out in part V.C.2, the countervailing benefits to the identified practice outweigh substantial injury that is not reasonably avoidable.

Based on these cumulative findings, the Bureau revokes the portion of § 1041.4 which identifies the failure to conduct an ability-to-repay assessment in connection with making a covered short-term or longer-term balloon-payment loan as an unfair practice.

VI. Amendments to the 2017 Final Rule To Eliminate Its Mandatory Underwriting Provisions—Revoking the Identification of Abusive Practices

The Bureau determines that the factual and legal grounds provided in the 2017 Final Rule do not support its conclusion that the identified practice is abusive under section 1031 of the Dodd-Frank Act, thereby eliminating that as a basis for the Mandatory Underwriting Provisions to address that conduct.[286]

Part VI.A considers the core principles of abusiveness under Dodd-Frank Act section 1031(d). Part VI.B reviews the factual findings and legal conclusions underlying this use of authority in the 2017 Final Rule. Part VI.C considers the two different abusiveness theories underlying the abusiveness finding in § 1041.4 of the 2017 Final Rule: The ''lack of understanding'' theory, and the ''inability to protect'' theory. First, part VI.C.1 reviews the Bureau's reasons for determining that, under section 1031(d) of the Dodd-Frank Act, the Bureau no longer identifies the practices as abusive under a ''lack of understanding'' theory as set out in § 1041.4 of the 2017 Final Rule. Second, part VI.C.2 sets forth the Bureau's reasons for determining that, under section 1031(d) of the Dodd-Frank Act, the Bureau no longer identifies the practices as abusive under an ''inability to protect'' theory as set out in § 1041.4 of the 2017 Final Rule.[287]

A. Background on Abusiveness

Section 1031(a) of the Dodd-Frank Act provides that the Bureau may use its enforcement authority, among other things, to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.[288] Since its inception, the Bureau has used its supervisory and enforcement authority to identify and seek relief where covered persons engage in unfair, deceptive, or abusive acts or practices (UDAAPs).

The statutory standard for what the Bureau has authority to declare an ''abusive act or practice'' is set forth in section 1031(d) of the Dodd-Frank Act. Specifically, section 1031(d) states that the Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of—(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.[289]

[285] Because the Bureau is finalizing the 2019 NPRM's conclusions that both the benefits to consumers and the benefits to competition should be weighed more heavily than in the 2017 Final Rule, and that together they outweigh the relevant injury, the Bureau need not decide whether the benefits to consumers alone or the benefits to competition alone would outweigh the relevant injury.

[286] The rulemaking addresses the legal and evidentiary bases for particular rule provisions identified in this final rule. It does not prevent the Bureau from exercising tool choices, such as appropriate exercise of supervision and enforcement tools, consistent with the Dodd-Frank Act and other applicable laws and regulations. It also does not prevent the Bureau from exercising its judgment in light of factual, legal, and policy factors in particular circumstances as to whether an act or practice meets the standards for abusiveness under section 1031 of the Dodd-Frank Act.

[287] The Bureau notes that, alongside covered short-term loans, the 2017 Final Rule included covered longer-term balloon-payment loans within the scope of the identified unfair and abusive practice. The Bureau stated that it was concerned that the market for covered longer-term balloon-payment loans, which is currently quite small, could expand dramatically if lenders were to circumvent the Mandatory Underwriting Provisions by making these loans without assessing borrowers' ability to repay. 82 FR 54472, 54583–84. The Bureau did not separately analyze the elements of unfairness and abusiveness for covered longer-term balloon-payment loans. *See id.* at 54583 n.626. Because the Bureau's identification in the Rule as to covered longer-term balloon-payment loans was predicated on its identification as to covered short-term loans, the Bureau proposed that if the latter is revoked the former should also be revoked. The Bureau received no comments that change this conclusion as to covered longer-term balloon-payment loans and finalizes it as proposed.

[288] Public Law 111–203, tit. X, sec. 1031(a), 124 Stat. 1376, 2005 (2010) (codified at 12 U.S.C. 5531(a)).

[289] 12 U.S.C. 5531(d).

Through the language in section 1031(d), Congress defined the abusiveness standard in general terms and did not attempt to include a complete list of abusive practices. To demonstrate a violation of section 1031(d), the Bureau therefore must satisfy the specific elements of sections 1031(d)(1), 1031(d)(2)(A), 1031(d)(2)(B), or 1031(d)(2)(C).

At the Federal level, the FTC and Federal banking regulators traditionally have protected consumers through the prohibitions on unfair and deceptive acts and practices in the FTC Act as well as through the prohibitions and requirements included in special statutes, such as the Truth in Lending Act [290] and the Fair Credit Reporting Act.[291] The Dodd-Frank Act added to these consumers protections the first Federal prohibition on abusive acts or practices with respect to consumer financial products and services generally.[292] Although Congress, through the language in section 1031(d), provided some indication of the abusiveness standard, the Dodd-Frank Act does not further elaborate on the meaning of the terms used in section 1031(d), and there is relatively limited legislative history discussing the meaning of the language in section 1031(d) (including in distinguishing the abusiveness standard from the deception and unfairness standards).[293] Moreover, the abusiveness standard does not have the long and rich history of the deception and unfairness standards. The FTC has used its authority under the FTC Act to address unfair and deceptive acts or practices (UDAPs) for more than 80 years, over which time policy statements, administrative and judicial precedent, and statutory amendments have provided important clarifications about the meaning of unfairness and deception.[294] Federal prudential regulators have also enforced the UDAP prohibitions in the FTC Act since before the Bureau's existence.

The Dodd-Frank Act authorizes the Bureau to engage in supervision, enforcement, and rulemaking for the purpose of ensuring that ''consumers are protected from unfair, deceptive, or abusive acts and practices.'' [295] The Bureau believes that Congress intended for the statutory phrase ''abusive acts or practices'' to encompass conduct by covered persons that is beyond what would be prohibited as unfair or deceptive acts or practices, although such conduct could overlap and thus satisfy the elements for more than one of the standards.[296] As relevant to this rulemaking, section 1031(d)(2) protects consumers that have the particular vulnerabilities that Congress identified in the statute from harms that unreasonably take advantage of those vulnerabilities.

B. Overview of the Factual Predicates and Legal Conclusions Underlying the Identification of Abusive Practices in Section 1041.4

Section 1031(d)(2) of the Dodd-Frank Act states in pertinent part that the Bureau shall have no authority to declare an act or practice abusive unless the act or practice ''takes unreasonable advantage'' of either (A) ''a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;'' or (B) ''the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.'' [297] The Bureau, in imposing the Mandatory Underwriting Provisions, relied on both of these prongs of the abusiveness standard.

With respect to the ''lack of understanding'' prong set forth in section 1031(d)(2)(A) of the Dodd-Frank Act, the Bureau acknowledged in the 2017 Final Rule that consumers who take out covered short-term or longer-term balloon-payment loans ''typically understand that they are incurring a debt which must be repaid within a prescribed period of time and that if they are unable to do so they will either have to make other arrangements or suffer adverse consequences.'' [298] However, in the 2017 Final Rule the Bureau interpreted ''understanding'' to require more than a general awareness of possible negative outcomes. Rather, the Bureau stated that consumers lack the requisite level of understanding if they do not understand both their own individual ''likelihood of being exposed to the risks'' of the product or service in question and ''the severity of the kinds of costs and harms that may occur.'' [299] The Bureau in the 2017 Final Rule found that ''a substantial portion of borrowers, and especially those who end up in extended loan sequences, are not able to predict accurately how likely they are to reborrow.'' [300] This finding also was based primarily on the Bureau's interpretation of limited data from the Mann study and is discussed further below.[301]

With respect to the alternative ''inability to protect'' prong of abusiveness set forth in section 1031(d)(2)(B) of the Dodd-Frank Act, the Bureau began by finding in the 2017 Final Rule that consumers who lack an understanding of the material costs and risks of a product often will be unable to protect their interests.[302] The Bureau's analysis found that consumers who use short-term loans ''are financially vulnerable and have very limited access to other sources of credit'' and that they have an ''urgent need for funds, lack of awareness or availability of better alternatives, and no

[290] 15 U.S.C. 1601 *et seq.*

[291] 15 U.S.C. 1681 *et seq.*

[292] Certain other Federal consumer financial laws, including the Fair Debt Collection Practices Act (FDCPA) and the Home Ownership and Equity Protection Act (HOEPA), reference either the term ''abusive'' or ''abuse.'' *See* 15 U.S.C. 1692d (FDCPA), 12 U.S.C. 1639(p)(2)(B) (HOEPA). The Telemarketing and Consumer Fraud and Abuse Prevention Act, Public Law 103–297, 108 Stat. 1545 (1994), also directed the FTC to ''prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'' *See* 15 U.S.C. 6102(a)(1).

[293] *See, e.g.,* S. Rep. No. 111–176, at 172 (2010) (''Current law prohibits unfair or deceptive acts or practices. The addition of 'abusive' will ensure that the Bureau is empowered to cover practices where providers unreasonably take advantage of consumers.''); Public Law 111–203, pmbl. (listing, in the preamble to the Dodd-Frank Act, one of the purposes of the Act as ''protect[ing] consumers from abusive financial services practices''); *see also* S. Rep. No. 111–176, at 9 n.19 (''Today's consumer protection regime . . . could not stem a plague of abusive and unaffordable mortgages.''); *id.* at 11 (''This financial crisis was precipitated by the proliferation of poorly underwritten mortgages with abusive terms.''); H.R. Rep. No. 111–376, at 91 (2009) (''Th[e] disparate regulatory system has been blamed in part for the lack of aggressive enforcement against abusive and predatory loan products that contributed to the financial crisis, such as subprime and nontraditional mortgages.''); H.R. Rep. No. 111–517, at 876–77 (2010) (Conf. Rep.) (''The Act also prohibits financial incentives . . . that may encourage mortgage originators . . . to steer consumers to higher-cost and more abusive mortgages.''). *See also* the legislative history discussed in the 2017 Final Rule, 82 FR 54472, 54521.

[294] *See, e.g.,* Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Comm. on Commerce, Science and Transportation, U.S. Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), *reprinted in In re Int'l Harvester Co.,* 104 F.T.C. 949, 1070, 1073 (1984); Letter from the FTC to Hon. John D. Dingell, Chairman, Comm. on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983) (FTC policy statement on deception), *reprinted in In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984); *Int'l Harvester Co.,* 104 F.T.C. at 949; *AFSA, supra;* section 5(n) of the FTC Act, 15 U.S.C. 45(n), as enacted by the Federal Trade Commission Act Amendments of 1994, Public Law 103–312, sec. 9, 108 Stat. 1691, 1695.

[295] 12 U.S.C. 5511(b)(2).

[296] *See* 82 FR 54472, 54621.

[297] 12 U.S.C. 5531(d)(2)(A), (B). Section 1031(d)(1) and (d)(2)(C) of the Dodd-Frank Act provide alternative grounds on which a practice may be deemed to be abusive, but the Bureau did not rely on either of those grounds for the Mandatory Underwriting Provisions.

[298] 82 FR 54472, 54615 (summarizing the Bureau's rationale for the 2016 NPRM).

[299] *Id.* at 54617.

[300] *Id.* at 54615.

[301] *See id.*

[302] *Id.* at 54618.

time to shop for such alternatives.'' [303] The Bureau also found in the 2017 Final Rule that consumers who take out an initial loan without the lender's reasonably assessing the borrower's ability to repay were generally unable to protect their interests in selecting or using further loans.[304] According to the 2017 Final Rule, consumers who obtain loans without an ability-to-pay determination and who in fact lack the ability to repay may have to choose between competing injuries—default, delinquency, reborrowing, and default avoidance costs, including forgoing essential living expenses.[305] The Bureau concluded that, ''though borrowers of covered loans are not irrational and may generally understand their basic terms, these facts do[ ] not put borrowers in a position to protect their interests.'' [306]

In support of the conclusion that consumers with payday loans could not protect their own interests, in the 2017 Final Rule the Bureau relied primarily on a survey of payday borrowers conducted by the Pew Charitable Trusts (Pew study).[307] In the Pew study, 37 percent of borrowers reported that at some point in their lives they had been in such financial distress that they would have taken a payday loan on ''any terms offered.'' [308] The Bureau viewed this study as showing that borrowers of short-term loans ''may determine that a covered loan is the only option they have.'' [309] The Pew study is discussed further below in part VI.C.2.b(1).

After determining that consumers lack understanding of the material risks, costs, or conditions of covered short-term and longer-term balloon-payment loans and that consumers are unable to protect their interests in selecting or using such products, the Bureau went on to conclude in the 2017 Final Rule that by making such loans to consumers without first assessing the consumers' ability to repay, lenders took unreasonable advantage of these consumers' vulnerabilities. In reaching this conclusion, the Bureau acknowledged that section 1031(d) of the Dodd-Frank Act ''does not prohibit financial institutions from taking advantage of their superior knowledge or bargaining power'' and that ''in a market economy, market participants with such advantages generally pursue their self-interests.'' [310] The Bureau stated, however, that section 1031(d) of the Dodd-Frank Act ''makes plain that there comes a point at which a financial institution's conduct in leveraging its superior information or bargaining power becomes unreasonable advantage-taking'' and the Bureau understood the statute to delegate to the Bureau ''the responsibility for determining when that line has been crossed.'' [311] The Bureau in the 2017 Final Rule did not identify any specific threshold, but nonetheless found that ''many lenders who make such loans have crossed the threshold.'' [312]

In support of its conclusion that lenders take unreasonable advantage of consumers of covered short-term and longer-term balloon-payment loans, the Bureau in the 2017 Final Rule pointed to a range of lender practices, including the design of the loan products, the way they are marketed, the absence of meaningful underwriting, the limited repayment options and the way those are presented to consumers, and the collection tactics used when consumers fail to repay.[313] The Bureau stated that ''the ways lenders have structured their lending practices here fall well within any reasonable definition'' of what it means to take unreasonable advantage under section 1031(d) of the Dodd-Frank Act.[314] The Bureau then singled out specifically the failure to underwrite and concluded that lenders take unreasonable advantage in circumstances if they make covered short-term loans or covered longer-term balloon-payment loans without reasonably assessing the consumer's ability to repay the loan according to its terms.[315]

C. Abusiveness Theories

1. Takes Unreasonable Advantage of Consumers' Lack of Understanding of Material Risks, Costs or Conditions

a. Takes Unreasonable Advantage

The Bureau's Proposal

In the 2019 NPRM, the Bureau reconsidered how the 2017 Final Rule applied section 1031(d)(2) of the Dodd-Frank Act, which proscribes abusive conduct that takes ''unreasonable advantage'' of certain consumer vulnerabilities enumerated in the statute. As described above, the Bureau in the 2017 Final Rule focused on two such vulnerabilities in connection with evaluating lenders making covered loans without making an ability-to-repay determination—both lack of consumer understanding and inability to protect their own interests. The Bureau in the 2017 Final Rule stated that there comes a point at which a financial institution's conduct in leveraging its superior information or bargaining power relative to consumers becomes unreasonable advantage-taking, and that the Dodd-Frank Act delegates to the Bureau the responsibility for determining when advantage-taking has become unreasonable.[316] The Bureau's unreasonable advantage analysis applied a multi-factor analysis, concluding that:

> At a minimum lenders take unreasonable advantage of borrowers when they [1] develop lending practices that are atypical in the broader consumer financial marketplace, [2] take advantage of particular consumer vulnerabilities, [3] rely on a business model that is directly inconsistent with the manner in which the product is marketed to consumers, and [4] eliminate or sharply limit feasible conditions on the offering of the product (such as underwriting and amortization, for example) that would reduce or mitigate harm for a substantial population of consumers.[317]

The Bureau in the 2019 NPRM decided to reassess this application of section 1031(d)(2) of the Dodd-Frank Act in light of the four factual considerations identified in the 2017 Final Rule. According to the 2019 NPRM, this inquiry is inherently a question of judgment in light of the factual, legal, and policy considerations that can inform what is taking reasonable or unreasonable advantage in particular circumstances. Upon further consideration of the approach in the 2017 Final Rule, the Bureau preliminarily determined in the 2019 NPRM that the application of the factual circumstances cited in the 2017 Final Rule do not support the conclusion that payday lenders took unreasonable advantage of consumers through making payday loans to them without determining they had the ability to repay those loans.

First, insofar as the Bureau in the 2017 Final Rule focused on the atypicality of granting credit without assessing ability to repay, the Bureau in the 2019 NPRM questioned whether this practice was an appropriate indicator that lenders took unreasonable advantage of consumers. Although the

[303] *Id.* at 54618–20.

[304] *Id.* at 54619.

[305] *Id.*

[306] *Id.* at 54620.

[307] Pew Charitable Trusts, *How Borrowers Choose and Repay Payday Loans* (2013), *http://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf.*

[308] *See id.* (citing the Pew study at 20); *see also* 82 FR 54472, 54618–19 (further discussing the Pew study).

[309] 82 FR 54472, 54619.

[310] *Id.* at 54621.

[311] *Id.*

[312] *Id.* at 54622.

[313] *Id.* at 54622–23.

[314] *Id.* at 54623.

[315] *Id.*

[316] *Id.* at 54621.

[317] *Id.* at 54623 (bracketed numbers added).

Bureau pointed to the fact that the practice of extending credit without assessing ability to repay is an unusual one, the 2019 NPRM stated that it is common with regard to credit products for consumers who lack traditional indicia of creditworthiness—for example, credit products for consumers with little or no credit history, loans for students, or reverse mortgages for the elderly. Further, the Bureau preliminarily determined that innovators and new entrants into product markets often engage in practices that deviate from established industry norms and conventions. Many such practices are by definition atypical. Thus, according to the 2019 NPRM, to presume that atypicality is inherently suggestive that a lender has taken unreasonable advantage of consumers would risk stifling innovation. The 2019 NPRM stated that this reasoning suggests that even if payday lenders not making ability-to-repay determinations about consumers before extending them loans was atypical, it still should not be viewed as inherently suggestive that lenders took unreasonable advantage of consumers in these circumstances, given differences between particular consumer financial markets and the needs of consumers in such varying markets.

Second, with regard to whether lenders making payday loans to consumers without determining that they have the ability to repay them takes unreasonable advantage of the particular consumer vulnerabilities, as discussed in greater detail in parts VI.C.1 and VI.C.2 below, the Bureau in the 2019 NPRM stated its preliminary conclusion that limitations in the record of the 2017 Final Rule, including issues related to the Bureau's interpretation of limited data from the Mann study and its interpretation of the Pew study, call into question the support for the Bureau's findings in the 2017 Final Rule regarding the degree of vulnerabilities of covered short-term and longer-term balloon-payment loan users. Even if the Bureau's findings in the 2017 Final Rule regarding user vulnerabilities were valid, the Bureau stated in the 2019 NPRM that it did not believe that they would independently support an unreasonable advantage-taking determination. The ''takes unreasonable advantage'' element in section 1031(d)(2) of the Dodd-Frank Act requires that an act or practice take advantage of a vulnerability specified by, as relevant here, section 1031(d)(2)(A) (lack of understanding) or section 1031(d)(2)(B) (inability to protect). The Bureau preliminarily determined in the 2019 NPRM that the 2017 Final Rule did not adequately explain how the practice of not reasonably assessing a consumer's ability to repay a loan according to its terms leveraged particular consumer vulnerabilities. On the contrary, the 2019 NPRM noted that covered short-term and longer-term balloon-payment loans are made available to the general public on standard terms, and the 2017 Final Rule did not conclude, for example, that lenders had the ability to identify consumers with particular vulnerabilities prior to lending and use that information to treat some consumers differently than others, for example, by charging them different prices or including different terms in contracts for them.[318]

Third, the 2019 NPRM asserted that the 2017 Final Rule conflated the significance of a consumer's understanding of a company's business model with the consumer's understanding of that company's products or services. The 2017 Final Rule stated that lenders' ''business model—unbeknownst to borrowers—depends on repeated re-borrowing.'' [319] The 2017 Final Rule concluded that lenders take unreasonable advantage of consumers when they, in addition to other factors, ''rely on a business model that is directly inconsistent with the manner in which the product is marketed to consumers.'' [320]

According to the 2019 NPRM, whether or not consumers understand the lender's revenue structure does not in itself determine whether they lack understanding about the features of the loan that they choose to take out. The 2019 NPRM stated that the Bureau in the 2017 Final Rule did not offer evidence that consumers erroneously believe or are misinformed by lenders that loans are offered only to those consumers who have the ability to repay without reborrowing. In the 2019 NPRM the Bureau expressed doubts that an inconsistency between a company's business model and its marketing of a product or service is a pertinent factor in assessing whether the method of deciding to extend credit constitutes unreasonable advantage-taking. According to the 2019 NPRM, the 2017 Final Rule noted that ''covered short-term loans are marketed as being intended for short-term or emergency use,'' [321] but that appears to be a statement about how most consumers use these loans, not a statement about the lenders' revenue structures.[322]

Fourth, in considering whether payday lenders take unreasonable advantage of consumers through extending them loans without determining that consumers could repay them, the Bureau in the 2017 Final Rule considered lenders eliminating or sharply limiting feasible conditions that would reduce harm for a substantial portion of consumers. In the 2019 NPRM, the Bureau questioned whether a lender's decision not to offer such conditions constitutes unreasonable advantage-taking in this context. According to the 2019 NPRM, a lender's decision not to offer a short-term, non-amortizing product for which it does not determine whether consumers have the ability to repay may be reasonable given that some States constrain the offering of longer-term products. In addition, even if State law were not a constraint, longer-term, amortizing products would require lenders to assume credit risk over a longer period of time. The Bureau therefore preliminarily determined in the 2019 NPRM that this factor is not of significant probative value concerning whether lenders take unreasonable advantage of consumers by making payday loans to them without determining they have the ability to repay those loans.

For these reasons, the Bureau preliminarily determined in the 2019 NPRM that it did not have a sufficient basis to find that lenders take unreasonable advantage of consumers under section 1031(d)(2) of the Dodd-Frank Act by making covered short-term loans or covered longer-term balloon-payment loans without reasonably assessing the consumer's ability to repay the loan according to its terms.

[318] As previously noted, due to similarities between the unfairness provisions in the Dodd-Frank Act and the FTC Act, FTC Act precedent helps to inform the Bureau's understanding of unfairness under the Dodd-Frank Act. Although Dodd-Frank Act abusiveness authority is distinct, FTC Act precedent provides some factual examples that may help illustrate leveraging particular vulnerabilities of consumers. *See, e.g.,* FTC Unfairness Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1074 (unfair practices may include exercising ''undue influence over highly susceptible classes of purchasers, as by promoting fraudulent 'cures' to seriously ill cancer patients''); *In re Ideal Toy Corp.,* 64 F.T.C. 297, 310 (1964) (''False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue.'').

[319] 82 FR 54472, 54621.

[320] *Id.* at 54623.

[321] *Id.* at 54616.

[322] Moreover, to the extent that certain lenders are using particular language to mislead consumers regarding either the features of loans or the lenders' own revenue structures, it is not clear that this is related to a failure to make an ability-to-repay determination. Rather, that would appear to be a fact-specific problem that is already unlawful under the Dodd-Frank Act's prohibition on deceptive acts or practices. *See* 12 U.S.C. 5531(a).

In the 2019 NPRM, the Bureau sought comment on this issue, including how the Bureau should interpret ''taking unreasonable advantage'' and the appropriate test for distinguishing between reasonable and unreasonable conduct under section 1031(d)(2) of the Dodd-Frank Act. The Bureau also sought comment about the extent to which firms make loans for other consumer financial products without engaging in traditional underwriting, such as what a bank would do before making an automobile loan or a consumer finance lender would do for a small business loan.

Comments Received

Industry-affiliated commenters generally agreed with the 2019 NPRM's preliminary determination. The majority of relevant industry comments addressed abusiveness in general terms. Without citing specific authority, a commenter stated that the revised interpretation of unreasonable advantage-taking better aligned with FTC precedent. Several commenters argued that under the common law and by common definition, an advantage is only unreasonable if it is extreme or excessive, outside the bounds of normal conduct, or there must be no rational reason to support the unfavorable advantage. According to commenters, the Bureau cannot find that covered loans, which are used by millions of consumers and permitted by a majority of State legislatures, are outside the bounds of normal conduct.

A number of commenters expressed general support for the preliminary findings in the 2019 NPRM regarding the factors in the 2017 Final Rule's four-factor test for determining whether a lender or other consumer financial services provider has taken unreasonable advantage of consumers. The one element of the four-factor test that commenters addressed in detail was whether atypicality is an appropriate indicator of unreasonable advantage-taking. A payday lender argued that the 2017 Final Rule presented no evidence that lenders do not assess ability-to-repay through manual underwriting at storefronts or centrally by use of credit reporting data. Other commenters argued that lenders employ various underwriting strategies and that foregoing burdensome underwriting is what makes it feasible for lenders to offer small-dollar loans.

In contrast, other commenters stated that the 2017 Final Rule correctly determined that lenders making payday loans without determining that consumers have the ability to repay takes unreasonable advantage of consumers. Some commenters generally argued that consciously lending to consumers with damaged credit who are unlikely to repay means that lenders are taking unreasonable advantage of consumers.

Commenters also specifically addressed the 2019 NPRM's analysis of the 2017 Final Rule's four-factor test for lenders taking unreasonable advantage of consumers. With respect to the first factor, some commenters argued that atypicality is an appropriate indicator of unreasonable advantage-taking. A commenter stated that mainstream consumer lending is based on ability to repay and atypicality is relevant because the unusual nature of a product speaks to whether consumers understand the product and can protect their interests. Further, commenters stated that the examples cited by the 2019 NPRM of consumer financial products offered without underwriting are misleading as many of those products do incorporate ability-to-repay assessments. Commenters suggested that Federal student loans have a back-end ability-torepay requirement in the form of income-driven repayment options and private student lenders do underwrite. Another commenter stated that reverse mortgage providers evaluate a borrower's ability to repay in the sense they evaluate a borrower's home equity. A commenter noted that FHA-insured reverse mortgages and secured credit cards have formal ability-to-repay requirements pursuant to 24 CFR 206.205 and 15 U.S.C. 1665e, respectively. Further, a commenter argued that some of the 2019 NPRM's examples of other credit offered without an ability-to-repay assessment are provided to consumers with little or no credit history: according to this commenter this is not analogous to covered loan users who typically have bad credit histories and significant indicia of an inability to pay.

With respect to the second factor, some commenters disagreed with the 2019 NPRM's preliminary determination that lenders do not take advantage of particular consumer vulnerabilities. Commenters stated that payday lenders may offer products to the general public on uniform terms, but consumers in financial distress frequent covered lenders, not the general public. Commenters also noted that the 2017 Final Rule specifically found that covered lenders target particular consumers through advertising and marketing.[323] Commenters also cited studies that they stated show higher densities of covered loan providers in rural communities and communities with high concentrations of low-income, minority, and elderly consumers.[324] Commenters suggested that veterans are particularly vulnerable to covered loans.[325]

With respect to the third factor, some commenters offered few comments on whether inconsistencies between a company's business model and its marketing of a product or service are pertinent. An academic commenter stated that consumers expect a lender to conduct underwriting and a lender's failure to do so can lull a consumer into thinking that they can repay the loan according to its original terms. Another commenter stated that the finding that lenders take unreasonable advantage of consumers does not depend on their understanding this disconnect—it only requires that the mismatch exist and that lenders take advantage of consumer's lack of understanding that many consumers are unable to repay their loan.

With respect to the fourth factor and whether a lender's decision not to offer feasible conditions to reduce harm has significant probative value toward finding unreasonable advantage-taking, one commenter stated that the 2019 NPRM did not cite examples of State laws that would constrain lenders from amortizing loans or offering longer terms. Another commenter also noted the 2019 NPRM's determination that amortizing products would require lenders to assume more credit risk is merely another way of pointing out that covered lenders shift a disproportionate share of credit risk onto borrowers.

Final Rule

After reviewing the comments received, the Bureau concludes that the practice of making covered short-term

[323] 82 FR 54472, 54562 n.506.

[324] *See* section VI of the Bates White Report; CRL, *Power Steering: Payday Lending Targeting Vulnerable Michigan Communities* (Aug. 2018), *https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-michigan-paydaylending-aug2018_0.pdf;* CRL, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law* (Mar. 2016), *https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016_0.pdf;* Fannie Mae Foundation, *Analysis of Alternative Financial Service Providers* (Feb. 2004); California Dep't of Bus. Oversight, *The Demographics of California Payday Lending: A Zip Code Analysis of Storefront Locations* (Dec. 2016), *https://dbo.ca.gov/wp-content/uploads/sites/296/2019/02/The-Demographics-of-CA-Payday-Lending-A-Zip-Code-Analysis-of-Storefront-Locations.pdf.*

[325] Ann Baddour *et al., Thank You For Your Service: The Effects of Payday and Vehicle Title Loans on Texas Veterans* (Mar. 2019), *https://www.texasappleseed.org/sites/default/files/ThankYouForYourService_March%202019_0.pdf* (noting that Texas veterans are six times as likely as the general population to get caught in a payday or vehicle title loan.).

loans without reasonably assessing the borrower's ability to repay the loan according to its terms does not take unreasonable advantage of consumers for purposes of section 1031(d)(2) of the Dodd-Frank Act.

As a preliminary matter, the Bureau declines to use this rulemaking to articulate general standards addressing whether the conduct of lenders or other financial services providers take unreasonable advantage of consumers. Instead, the Bureau will articulate and apply such standards, including the 2017 Final Rule's four-factor analysis, to the extent necessary to decide the specific issue in this rulemaking, namely, whether lenders take unreasonable advantage of consumers if the lenders make covered loans without determining whether borrowers have the ability to repay them. Further, some comments suggested that lenders could never take unreasonable advantage of consumers by providing covered loans because millions of consumers take out such loans and a majority of State legislatures permit lenders to make such loans to their citizens. However, the Bureau does not find this general argument persuasive, because it addresses the product rather than the practice and because FTC precedent suggests that an act or practice can be an unfair, deceptive, or abusive even if it is prevalent in the marketplace.[326]

Turning to the four-factor analysis the 2017 Final Rule applied in concluding that lenders take unreasonable advantage of consumers through making loans without determining if they have the ability to repay them, the Bureau focuses first on whether payday loan borrowers were particularly vulnerable to being taken advantage of by payday lenders. The Bureau concludes that record does not support the conclusion that payday borrowers had any particular vulnerability or that payday lenders took unreasonable advantage of that particular vulnerability.

First, in the 2017 Final Rule, the Bureau noted that its ''primary concern is for those longer-term borrowers who find themselves in extended loan sequences.'' [327] The Bureau, however, did not indicate what characteristic of these borrowers made them more vulnerable to the conduct of payday lenders than other payday loan borrowers. FTC precedent has analyzed whether consumers are particularly vulnerable to the acts and practices because the consumers are part of a group that would respond differently to conduct than the general population, such as cancer patients having a different take away than the general population from cancer cure advertising claims for a product or children having a different take away than adults from advertising claims for products.[328]

Assuming for the sake of the argument that there are payday loan borrowers who lenders can take unreasonable advantage of because of a particular vulnerability, in practice the 2017 Final Rule applied to all consumers (*i.e.,* up to 12 million consumers annually) who take out payday loans, not just borrowers who find themselves in extended loan sequences. Indeed, the 2017 Final Rule's analysis and provisions apply to all payday loan consumers, even consumers who successfully repaid their loans without reborrowing—a group of consumers that the Bureau itself in the 2017 Final Rule acknowledged benefitted from payday loans.

In the 2017 Final Rule, the Bureau reasoned that lenders took unreasonable advantage of payday loan borrowers by targeting prospective borrowers through advertising, marketing, or store placement. The Bureau emphasizes that businesses engaging in efforts to identify and persuade prospective customers to purchase their products is very common commercial conduct. Indeed, such efforts often are an important form of competition among firms that results in lower prices and innovation. The Bureau declines to conclude that the mere fact the payday lenders advertised, marketed, selected store placement, or otherwise generally promoted their loans to consumers who may be interested in them indicates that the lenders were using such conduct to take unreasonable advantage of consumers. Moreover, even if the Bureau were to consider longer-term borrowers with extended sequences to be particularly vulnerable to being taken advantage of, in the 2017 Final Rule the Bureau did not find that payday lenders targeted their loans to these borrowers. In fact, payday lenders do not know which prospective borrowers will become longer-term borrowers with extended sequences at the time that lenders are advertising, marketing, placing, or otherwise promoting initial payday loans to prospective customers.

Finally, even assuming payday loan borrowers who are longer-term borrowers with extended sequences are particularly vulnerable and that payday lenders had a vehicle through which they could take unreasonable advantage of those vulnerabilities, there is no evidence in the 2017 Final Rule that supports the conclusion that lenders do so. Even commenters who did not support the 2019 NPRM acknowledged that covered lenders offer loans on uniform terms to the general public and treat consumers substantially the same. Lenders do not increase prices or offer unfavorable changes to contract terms to those consumers who reborrow extensively. Thus, the Bureau concludes that the information in the record does not support the conclusion that payday lenders take advantage of particular consumer vulnerabilities if they make loans to consumers without determining if they have the ability to repay them.

The Bureau in the 2017 Final Rule also determined that lenders making payday loans without determining if borrowers had the ability to repay was an atypical lending practice in the broader marketplace, and that this was a factor indicating that lenders were taking unreasonable advantage of consumers through not making this determination. At the outset, the Bureau notes that whatever analysis covered lenders conduct as to their likely return before making payday loans, most covered lenders do not assess ability to repay similar to what the 2017 Final Rule would require.[329] But the Bureau disputes the characterization of this practice of not assessing ability to repay as atypical among markets for consumer financial products and services. In light of some comments, the Bureau believes that the 2019 NPRM may have overstated the extent to which providers of particular consumer financial products extend credit without assessing ability to repay. Some of the consumer financial products that the 2019 NPRM cited for not assessing ability to repay may incorporate ability-to-repay assessments, including private

[326] *See, e.g., AFSA,* 767 F.2d at 976–77 (contract provisions were found to be unfair even though they were industry-wide boilerplate).

[327] *Id.*

[328] *See, e.g.,* FTC Unfairness Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1074 (unfair practices may include exercising ''undue influence over highly susceptible classes of purchasers, as by promoting fraudulent 'cures' to seriously ill cancer patients''); *Ideal Toy,* 64 F.T.C. at 310 (''False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue.'').

[329] The Bureau acknowledges that the Community Financial Services of America, a trade association representing payday and small-dollar lenders, revised its best practices to add that its members should, before extending credit, ''undertake a reasonable, good-faith effort to determine a customer's creditworthiness and ability to repay the loan.'' This practice applies to other small-dollar loans the member makes. *See* Cmty. Fin. Servs. of Am., *Best Practices for the Small-Dollar Loan Industry, https://www.cfsaa.com/files/files/CFSA-BestPractices.pdf* (last visited Apr. 28, 2020). However, this best practice is not detailed or prescriptive and ''reasonable'' and ''good faith'' are not defined.

student loans, secured credit cards, and reverse mortgages. However, the examples of particular consumer financial products set out in the 2019 NPRM were illustrative. There are other alternative products that do not require an ability-to-repay assessment, such as long-term installment loans, as set out in the 2016 NPRM.[330]

Assuming for the sake of the argument that lenders making payday loans without determining that consumers have the ability to repay them is an atypical lending practice, it does not follow that lenders are taking unreasonable advantage of consumers through this different lending practice. Neither the 2017 Final Rule nor commenters have explained why the atypicality of this practice shows that lenders use it to take unreasonable advantage of consumers. A commenter argued that atypicality is relevant because if a lender's practice is unusual, then consumers may not expect the lender to engage in it, which, in turn, could permit the lender to take unreasonable advantage of them. But even if it was atypical in the experience of consumers with other financial products for lenders not to make an ability-to-repay determination before extending credit, millions of consumers take out payday loans without providing lenders with the information or the access to information that lenders would need to make traditional credit underwriting decisions. The 2017 Final Rule offered no evidence that consumers erroneously thought that payday lenders were making such an ability-to-repay determination when they in fact were not. So, even if payday lenders not conducting an ability-to-repay analysis was atypical (which the Bureau does not determine is the case), there is no evidence to support the conclusion that lenders used that atypicality to take unreasonable advantage of consumers.

The Bureau emphasizes that an especially careful and close analysis is needed before concluding that the acts and practices of firms take unreasonable advantage of and abuse consumers simply because those acts and practices are atypical. As the 2019 NPRM explained, innovators and new entrants into product markets (for instance, in this context, providers of wage access and fintech products) often engage in acts and practices that deviate from established industry norms and conventions. Such atypical acts and practices can be beneficial to consumers and they can be an important form of competition among firms, which, in turn, may also benefit consumers.

The 2017 Final Rule further concluded that the differences between how payday lenders marketed their loans and their business model shows that payday lenders took unreasonable advantage of consumers. The Bureau received few comments that addressed this factor, but those which did primarily focused on the potential for consumer misunderstanding, arising in large part from lender advertising and marketing, that would allow payday lenders to take unreasonable advantage of them. However, this is not a concern resulting from a mismatch between payday lending marketing and the payday lending business model. Because there does not seem to be a viable theory linking this mismatch to payday lenders taking unreasonable advantage of consumers, much less evidence that the lenders are actually doing so, the Bureau concludes that the record does not support the 2017 Final Rule's conclusion that this factor indicates that payday lenders took unreasonable advantage of consumers through making loans to consumers without determining their ability to repay those loans.

Finally, the 2019 NPRM preliminarily determined that, in contrast to the 2017 Final Rule, a payday lender's decision not to offer conditions that would eliminate or sharply limit feasible conditions that would reduce harm for a substantial portion of consumers is not of significant probative value concerning whether the identified practice constitutes unreasonable advantage-taking.[331] Several commenters noted that the 2019 NPRM did not cite examples of State laws that prevent lenders from offering products with features, such as longer loan terms or amortization options, that would reduce potential harm related to reborrowing and default. The Bureau is persuaded by these comments and the real-world examples of lenders shifting to alternative loan products (discussed above in the reasonable avoidability section) and concludes that the majority of State laws may not constrain covered lenders from designing covered loan products that would incorporate such features.

However, the Bureau determines that a decision not to offer products with such features may be reasonable given business considerations, including a lender's desire not to assume credit risk over a longer period of time. The 2017 Final Rule did not suggest that the identified practice interfered with consumers taking steps on their own to reduce or mitigate harm. Virtually every credit product presents some risks to consumers that could potentially be limited, although doing so likely would come at the cost of the lender's profits and potentially its viability as an ongoing concern. If it were the case that lenders in a systematic fashion offered an inferior, ''risky'' product to one group of consumers and a superior, ''safe'' product to another, this could indicate that lenders were taking advantage of some consumers through the offering of that risky product. But there is no evidence that payday lenders are engaged in such conduct.

Accordingly, the Bureau finalizes the 2019 NPRM and concludes based on an application of the factual cirumstances cited in the 2017 Final Rule that payday lenders do not take unreasonable advantage of consumers through engaging in the identified practice.

b. Consumer Lack of Understanding of Material Risks, Costs and Conditions

(1) Legal

The Bureau's Proposal

Under section 1031(d)(2)(A) of the Dodd-Frank Act it is an abusive practice to take unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of a consumer financial product or service. In the Mandatory Underwriting Provisions of the 2017 Final Rule, the Bureau took a similar approach to interpreting this provision as it took with respect to the reasonable avoidability element of unfairness. The Bureau in the 2017 Final Rule interpreted this statutory language to mean that consumers lack understanding if they fail to understand either their personal ''likelihood of being exposed to the risks'' of the product or service in question or ''the severity of the kinds of costs and harms that may occur.'' [332]

The 2019 NPRM stated that, unlike the elements of unfairness specified in section 1031(c) of the Dodd-Frank Act, the elements of abusiveness do not have a long history or governing precedents. Rather, the Dodd-Frank Act marked the first time that Congress defined ''abusive acts or practices'' as generally

[330] 81 FR 47863, 47886 (''The Bureau believes based on market outreach, that some lenders use similar underwriting practices for both single-payment and payday installment loans (borrower identification, and information about income and a bank account) so long as they have access to the borrower's bank account for repayment.'').

[331] The 2019 NPRM offered a lender's decision to offer longer-term, amortizing products as an example of a condition that would eliminate or reduce harm for a substantial population of consumers. *See* 84 FR 4252, 4276.

[332] 82 FR 54472, 54617.

unlawful in the consumer financial services sphere. The Bureau preliminarily determined in the 2019 NPRM that this element of the abusiveness test should be treated as similar to reasonable avoidability. That is, the Bureau preliminarily determined that the approach taken in the 2017 Final Rule was problematic. As discussed below, in the 2019 NPRM the Bureau applied an approach under which ''lack of understanding'' would not require payday borrowers to have a specific understanding of their personal risks such that they can accurately predict how long they will be in debt after taking out a covered short-term or longer-term balloon-payment loan. Rather, the Bureau preliminarily believed that consumers have a sufficient understanding under section 1031(d)(2)(A) of the Dodd-Frank Act if they understand the magnitude and likelihood of risk of harm associated with covered loans sufficient for them to anticipate that harm and understand the necessity of taking reasonable steps to prevent resulting injury. The Bureau in the 2017 Final Rule did not offer evidence that consumers lack such an understanding with respect to the material risks, costs or conditions on covered short-term and longer-term balloon-payment loans. In the absence of such evidence, the Bureau preliminarily determined it should not have concluded in the 2017 Final Rule that the identified practice was an abusive act or practice pursuant to section 1031(d)(2)(A) of the Dodd-Frank Act.

For these reasons, which are set forth in more detail in part V.B.1 above regarding reasonable avoidability, the Bureau preliminarily determined in the 2019 NPRM that its interpretation of ''lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service'' in the 2017 Final Rule was too broad. The Bureau sought comment on how the Bureau should interpret section 1031(d)(2)(A) of the Dodd-Frank Act.

Comments Received

Some commenters stated that the 2019 NPRM properly links the ''lack of understanding'' analysis pursuant to section 1031(d)(2)(A) of the Dodd-Frank Act with whether a consumer's injury is reasonably avoidable. At least one commenter stated that consumer ''understanding'' in this context has long been understood to mean a general awareness of possible outcomes and that the 2019 NPRM correctly determined that section 1031(d)(2)(A) does not require payday borrowers to accurately predict how long they individually will be in debt after taking out a loan. Commenters also stated that the 2017 Final Rule's interpretation of this element was inconsistent with the statutory language, which focuses on ''understanding'' the risks and costs of ''the product,'' not on predictions about the consequences of an individual consumer's use of it.

Trade association commenters stated that the plain text of the Dodd-Frank Act and its supplemental history, including legislative history, indicate that the abusiveness standard as set forth in section 1031 is intended to be viewed on an individual, case-by-case basis.

In contrast, other commenters, including consumer groups, disagreed with the proposal, stating that the 2017 Final Rule applied an appropriate standard for section 1031(d)(2)(A) of the Dodd-Frank Act and correctly determined that a significant population of consumers do not understand the material risks and costs of unaffordable loans that are made without reasonably assessing the borrower's ability to repay the loan according to its terms. Commenters also cited behavioral economics factors and other research to suggest that consumers do not understand covered loan costs and terms.[333]

Some consumer groups and a group of 25 State attorneys general argued that the 2019 NPRM erroneously conflated the unfairness and abusiveness standards by treating the lack of understanding analysis as similar to reasonable avoidability. Some commenters asserted that the statutory standard requires understanding of ''material risks, costs, or condition'' of a product—not the knowledge of lending generally.

Final Rule

After reviewing the comments received, while the statutory language for reasonable avoidability and lack of understanding is different, the Bureau determines that the lack of understanding element of abusiveness pursuant to section 1031(d)(2)(A) of the Dodd-Frank Act should be treated as similar to the requisite level of understanding for reasonable avoidability. For the same reasons that the Bureau concluded that there was an insufficient basis to support the 2017 Final Rule's finding that substantial injury from the identified practice was not reasonably avoidable, the Bureau now concludes that there is an insufficient basis to conclude that consumers lack understanding of the material risks, costs, or conditions of covered loans.

The Bureau declines to follow certain recommendations in comments suggesting that the statutory language of Dodd-Frank Act section 1031(d)(2)(A) requires merely a general awareness of possible outcomes.

In finalizing the 2019 NPRM's preliminary determination, the Bureau concludes that the 2017 Final Rule should have applied a different interpretation and incorrectly determined that consumers lack requisite understanding. As discussed in the reasonable avoidability section, the 2017 Final Rule did not offer specific evidence on what consumers specifically understand with respect to material risks, costs, or conditions of covered loans. Although the 2017 Final Rule concluded that a significant population of consumers do not understand the material risks and costs of covered loans, the 2017 Final Rule extrapolated or inferred this conclusion from the Bureau's interpretation of limited data from the Mann study, which examined the different question of whether consumers are unable to predict how long they would be in debt. The limited data from the Mann study does not address whether consumers lack an understanding of the material risks, costs, or conditions of covered loans. For instance, the 2017 Final Rule did not consider evidence that directly addressed whether consumers are aware of the particular risks flowing from extended loan sequences or understand that a significant portion of consumers end up in extended loan sequences. Commenters point to evidence that the Bureau had considered in the 2016 NPRM preceding the 2017 Final Rule, which suggests a lack of understanding about particular terms of covered loans—principally, the Martin study[334]—but this evidence has limitations as described below in part VI.C.2.b, and does not offer support for the 2017 Final Rule's findings as to consumer understanding of covered loan risks, costs, or conditions more broadly.

In addition, the Bureau disagrees with comments that the 2019 NPRM erroneously conflates unfairness and abusiveness in analyzing the ''lack of understanding'' element. Although the

[333] *See* section VI of Bates White Economic Consulting, *Report Reviewing Research on Payday, Vehicle Title, and High-Cost Installment Loans* (May 2019), *https://lawyerscommittee.org/wp-content/uploads/2019/05/Report-reviewing-research-on-payday-vehicle-title-and-high-cost-installment-loans.pdf* (providing an overview of studies addressing consumer understanding); *see also* Martin study.

[334] *See* Martin, 52 Ariz. L. Rev. at 563.

2019 NPRM proposed to evaluate understanding in the unfairness and abusiveness analyses in a similar manner, reasonable avoidability has a ''means to avoid'' requirement that is absent from the abusiveness standard. Thus, in certain circumstances, abusiveness could prohibit some conduct that unfairness would permit. But in light of the Bureau's proposal, and an analysis of the comments received, the Bureau determines that it is appropriate to treat reasonable avoidability and ''lack of understanding'' as similar but distinct.

Accordingly, the Bureau concludes that the 2017 Final Rule failed to show that consumers lack understanding of the material risks, costs, or conditions of the practice of making covered short-term loans without reasonably assessing the borrower's ability to repay the loan according to its terms.

(2) Reconsidering the Evidence for the Factual Analysis of Consumer Lack of Understanding in Light of the Impacts of the Mandatory Underwriting Provisions

In the 2019 NPRM, the Bureau preliminarily believed that the Mann study was not sufficiently robust and reliable, in light of the Rule's dramatic impacts in restricting consumer access to payday loans, to be the linchpin for a finding that consumers lack understanding of the material risks, costs, or conditions of such loans. The 2019 NPRM also proposed that other findings and evidence were not sufficiently robust and reliable to support the Bureau's finding in the 2017 Final Rule that consumers lacked an understanding of the possible risks and consequences associated with taking out payday loans.

The Bureau finds that the analysis of the factual underpinnings of consumer lack of understanding is the same as it is for the reasonable avoidability analysis. The same factual underpinnings supported, in the 2017 Final Rule, the finding that consumers lacked understanding for purposes of abusiveness and unfairness. Similarly, the 2019 NPRM addressed the same set of shared facts in reconsidering the 2017 Final Rule's analysis of lack of understanding and reasonable avoidability. The consideration of comments and additional analysis, addressed above in parts V.B.2.a through V.B.2.d, therefore apply equally here to the factual underpinnings of consumer lack of understanding.

For the reasons set out above in parts V.B.2.a through V.B.2.d and VI.C.1.b(1), the Bureau concludes that the available evidence does not provide a sufficiently robust and reliable basis to conclude that consumers who use covered short-term or longer-term balloon-payment loans lack understanding of the material risks, costs and conditions of payday loans.

2. Takes Unreasonable Advantage of Consumers' Inability To Protect Themselves

a. Takes Unreasonable Advantage

For the reasons set out above in part VI.C.1.a, the Bureau finalizes the 2019 NPRM and concludes that the factors cited in the 2017 Final Rule do not constitute unreasonable advantage-taking of consumers' inability to protect themselves. The Bureau withdraws its determination in the 2017 Final Rule that the four factors it identified—atypicality, taking advantage of particular vulnerabilities, reliance on a business model inconsistent with the manner in which the product is marketed to consumers, and limitations on means of reducing or mitigating harm for many consumers—constituted unreasonable advantage taking of consumers' inability to protect themselves, assumed for purposes of this analysis.

b. Consumers' Inability To Protect Themselves—Factual Reconsideration

(1) The Pew Study and the Finding Based On It

The Bureau's Proposal

In part V.B.3 of the 2019 NPRM, the Bureau preliminarily found that a survey of payday borrowers conducted by the Pew Charitable Trusts (Pew study) [335] does not provide a sufficiently robust and reliable basis for the Bureau's finding in the 2017 Final Rule that consumers who use covered short-term or longer-term balloon-payment loans lack the ability to protect themselves in selecting or using these products. In the study, 37 percent of borrowers answered in the affirmative to the question ''Have you ever felt you were in such a difficult situation that you would take [a payday loan] on pretty much any terms offered?''

The 2019 NPRM stated that the Pew study asked respondents about their feelings, not about their actions; and, that respondents were not asked whether they had in fact taken out a payday loan at a time when they would have done so on any terms. The 2019 NPRM also stated that the Pew study contains a number of other findings that cast doubt on whether payday borrowers cannot explore available alternatives that would protect their interests. For example, the Pew study found that 58 percent of respondents had trouble meeting their regular monthly bills half the time or more, suggesting that these borrowers are, in fact, accustomed to exploring alternatives to payday loans to deal with cash shortfalls.

The 2019 NPRM also cited to other evidence that it preliminarily determined casts doubt on the robustness and reliability of the Pew study.[336]

Comments Received

Industry commenters and others stated that the Pew study provided an inadequate basis for the 2017 Final Rule to have drawn broad conclusions about consumers' ability to protect their own interests. Industry commenters stated that the inverse of the Pew study's 37 percent is that 63 percent of consumers would seek alternatives if they perceived the payday loans as harmful. Industry commenters further stated that consumers generally act in a utility-enhancing way when opting for and using a payday loan. They also stated that payday loan consumers have numerous alternatives to obtain short-term financial assistance, including through check cashing and pawn broking as well as through loans from personal finance companies and financial institutions.

Consumer group commenters and others noted that the Pew study was limited to payday loans borrowers. That sample set, they stated, indicates that respondents were speaking about actual payday loan experience. Moreover, in their view a reasonable reading of the study's survey question is that it asks for respondents to recall a situation in the past when they took out a payday loan. They stated that the 2019 NPRM provides no basis for assuming that respondents were not answering in the affirmative based on an actual experience with payday loans. Further, they stated, the survey responses about regular difficulty paying bills does not indicate that borrowers are accustomed to exploring alternatives. The more straightforward interpretation, they said, is that many payday borrowers often find themselves in situations where payday loans appear to be the only alternative.

Consumer group commenters stated that the other evidence cited by the 2019 NPRM as casting doubt on the Pew study was itself dubious or not applicable to payday borrowers. These

[335] Pew Charitable Trusts, *How Borrowers Choose and Repay Payday Loans* (2013), *http://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf.*

[336] 84 FR 4252, 4267–68.

commenters also sought to rebut the other evidence the 2019 NPRM cited. They argued that, even if its validity were accepted, in the view of these commenters this other evidence does not undermine the 2017 Final Rule's finding of consumer inability to protect interests.

Final Rule

For the reasons set out in the 2019 NPRM and reiterated here, the Bureau determines that the Pew study does not provide a sufficiently robust and reliable basis for the Bureau's finding in the 2017 Final Rule that consumers who use covered short-term or longer-term balloon-payment loans lack the ability to protect themselves in selecting or using these products. Consumer group commenters' observations—that the Pew study surveyed actual payday loan borrowers and that those surveyed could have understood the question to be asking about their actual payday loan experience—do not change the fact, as preliminarily set forth in the 2019 NPRM, that the question posed was not the question directly relevant to the issue at hand (whether consumers take out payday loans because they have no alternative). The question asked was hypothetical (''would you have'' taken out a loan on any terms offered) and did not ask directly about the actual experience of those surveyed. Further, the Bureau concludes, as was stated in the 2019 NPRM, that the Pew study does not establish—whether robustly or otherwise—that consumers lack access to alternative sources of credit before consumers take out the first loan in a sequence of payday loans. Indeed, the Bureau concludes that payday loan consumers do have access to alternative sources of credit. As noted above, consumers who live in States where covered loans are restricted are able to find credit alternatives without turning to illegal loans or harmful alternatives. Newly available alternatives include credit offered by fintechs, credit unions, and other mainstream financial institutions. Further, as was stated in the 2019 NPRM,[337] in a report issued by the Federal Reserve Board regarding the economic well-being of U.S. households, consumers who reported that they would have difficulty covering a $400 emergency expense were asked how they would cope were such an emergency to arise. These consumers pointed to a variety of potential mechanisms including borrowing from a friend or family member (26 percent) or selling something (19 percent). Only 5 percent reported that they would use a payday loan or similar product.[338]

Finally, regarding consumer group commenters' criticisms of the other evidence cited by the 2019 NPRM as casting doubt on the Pew study, the 2019 NPRM cited this evidence merely to corroborate the Bureau's concerns about the Pew study. The Bureau's determination that the Pew study does not provide a sufficiently robust and reliable basis for the 2017 Final Rule's finding that payday loan consumers lack the ability to protect themselves is not dependent upon the other evidence cited by the 2019 NPRM.

(2) Other Evidence Pertaining to Inability To Protect

The Bureau's Proposal

In part V.B.4 of the 2019 NPRM, the Bureau preliminarily found that the evidence other than the Pew study cited by the 2017 Final Rule for consumer inability to protect interests was insufficient to sustain a determination that consumers are not able to protect their own interests. That is, the Bureau preliminarily found that the evidence other than the Pew study cited by the 2017 Final Rule for consumer inability to protect interests did not suffice to compensate for the insufficient robustness and reliability of the Pew study.

Comments Received

Industry commenters and others stated that many of the studies, other than the Pew study, cited by the 2017 Final Rule did not support the Rule or, even if in part supportive of aspects of the Rule (*e.g.,* substantial injury), the studies also contained other relevant findings that suggest that payday loan consumers are able to protect their interests. They also stated that payday loan consumers have alternatives to payday loans, with which payday loans compete, and that the availability of these alternatives suggests that consumers are able to protect themselves in selecting and using payday loans. They also stated that there is no evidence of market failure in the competition among these various alternative forms of credit, including payday loans, for the business of consumers.

In addition, these commenters noted, the rate of consumer complaints about payday loans is low relative to other consumer financial products, which indicates that consumers do not see themselves as being harmed by the products. Further, of the payday loan complaints that are submitted, according to commenters, many are about unregulated offshore lenders and illegal operators, and others do not actually relate to payday lenders but are in fact about debt collection or other issues. Finally, these commenters noted, the Bureau has acknowledged that consumer complaints related to payday loans have been declining for the past several years.

Consumer group commenters and others stated that there was a substantial amount of robust and reliable evidence, other than the Pew study, that the 2017 Final Rule pointed to as showing consumer inability to protect interests. And, they said, the 2019 NPRM did not address or consider this evidence. Specifically, the evidence in the 2017 Final Rule record that consumer group commenters asserted that the 2019 NPRM did not address, and which they said robustly shows consumer inability to protect interests, is the same evidence listed above in part V.C.4 of the 2019 NPRM (and numbered (1) to (5)) regarding whether consumer injury is not reasonably avoidable due to consumers' lack of specific understanding of their personal risks.

Since publication of the NPRM in February 2019, two relevant studies have become available: The Carvalho study and the Allcott study, which are described in part V.B.2 above.

Final Rule

The Bureau has considered all of the applicable evidence, including all of the evidence raised by commenters. For the following reasons, the Bureau determines that the evidence does not provide a sufficiently robust and reliable basis to conclude that consumers who use covered short-term or longer-term balloon-payment loans are unable to protect their interests in selecting or using the loans.

Evidence of Repeated Reborrowing Prior to Default

With respect to the evidence showing that substantial numbers of payday loan consumers reborrow repeatedly prior to defaulting on their loans, the Bureau determines that that evidence does not suggest—whether robustly and reliably or otherwise—that consumers are unable to protect themselves before they take out the first loan in a sequence. The evidence of reborrowing prior to default does not, for example, suggest that consumers have inadequate information about or do not have alternatives to payday loans. Further, as noted above,

[337] 84 FR 4252, 4267.

[338] Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2017,* at 21 (2018), *https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.*

the Bureau does not believe that whenever a consumer makes a choice that turns out to have been suboptimal it follows that the consumer lacked understanding, or was unable to protect his or her interests, at the time the choice was made. Consumers often make decisions in conditions of uncertainty—uncertainty of which the consumers are aware—and those decisions sometimes turn out to be suboptimal, but it does not follow that the consumers at the time of their decisions were unable to protect their own interests.

Analyzing that same evidence of repeated reborrowing prior to default, consumer group commenters argued, as noted above, that the 2019 NPRM ignored the 2017 Final Rule's point that the evidence shows that consumers cannot protect themselves *after* they have taken out the first loan in a sequence. However, the requirement in the 2017 Final Rule that lenders assess consumers' ability to repay applies to *all* consumers of payday loans, not just those consumers who are already engaged in a sequence of short-term payday loans. That is, the 2017 Final Rule's requirement to assess consumers' ability to repay applies to all consumers who take out a payday loan and it applies before a consumer takes out the first loan in a sequence. The Bureau further responds that the focus of Dodd-Frank Act section 1031(d)(2)(B) is on whether consumers are unable to protect their own interests. In the context of the 2017 Final Rule's finding that the practice of failing to assess ability to repay takes unreasonable advantage of consumers who take out covered loans, if the consumers can protect their interests before they take out the first loan in a sequence of covered loans, they do not lack the ability to protect their own interests. In other words, because the 2017 Final Rule's requirement to assess consumers' ability to repay applies before a consumer takes out the first loan in a sequence, the Bureau determines that the Bureau must find that consumers are unable to protect themselves *both* (i) before they take out the first loan in a sequence *and* (ii) after they take out the first loan, in order for the Bureau to find that the practice of making a payday loan without assessing ability to repay takes unreasonable advantage of consumers' inability to protect themselves (pursuant to Dodd-Frank Act section 1031(d)(2)(B)).[339] And, as stated above, the Bureau has determined that the evidence indicating that consumers reborrow repeatedly prior to defaulting does not suggest, whether robustly and reliably or otherwise, that consumers are unable to protect themselves *before* they take out the first loan. The Bureau therefore determines that that evidence does not suggest that consumers are unable to protect themselves in selecting or using payday loans.

Evidence of Harmed Consumers Initiating Payday-Loan Sequences Recurringly

Regarding the evidence that consumer group commenters asserted shows that some consumers harmed by payday loans enter into loan sequences recurringly, the Bureau determines that that evidence does not indicate that consumers do not have alternatives to payday loans, nor that consumers are unable to protect themselves before they take out the first loan in a sequence. The evidence does not suggest that consumers have inadequate information about or do not have alternatives to payday loans. Indeed, the Bureau determines that the evidence is reasonably viewed as indicating that the consumers, making their own choices, have decided that payday loans are the best option among the alternatives available to them. That is, this evidence does not suggest that consumers are unable to decide for themselves among the options available to them. The evidence therefore does not suggest that consumers are unable to protect their own interests.

Other Studies Mentioned by the 2017 Final Rule

In addition, the Bureau has determined that the other studies—*e.g.,* the ''150 studies'' pointed to by consumer group commenters—mentioned by the 2017 Final Rule are not relevant to the specific issue at hand here. Instead of considering the number of studies that may be relevant to an issue, the Bureau considers the relevance, rigor, and consistency of findings across studies in determining the probative value of research on that issue. The large set of studies discussed in the 2017 Final Rule concerned the experiences of low-income consumers, State reports on payday and vehicle-title lending, and responses to changes in State regulations for small-dollar lending, all of which provide useful context and evidence on how the market functions and how consumers engage with these products. But these studies do not constitute robust and reliable evidence regarding the specific factual finding the Bureau would have to make to conclude that the identified practice was abusive, namely, that consumers are unable to protect their interests before they take out a payday loan.

Other Miscellaneous Sources of Evidence Cited by Commenters

The other miscellaneous evidence pointed to by consumer group commenters (see part VI.C.2.b(2) above) does not robustly and reliably indicate that consumers are unable to protect their own interests in selecting or using payday loans. Some of these sources of information were cited by the 2017 Final Rule for various purposes, but they were not the basis for the 2017 Final Rule's determination that consumers are unable to protect their own interests. This is because these sources are even less probative of this issue than the Pew study that the Bureau focused on in the 2017 Final Rule.

The Martin Study

The Bureau did not rely on the Martin study in the 2017 Final Rule and does not rely upon it in this rulemaking. The Bureau does not believe that commenters' arguments regarding the Martin study suggest that consumers are unable to protect their own interests in selecting or using payday loans.

The Martin study reported that 60 percent of payday loan borrowers did not know the APR of their loans. Even were the Bureau to grant that this study suggests that some consumers might not know the exact price of their payday loans (*i.e.,* in APR terms), the Bureau believes that such lack of knowledge does not indicate that consumers are unable to protect their interests before they take out a payday loan. A consumer can have access to other alternative sources of credit, and be familiar with payday loans and understand that they are a relatively expensive source of credit,[340] even if the

[339] The 2017 Final Rule, 82 FR 54472, 54619–21, explained its view that consumers can protect their interests neither before they take out the initial payday loan nor after. This is because it was necessary for the 2017 Final Rule to show that there was no time when consumers could protect their interests. That is, because the 2017 Final Rule's ability-to-repay requirement applies before a consumer takes out the first loan in a sequence, if the consumer were able to protect his or her interests before she takes out the initial payday loan, there would be no ''inability to protect,'' even if the consumer has less ability or even no ability to protect their interests afterward.

[340] As noted above, evidence is mixed as to whether consumers understand the price of their loans in dollar-cost terms (*e.g.,* $15 for $100 for 2 weeks), even if they might not remember or understand the loans' APR. For example, the Elliehausen study, at 36–37, found that most payday loan consumers said they were aware of the finance charge of their payday loans and noted most borrowers reported what the study considered plausible finance charges for their loans.

consumer does not know the APR of a payday loan. For example, the consumer might have prior experience using payday loans or might have family, friends, or neighbors who have used payday loans and other forms of credit and from whom the consumer might have developed a reasonable sense of how payday loans compare to other forms of credit, even if the consumer does not know the specific APR of the payday loan the consumer received. The Bureau therefore determines that the Martin study does not show that consumers are unable to protect their interests in selecting or using payday loans.

Evidence Available Subsequent to Publication of the 2019 NPRM

Finally, the Bureau turns to the two studies—the Carvalho study and the Allcott study—that became available since publication of the 2019 NPRM. The Bureau is not relying upon these studies in this rulemaking because they do not show that consumers are unable to protect their own interests in selecting or using payday loans.

The Carvalho study, as noted above, pertained to Icelandic consumers and found that about half of payday loan dollars go to consumers in the bottom 20 percent of decision-making ability. The data from the study primarily concerns Icelandic consumers, which makes its usefulness unclear when considering a regulatory intervention for payday loan borrowers in the United States. In any event, the Bureau concludes that this study does not demonstrate, let alone robustly and reliably demonstrate, that payday loan consumers are unable to protect their own interests in selecting or using payday loans. While consumers with low decision-making ability may have more difficulty than other consumers in selecting or using any credit, financial, or other product, these consumers (like all other consumers) choose among available credit and financial products as well as a myriad of other products. In other words, consumers being in the bottom 20 percent of the population in terms of decision-making ability does not necessarily mean they are incapable of protecting their own interests in financial transactions. Moreover, the 2017 Final Rule's identified practice and corresponding Rule provisions apply to all payday loan borrowers, not just those who are in the bottom 20 percent of the population in terms of decision-making ability. The Carvalho study does not suggest that the consumers in question do not have access to the same credit product alternatives to payday loans that are available to the general public. For all of the reasons discussed above, the Bureau is not relying on the Carvalho study to support conclusions in this rulemaking about inability to protect interests.

The Allcott study, as described above, finds that many payday loan borrowers have a desire to be incentivized not to take out the loans in the future. Most surveyed borrowers said they would ''very much'' like to give themselves extra motivation to avoid payday loan debt and a supermajority (about 90 percent) would at least somewhat like to give themselves extra motivation. The study finds that borrowers in their sample do put more weight on near-term payoffs, but that they are also aware of this. Moreover, the borrowers' self-control issues, if present, would likely be present irrespective of which credit or financial products they chose to use. That is, the study does not suggest that consumers have inadequate information about, or do not have alternatives to, payday loans. Indeed, the study would be entirely consistent with consumers making their own choices and deciding that payday loans are the best option among the alternatives available to them. The Bureau believes that this study does not indicate that consumers are unable to protect their own interests in selecting or using payday loans. As an additional reason, the study involves a single lender in a single State (Indiana). The Bureau therefore believes that the study is not sufficiently representative to serve as the basis for making findings applicable nationwide about all lenders making payday loans to borrowers in all States. For these reasons, the Bureau is not relying on the Allcott study to support any conclusions in this rulemaking about inability to protect interests.

For the reasons described above, the Bureau determines that the available evidence does not provide a sufficiently robust and reliable basis to conclude that consumers who use covered short-term or longer-term balloon-payment loans are unable to protect their interests in selecting or using the loans. Accordingly, the Bureau determines to revoke the 2017 Final Rule's finding that consumers are unable to protect themselves in selecting or using payday loans.

D. Conclusion on Abusiveness Theories

As set out in part VI.C above, the Bureau determines that there are insufficient factual and legal bases for the 2017 Final Rule to identify the practice as abusive. As to the lack of understanding theory of abusiveness, there are three discrete and independent grounds that justify revoking the identification of an abusive practice: (1) That there is no taking unreasonable advantage of consumers in that context; (2) that the 2017 Final Rule should have applied a different interpretation of the lack of understanding element of abusiveness under section 1031(d)(2)(A) of the Dodd-Frank Act; and (3) that the evidence was insufficiently robust and reliable in support of a factual determination that consumers lack understanding.

As to the inability to protect theory of abusiveness, there are two independent grounds that justify revoking the identification of an abusive practice: (1) That there is no unreasonable advantage-taking of consumers; and (2) there are insufficient legal or factual grounds to support the identification of consumer vulnerabilities, specifically a lack of understanding and an inability to protect consumer interests.

In the aggregate, the Bureau concludes that there are independent legal and factual conclusions sufficient to finalize revocation of the Bureau's identification of abusive practices under both the consumer lack of understanding and the consumer inability to protect theories.

VII. Consideration of Alternatives and Conclusion

A. Consideration of Alternatives

The Bureau generally considers alternatives in its rulemakings. Here, the context for the consideration of alternatives is that the Bureau, for the reasons set forth above, is revoking the Mandatory Underwriting Provisions of the 2017 Final Rule, which were based on the Bureau's discretionary authority, not a specific statutory directive.[341] The 2017 Final Rule would eliminate most covered short-term and longer-term balloon-payment loans.

The Bureau's Proposal

In part V.D of the 2019 NPRM, the Bureau set forth its preliminary consideration of alternatives. The Bureau stated that, in light of the fact that the Bureau is revoking the Mandatory Underwriting Provisions of the 2017 Final Rule, the Bureau does not believe that the alternative interventions to the Mandatory Underwriting Provisions considered in the 2017 Final Rule are viable alternatives to the Bureau's proposed revocation of the Mandatory Underwriting Provisions, because the

[341] 12 U.S.C. 5531(b) (''The Bureau *may* prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices.'') (emphasis added).

Bureau is proposing to revoke the underlying findings concerning the existence of an unfair and abusive practice.[342] The Bureau stated that it also does not believe that the expenditure of substantial Bureau resources on the development of possible alternative theories of unfair or abusive practices and corollary preventative remedies is warranted given the likely complexity of such an endeavor. Additionally, the Bureau stated that it is not choosing to exercise its rulemaking discretion in order to pursue new mandated disclosure requirements pursuant to section 1032 of the Dodd-Frank Act.

In parts V.B.1 and V.B.3 of the 2019 NPRM, the Bureau stated its preliminary view that it cannot in a timely and cost-effective manner develop evidence that might corroborate the 2017 Final Rule's interpretation of the limited data from a portion of the Mann study and the results of the Pew study that the 2017 Final Rule relied on to support its key findings.

Comments Received

Consumer groups and others stated that one viable alternative would be for the Bureau to withdraw the 2019 NPRM, allow implementation of the 2017 Final Rule to proceed, and analyze the effects of the Mandatory Underwriting Provisions after implementation. Another alternative, they said, would be additional research, which would not be too complex or costly, because the Bureau has a Congressionally mandated Office of Research with extensive research capabilities, as well as a new office focused on cost-benefit analysis, and available budget authority that it is not using. Further, they said, timeliness is not a concern here, because there is no deadline or requirement for the Bureau to reconsider its own rule. Thus, they stated, the Bureau declining to conduct new research would appear to be nothing more than a pretext to justify its chosen result. Finally, consumer groups stated, a Bureau declination of conducting additional research in this area would conflict with the Bureau's stated commitment to encourage consumer savings and to ensure that the market for liquidity-bridge loan products is fair, because if such loan products are expensive, misleadingly offered, or difficult to use safely, it can be harder for consumers to build savings.

Industry commenters and others stated that the 2019 NPRM properly did not adopt any of the alternative approaches that it considered. These commenters stated that mandating new disclosures would change little. They also stated that the alternatives considered in the 2017 Final Rule rest on the same insufficient findings as the Mandatory Underwriting Provisions and it would not be a good use of the Bureau's limited resources to develop new evidence to support such alternatives; instead, those resources would be better spent on Office of Innovation initiatives. Some industry commenters noted that the 2017 Final Rule acknowledged that short-duration sequences of short-term payday loans can be welfare enhancing for consumers. And, they stated, to the extent any problem was identified by the 2017 Final Rule, it was short-term loan sequences of long duration. At least one industry commenter stated that the appropriate remedy for such harm if it exists would be to address loan sequence duration directly rather than apply Mandatory Underwriting Provisions to all covered loans at the time a consumer initially takes out a loan. This commenter stated that the mismatch between the injurious practice asserted by the Bureau and the Bureau's chosen remedy of the Mandatory Underwriting Provisions means that the 2017 Final Rule's Mandatory Underwriting Provisions are arbitrary and capricious.

One commenter that is one of the three nationwide credit bureaus stated that it sees its short-term lender customers using a combination of traditional and alternative credit data, and that traditional lenders also use traditional and alternative credit data. As a result, it said, the previously different underwriting policies and credit data requirements of short-term and traditional lenders are becoming quite similar. The commenter further stated that short-term lending appears to be undergoing a shift in the type of loans being requested by consumers and therefore provided by lenders. Specifically, the credit bureau stated, its data shows that the number of single-payment loans reported to it in 2018 grew 17 percent, while the number of short-term installment loans grew 82 percent. The commenter also cited to industry data showing that single-payment loans declined 4 percent in 2018 while installment loans grew by 18 percent. This commenter concluded that these market changes offer benefits to consumers and obviate the need for the specific underwriting requirements in the 2017 Final Rule.

Final Rule

For the reasons set forth above, the Bureau has determined that it should not have identified an unfair and abusive practice as set out in § 1041.4 of the 2017 Final Rule and the Bureau has therefore determined to revoke § 1041.4 and its related provisions. Because the Bureau has determined that it should not have identified an unfair and abusive practice in § 1041.4, the Bureau determines that it would not be proper to allow implementation of the Mandatory Underwriting Provisions of the 2017 Final Rule to proceed.

Absent an identified unfair or abusive practice, the Bureau does not have the authority to implement alternatives to the 2017 Final Rule's Mandatory Underwriting Provisions that are based in the Bureau's UDAAP authority in section 1031 of the Dodd-Frank Act. Moreover, the Bureau is not exercising its discretion to undertake additional research in an attempt to support the unfairness and abusiveness identifications of the 2017 Final Rule, or to do so with respect to any of the alternatives based in the Bureau's UDAAP authority that the Bureau considered and dismissed in the course of issuing the 2017 Final Rule. The Bureau believes that innovation is occurring rapidly in the small-dollar lending market and that some lenders are underwriting small-dollar loans in new ways that better meet both lenders' and consumers' needs. These new methods do not appear to meet or be likely to meet the specific ability-to-repay requirements that were set forth in the Mandatory Underwriting Provisions of the 2017 Final Rule, and, therefore, consumers might not be able to choose these products if such requirements were applicable. But even independent of that consideration, the Bureau does not view as promising the prospect that additional Bureau research would seek to develop the necessary support for UDAAP findings such as that consumers lack the requisite understanding of the risk of substantial injury where they take out payday loans where lenders have not determined that they have the ability to repay them, that consumers are unable to protect their own interests before they take out payday loans, or that lenders' common business practices take unreasonable advantage of consumers.[343] Moreover,

[342] This includes, for instance, the payment-to-income alternative, limits on the number of loans in a sequence, the various State law regulatory approaches such as loan caps, and other interventions. *See* 82 FR 54472, 54636–40.

[343] Consumer protection issues have arisen and will continue to arise in the payday market, as in other markets, as a result of a given lender's specific

Continued

any Bureau research effort in this area pursuant to a possible UDAAP rulemaking would require significant resources and a substantial but uncertain amount of time. The Bureau has a busy rulemaking agenda with many other rulemakings that the Bureau views as more promising to prioritize in order to achieve the Bureau's mission of preventing consumer harm.[344] Finally, the Bureau does not believe it would be sensible to further delay the compliance date of the Mandatory Underwriting Provisions based solely on the uncertain prospect that additional Bureau research might develop further support for the unfairness and abusiveness identifications in the 2017 Final Rule.

On the other hand, the Bureau believes that disclosures constitute a more promising avenue for research. This research would not be focused on developing mandated disclosures under section 1031 of the Dodd-Frank Act to prevent UDAAPs, but rather would be focused on developing potential disclosures under section 1032 of the Dodd-Frank Act to provide consumers with information to help them understand better certain features of payday loans. The Bureau believes that payday loans can provide benefits to certain consumers. At the same time, the Bureau believes that improved disclosures could be helpful to consumers and therefore expects to consider them further. The Bureau views disclosures as a more promising investment of resources than the other alternatives discussed above, for the following reasons.

There have been two disclosure interventions in the payday loan market evaluated so far. The first was a randomized controlled trial testing three different disclosures in a short-run experiment across 11 States.[345] The three disclosures were presented on the envelope containing the borrower's loan proceeds and included information on either (a) the APR of payday loans and other products, (b) the dollar cost of charges on a payday loan and credit card for different lengths of time, or (c) the share of people who will borrow a payday loan for different sequence lengths. The authors found that the dollar cost disclosure reduced reborrowing by about 11 percent, while the APR disclosure had a more modest effect. The disclosure highlighting reborrowing length had an insignificant effect.

Following this study, in 2012 Texas began requiring a disclosure that incorporates elements of the study's dollar and APR disclosures in addition to other information for all payday and vehicle title loans. Bureau researchers examined the effects of this policy change and found a reduction in payday loan volume of 13 percent, similar to what was found in the aforementioned randomized controlled trial.[346]

The 2019 NPRM noted that the Texas disclosures discussed above had ''limited'' effects and suggested this might be because payday loan users were already aware that such loans can result in extended loan sequences. However, as noted above, the reduction in payday loan borrowing was 11 to 13 percent, which suggests that a non-trivial share of consumers in the payday market may have responded to the additional information and/or to changes in how the information is presented by changing their borrowing behavior.[347]

The Bureau believes that the existing research in this area is promising but sparse. The Bureau will soon begin conducting research to better understand what information about payday loans consumers want to know as well as how consumers process, comprehend, and use that information in their decisions about payday loan use. In designing and testing disclosure forms, Bureau researchers plan to consider existing but limited research on payday disclosures, States' experiences in this market, Bureau researchers' subject-matter expertise, and the information and views consumers, consumer advocates, industry participants, and other stakeholders have shared with the Bureau. Measurable data from Bureau disclosure research will enable the Bureau to make stronger and more reliable inferences about the potential impact of model disclosures on the payday loan market than is possible with current data.

Conclusion

The Bureau believes that each of the concerns raised and finalized above are sufficiently serious in their own right to merit reconsideration of the 2017 Final Rule, and even more so when considered in combination. The Bureau now concludes that the 2017 Final Rule should have used an alternate approach in applying section 1031 of the Dodd-Frank Act in determining what kind of consumer understanding is necessary to make the findings on reasonable avoidability and lack of understanding required to support a determination that the identified practice was unfair or abusive; and in evaluating whether the factors set forth in the 2017 Final Rule are the appropriate standard for taking unreasonable advantage of consumers and, if so, whether the Bureau properly applied that standard. The Bureau also believes that the 2017 Final Rule provided an insufficient basis for finding that consumers cannot protect their interests. The Bureau concludes that it is appropriate to revoke § 1041.4 and that it is also appropriate to revoke the remainder of the Mandatory Underwriting Provisions of the 2017 Final Rule.

The technical aspects of this revocation and additional, more specific questions with regard to the specific amendments to the 2017 Final Rule are discussed in more detail in part VIII below.

VIII. Section-by-Section Analysis

As described in greater detail in parts V, VI and VII above, the Bureau is revoking §§ 1041.4 and 1041.5 and related provisions of the 2017 Final Rule, which respectively identify the failure to reasonably determine whether consumers have the ability to repay certain covered loans as an unfair and abusive practice and establish certain underwriting requirements to prevent that practice. The Bureau is also revoking certain derivative provisions that are premised on these two core sections, including a principal step-down exemption for certain loans in § 1041.6, two provisions (§§ 1041.10 and 1041.11) that facilitate lenders' ability to obtain certain information about consumers' past borrowing history from information systems that have registered with the Bureau, and certain recordkeeping requirements in § 1041.12. The Bureau concludes that, because §§ 1041.4 and 1041.5 are being revoked, these derivative provisions no longer serve the purposes for which

practices, and the Bureau is prepared to address those issues (for example, through supervision and enforcement against deceptive claims in advertising or marketing for payday loans).

[344] *E.g.,* Semiannual Regulatory Agenda, 84 FR 71231 (Dec. 26, 2019). With respect to comments on the Bureau's general budget, the Bureau notes that it exercises its discretion to make budgetary decisions based on policy considerations that are well beyond the scope of this rulemaking.

[345] Marianne Bertrand & Adair Morse, *Information Disclosure, Cognitive Biases and Payday Borrowing,* 66 J. of Fin. 1865, 1865–93 (Dec. 2011) (Bertrand & Morse).

[346] Bureau of Consumer Fin. Prot., *Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products* (June 2016), *https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf.*

[347] Bertrand & Morse also argue ''it is important to cast the 11% reduction in borrowing in light of the low cost and benign nature of information disclosure, relative to other policy alternatives'' and note that other interventions may have larger effects but may also negatively affect consumers who are not the intended target of those interventions. Bertrand & Morse at 1891.

they were included in the 2017 Final Rule and are now revoked as well.

This part VIII describes the particular modifications the Bureau is making in order to implement the revocation of these various Mandatory Underwriting Provisions. Specifically, as discussed in more detail below, the Bureau is removing in their entirety the regulatory text and associated commentary for subpart B of the Rule (§§ 1041.4 through 1041.6) and certain provisions of subpart D (§§ 1041.10 and 1041.11, and parts of § 1041.12). The Bureau is also amending other portions of regulatory text and commentary in the 2017 Final Rule that refer to the Mandatory Underwriting Provisions or the requirements therein.

As this part VIII is describing the specific modifications to regulatory text and commentary that the Bureau is making, it refers to ''removing'' text rather than ''revoking'' it, consistent with the language agencies use to instruct the Office of the **Federal Register** as to changes to be made in the *Code of Federal Regulations.*[348] In order to avoid confusion, the Bureau is not renumbering the sections or paragraphs that it is not removing; rather, the Bureau now marks the removed section and paragraph numbers as ''[Reserved]'' so that the remaining provisions will continue with the same numbering as they have currently.

Due to changes in requirements by the Office of the **Federal Register**, when amending commentary the Bureau is now required to reprint certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of commentary included in this document show the language of those sections now that the Bureau is adopting its changes as proposed. The Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is making to the regulatory text and commentary of the 2017 Final Rule.[349]

The Bureau did not receive comments on these proposed modifications. The sections below describe the Bureau's final actions regarding these provisions.

[348] As noted previously, while most of the 2017 Final Rule has a compliance date of August 19, 2019, the Rule became effective on January 16, 2018.

[349] This redline can be found on the Bureau's regulatory implementation page for the Rule at *https://www.consumerfinance.gov/policy-compliance/guidance/payday-lending-rule/.* If any conflicts exist between the redline and the text of the 2017 Final Rule or this final rule revoking the Mandatory Underwriting Provisions, the documents published in the **Federal Register** are the controlling documents.

Subpart A—General

Section 1041.1 Authority and Purpose

1(b) Purpose

Section 1041.1 sets forth the Rule's authority and purpose. The Bureau is removing the last sentence of § 1041.1(b), which currently provides that part 1041 also prescribes processes and criteria for registration of information systems. The Bureau is making this change for consistency with the removal of §§ 1041.10 and 1041.11 discussed below.

Section 1041.2 Definitions

2(a) Definitions

2(a)(5) Consummation

Section 1041.2(a)(5) defines the term consummation. Comment (a)(5)–2 describes what types of loan modifications trigger underwriting requirements pursuant to § 1041.5. The Bureau is removing comment 2(a)(5)–1 for consistency with the removal of § 1041.5 discussed below.

2(a)(14) Loan Sequence or Sequence

Section 1041.2(a)(14) defines the terms loan sequence and sequence to mean a series of consecutive or concurrent covered short-term loans, or covered longer-term balloon loans, or a combination thereof, in which each of the loans (other than the first loan) is made during the period in which the consumer has a covered short-term or longer-term balloon-payment loan outstanding and for 30 days thereafter. These terms are used in §§ 1041.5, 1041.6, and 1041.12(b)(3), and related commentary. The Bureau is removing and reserving § 1041.2(a)(14) for consistency with the removal of the provisions in which these terms appear, as discussed below.

2(a)(19) Vehicle Security

Section 1041.2(a)(19) defines the term vehicle security to generally mean an interest in a consumer's motor vehicle obtained by the lender or service provider as a condition of the credit. This term is used in §§ 1041.6 and 1041.12(b)(3) and in commentary accompanying §§ 1041.5(a)(8) and 1041.6. The Bureau is removing and reserving § 1041.2(a)(19) for consistency with the removal of the provisions in which this term appears, as discussed below.

The Bureau requested comment on whether there are any other definitional terms or portions thereof, in addition to the terms loan sequence or sequence and vehicle security, that it should similarly remove for consistency with the proposed revocation of the Mandatory Underwriting Provisions. The Bureau received no such comments and finalizes this provision as proposed.

Section 1041.3 Scope of Coverage; Exclusions; Exemptions

3(e) Alternative Loan

Section 1041.3(e) provides a conditional exemption for alternative loans from the requirements of 12 CFR part 1041, which are covered loans that satisfy the conditions and requirements set forth in § 1041.3(e). The Bureau is revising two comments accompanying § 1041.3(e) that reference the Mandatory Underwriting Provisions, as described below.

3(e)(2) Borrowing History Condition

Section 1041.3(e)(2) addresses a consumer's borrowing history on other alternative loans. Comment 3(e)(2)–1 describes the relevant records a lender may use to determine that the consumer's borrowing history on alternative covered loans meets the criteria set forth in § 1041.3(e)(2). The Bureau is revising the second sentence of this comment to remove language that refers to consumer reports obtained from information systems registered with the Bureau. The Bureau is changing this for consistency with the removal of § 1041.11 discussed below.

3(e)(3) Income Documentation Condition

Section 1041.3(e)(3) requires a lender to maintain and comply with policies and procedures for documenting proof of recurring income. Comment 3(e)(3)–1 generally describes the income documentation policies and procedures that a lender must maintain to satisfy the income documentation condition of the conditional exemption. The Bureau is removing the second sentence of the comment, which distinguishes the income document condition of § 1041.3(e)(3) from the income documentation procedures required by § 1041.5(c)(2). The Bureau is revising this comment for consistency with the removal of § 1041.5 discussed below.

Subpart B—Underwriting

Subpart B sets forth the rule's underwriting requirements in §§ 1041.4 through 1041.6. The Bureau is removing and reserving the heading for subpart B; the removal of its contents is discussed below.

Section 1041.4 Identification of Unfair and Abusive Practice

Section 1041.4 provides that it is an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans without reasonably determining that the consumers will have the ability to repay the loans according to their terms. For the reasons set forth above, the Bureau is removing and reserving § 1041.4 and removing the commentary accompanying § 1041.4.

Section 1041.5 Ability-to-Repay Determination Required

Section 1041.5 generally requires a lender to make a reasonable determination that a consumer has the ability to repay a covered short-term or a longer-term balloon-payment loan before making such a loan or increasing the credit available under such a loan. It also sets forth certain minimum requirements for how a lender may reasonably determine that a consumer has the ability to repay such a loan. For the reasons set forth above, the Bureau is removing and reserving § 1041.5 and removing the commentary accompanying § 1041.5.

Section 1041.6 Principal Step-Down Exemption for Certain Covered Short-Term Loans

Section 1041.6 provides a principal step-down exemption for covered short-term loans that satisfy requirements set forth in § 1041.6(b) through (e); §§ 1041.4 and 1041.5 do not apply to such conditionally exempt loans. For the reasons set forth above and for consistency with the removal of §§ 1041.4 and 1041.5, the Bureau is removing and reserving § 1041.6 and removing the commentary accompanying § 1041.6.

Subpart D—Information Furnishing, Recordkeeping, Anti-Evasion, Severability, and Dates

Subpart D contains the rule's requirements regarding information furnishing (§ 1041.10), registered information systems (§ 1041.11), and compliance programs and record retention (§ 1041.12); sets forth a prohibition against evasion (§ 1041.13); addresses severability (§ 1041.14); and sets forth effective and compliance dates (§ 1041.15). The Bureau is removing the portion of the subpart's heading that refers to information furnishing for consistency with the removal of §§ 1041.10 and 1041.11. Specific amendments to this subpart's contents are discussed below.

Section 1041.10 Information Furnishing Requirements

Among other things §§ 1041.5 and 1041.6, discussed above, require lenders when making covered short-term and longer-term balloon-payment loans to obtain consumer reports from information systems registered with the Bureau pursuant to § 1041.11. Section 1041.10, in turn, requires lenders to furnish certain information about each covered short-term and longer-term balloon-payment loan to each registered information system. For the reasons set forth above and for consistency with the other changes announced herein, the Bureau is removing and reserving § 1041.10 and removing the commentary accompanying § 1041.10.

Section 1041.11 Registered Information Systems

Section 1041.11 sets forth processes for information systems to register with the Bureau, describes the conditions that an entity must satisfy in order to become a registered information system, addresses notices of material change, suspension and revocation of a registration, and administrative appeals. For the reasons set forth above and for consistency with the other changes announced herein, the Bureau is removing and reserving § 1041.11 and removing the commentary accompanying § 1041.11.

Section 1041.12 Compliance Program and Record Retention

12(a) Compliance Program

Section 1041.12 provides that a lender making a covered loan must develop and follow written policies and procedures that are reasonably designed to ensure compliance with the requirements of part 1041. Comment 12(a)–1, in part, lists the various sections of the rule that must be addressed in the compliance program. The Bureau is removing from that comment the references to the ability-to-repay requirements in § 1041.5, the alternative requirements in § 1041.6, and the requirements on furnishing loan information to registered and preliminarily registered information systems in § 1041.10.

Comment 12(a)–2 explains that the written policies and procedures a lender must develop and follow under § 1041.12(a) depend on the types of covered loans that the lender makes, and provides certain examples. The Bureau is removing this comment as its examples are largely focused on compliance with §§ 1041.5, 1041.6, and 1041.10. The Bureau does not believe that it is useful to retain the remaining portion of this comment focusing solely on disclosures related to § 1041.9, although of course it remains true pursuant to § 1041.12(a) itself that a lender that makes a covered loan subject to the requirements of § 1041.9 must develop and follow written policies and procedures to provide the required disclosures to consumers.

The Bureau is making these changes for consistency with the removal of §§ 1041.5, 1041.6, and 1041.10 discussed above.

12(b) Record Retention

Section 1041.12(b) provides that a lender must retain evidence of compliance with part 1041 for 36 months after the date on which a covered loan ceases to be an outstanding loan. Section 1041.12(b)(1) through (5) sets forth particular requirements for retaining specific records, including: Retention of the loan agreement and documentation obtained in connection with originating a covered short-term or longer-term balloon-payment loan (§ 1041.12(b)(1)); retention of electronic records in tabular format for covered short-term or longer-term balloon-payment loans regarding origination calculations and determinations under § 1041.5 (§ 1041.12(b)(2)) as well as loan type, terms, and performance (§ 1041.12(b)(3)); and retention of records relating to payment practices for covered loans (§ 1041.12(b)(4) and (5)). Revisions to the regulatory text of § 1041.12(b)(1) through (5), and related commentary, are discussed in turn further below.

Comment 12(b)–1 addresses record retention requirements generally. The Bureau is removing the portion of this comment explaining that a lender is required to retain various categories of documentation and information specifically in connection with the underwriting and performance of covered short-term and longer-term balloon-payment loans, while retaining (with minor revisions for clarity) the reference to records concerning payment practices in connection with covered loans. The comment also explains that the items listed in § 1041.12(b) are non-exhaustive as to the records that may need to be retained as evidence of compliance with part 1041. The Bureau is removing the remainder of this sentence, which specifically refers to loan origination and underwriting, terms and performance, and payment practices (the specific mention of which is no longer necessary if the other references are removed). The Bureau is making these changes for consistency with the removal of §§ 1041.4 through 1041.6 discussed above as well as the changes to § 1041.12(b)(1) discussed below.

12(b)(1) Retention of Loan Agreement and Documentation Obtained in Connection With Originating a Covered Short-Term or Covered Longer-Term Balloon-Payment Loan

Section 1041.12(b)(1) requires that, in order to comply with the requirements in § 1041.12(b), a lender must retain or be able to reproduce an image of the loan agreement and certain documentation obtained in connection with the origination of a covered short-term or longer-term balloon-payment loan. The Bureau is removing the language in the heading and in the introductory text for § 1041.12(b)(1) that refers to certain documentation obtained in connection with a covered short-term or longer-term balloon-payment loan, as well as the entirety of § 1041.12(b)(1)(i) through (iii) that specifies particular categories of such documentation. As proposed, the remainder of this provision requires a lender to retain or be able to reproduce an image of the loan agreement for each covered loan. Retaining a copy of the loan agreement is necessary for all lenders, pursuant to the requirement in § 1041.12(b) that lenders retain evidence of compliance for covered loans, in order to determine covered loan status for purposes of determining compliance with the Payment Provisions; the Bureau explicitly is retaining this requirement in § 1041.12(b)(1), for all covered loans, to avoid potential confusion. The Bureau is also removing the commentary accompanying § 1041.12(b)(1). The Bureau is making these changes for consistency with the other changes announced herein.

12(b)(2) Electronic Records in Tabular Format Regarding Origination Calculations and Determinations for a Covered Short-Term or Covered Longer-Term Balloon-Payment Loan Under § 1041.5

Section 1041.12(b)(2) requires lenders to retain records regarding origination calculations and determinations for a covered short-term or longer-term balloon-payment loan, including specific required information listed in § 1041.12(b)(2)(i) through (v). It requires lenders to retain these records in an electronic, tabular format. For consistency with the removal of § 1041.5, the Bureau is removing and reserving § 1041.12(b)(2) and removing the commentary accompanying § 1041.12(b)(2).

12(b)(3) Electronic Records in Tabular Format Regarding Type, Terms, and Performance for Covered Short-Term or Covered Longer-Term Balloon-Payment Loans

Section 1041.12(b)(3) requires lenders to retain records regarding the type, terms, and performance of a covered short-term or longer-term balloon-payment loan, including specific required information listed in § 1041.12(b)(3)(i) through (vii). It requires lenders to retain these records in an electronic, tabular format. The Bureau is removing and reserving § 1041.12(b)(3) and removing the commentary accompanying § 1041.12(b)(3), for consistency with the removal of §§ 1041.5 and 1041.6 discussed above.

12(b)(5) Electronic Records in Tabular Format Regarding Payment Practices for Covered Loans

Section 1041.12(b)(5) requires lenders to retain records regarding the payment practices for covered loans, including specific required information listed in § 1041.12(b)(5)(i) and (ii). It requires lenders to retain these records in an electronic, tabular format. For consistency with the other changes announced herein, the Bureau is revising comment 12(b)(5)–1 by removing most of its content, which focuses on compliance with § 1041.12(b)(2) and (3) in conjunction with § 1041.12(b)(5), and in its place the Bureau is incorporating the description of how a lender complies with the requirement to retain records in a tabular format, which is currently set forth in comment 12(b)(2)–1.

Section 1041.15 Effective and Compliance Dates

15(d) November 19, 2020 Compliance Date

Section 1041.15 states the effective and compliance dates for various aspects of 12 CFR part 1041. In § 1041.15, for the reasons set forth above and for consistency with the other changes announced herein, the Bureau is removing paragraph (d), which provides that the compliance date for §§ 1041.4 through 1041.6, 1041.10, and 1041.12(b)(1) through (3) is November 19, 2020.

Appendix A to Part 1041—Model Forms

A–1 Model Form for First § 1041.6 Loan

Section 1041.6(e)(2)(i) requires a lender that makes a first loan in sequence of loans under the principal step-down exemption in § 1041.6 to provide a consumer with a notice that includes certain information and statements, using language that is substantially similar to the language set forth in Model Form A–1. For the reasons sets forth above and for consistency with the removal of § 1041.6, the Bureau is removing and reserving Model Form A–1.

A–2 Model Form for Third § 1041.6 Loan

Section 1041.6(e)(2)(ii) requires a lender that makes a third loan in sequence of loans under the principal step-down exemption in § 1041.6 to provide a consumer with a notice that includes certain information and statements, using language that is substantially similar to the language set forth in Model Form A–2. For the reasons sets forth above and for consistency with the removal of § 1041.6, the Bureau is removing and reserving Model Form A–2.

IX. Compliance and Effective Dates

The Bureau proposed that this final rule take effect 60 days after publication in the **Federal Register**.[350] As discussed above, the current compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule was changed from August 19, 2019, as originally set out in the 2017 Final Rule, to November 19, 2020, as set out in the final rule delaying this compliance date.

The Bureau sought comment on this aspect of the proposal. The Bureau received none. However, in order to ensure sufficient time to comply with procedures for submitting the rule to Congress under the Congressional Review Act, the Bureau has determined that the effective date for this revocation will be 90 days after publication in the **Federal Register**.

X. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing this rule, the Bureau considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[351] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs

[350] Section 553(d) of the APA generally requires that the effective date of a final rule be at least 30 days after publication of that final rule, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules or statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). This final rule does not establish any requirements; instead, it revokes the relevant provisions of the 2017 Final Rule. Accordingly, this final rule is a substantive rule which relieves a restriction that is exempt from section 553(d) of the APA.

[351] 12 U.S.C. 5512(b)(2)(A).

of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas.

In advance of issuing this rule, the Bureau has consulted with the prudential regulators and the FTC, including consultation regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

1. The Need for Federal Regulatory Action

As explained above, the Bureau now believes that, in light of the 2017 Final Rule's dramatic market impacts as detailed in the section 1022(b)(2) analysis accompanying the 2017 Final Rule, its evidence is insufficient to support the findings that are necessary to conclude that the identified practices were unfair and abusive. The Bureau also now believes that the finding of an unfair and abusive practice as identified in § 1041.4 of the 2017 Final Rule rested on applications of section 1031(c) and (d) of the Dodd-Frank Act that the Bureau should no longer use given the identification of better interpretations of these statutory provisions. The Bureau therefore is revoking the Mandatory Underwriting Provisions of the 2017 Final Rule because it believes the facts and the law do not adequately support the conclusion that the identified practice meets the standard for unfairness or abusiveness under section 1031(c) and (d) of the Dodd-Frank Act.[352]

2. Data and Evidence

In this section 1022(b)(2) analysis, the Bureau endeavors to consider comprehensively the economic benefits and costs that are likely to result from revoking the Mandatory Underwriting Provisions of the 2017 Final Rule, possibly including some indirect effects.

Since the issuance of the 2017 Final Rule, the body of evidence bearing on benefits and costs has only slightly expanded. As such, with the exception of the new studies discussed below and in the proposal for this final rule,[353] the Bureau has considered the same information as it considered in the section 1022(b)(2) analysis of the 2017 Final Rule, although as discussed in parts V and VI of this final rule, the Bureau has determined that the key evidence is insufficient to support finding an unfair and abusive act or practice as well as warranting regulatory intervention.[354] The new research that has become available after the drafting of the 2017 Final Rule has relatively little impact on the Bureau's analysis compared to the evidence cited in the 2017 Final Rule, as the implications of this new evidence for total surplus and consumer welfare are less clear or probative than previously considered evidence.

The Bureau invited submission of additional data and studies that could supplement those relied on in the 2017 Final Rule's analysis which form the predicate for the estimates here as well as comments on the analyses of benefits and costs contained in the 2017 Final Rule and relied on here. While commenters did note some new studies that they believe are relevant to this final rule, the Bureau still lacks representative data that could be used to analyze all effects of this final rule. Absent these data, portions of the analysis rely, at least in part, on qualitative evidence provided to the Bureau in previous comments, responses to RFIs, and academic papers; general economic principles; and the Bureau's experience and expertise in consumer financial markets. As such, many of the benefits, costs, and impacts of this final rule are presented in general terms or ranges (as they were in the section 1022(b)(2) analysis of the 2017 Final Rule), rather than as point estimates. Additional details underlying this analysis can be found in the 2017 Final Rule and the 2019 NPRM.

3. Major Provisions and Coverage of the Rule

In this analysis, the Bureau focuses on the benefits, costs, and impacts of the three major elements of the final rule: (1) The amendment of the 2017 Final Rule to eliminate the requirement that lenders reasonably determine borrowers' ability to repay covered short-term and longer-term balloon-payment loans according to their terms (along with the principal step-down exemption allowing for a principal step-down approach to issuing a limited number of short-term loans); (2) the amendment of the 2017 Final Rule to eliminate the recordkeeping requirements associated with (1); and (3) the amendment of the 2017 Final Rule to eliminate requirements concerning lenders furnishing information to registered information systems as well as associated requirements.

As discussed in the 2017 Final Rule, there are two major classes of short-term lenders that would be affected by the Mandatory Underwriting Provisions: Payday/unsecured short-term lenders, both storefront and online, and short-term vehicle title lenders.[355] Any depository institution offering a deposit advance product would also be likely to be affected by the 2017 Final Rule's provisions.[356] Similarly, any depository institution that might have considered offering a deposit advance product would likely be affected by the 2017 Final Rule's provisions.[357]

In addition to short-term lenders, lenders making longer-term balloon-payment loans (either vehicle title or unsecured) are also covered by the 2017 Final Rule's requirements concerning underwriting and RISes. It follows that the elimination of the mandatory underwriting and RIS requirements for lenders of each of these types have similar effects as to those for short-term lenders.

The amendment of the 2017 Final Rule to eliminate its mandatory underwriting and RIS requirements carries implications relating to recordkeeping requirements that apply to any lender making covered short-term or longer-term balloon-payment loans. The elimination of the RIS provisions relates to the application process and operational requirements for entities who otherwise would have sought to become RISes.[358]

4. Description of the Baseline

The major impact of this final rule would be to eliminate the Federal regulations requiring underwriting of covered short-term and longer-term

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[352] The 2017 Final Rule stated that the existence of a market failure supported the need for Federal regulatory action. As the Bureau now believes that there is not a need for the Federal regulatory action described in the 2017 Final Rule, it is not necessary for the Bureau here in the section 1022(b)(2) analysis to identify or address a market failure.

[353] 84 FR 4252, 4291–94.

[354] The same evidence may be evaluated differently for purposes of legal and economic analyses.

[355] 82 FR 54472, 54814.

[356] *See id.*

[357] *Id.* at 54815. Notably, a May 23, 2018 OCC bulletin encourages banks to offer responsible short-term, small-dollar installment loans, which would likely compete with the loans covered by this final rule. Bulletin, Office of the Comptroller of the Currency, *Core Lending Principles for Short-Term, Small-Dollar Installment Lending* (OCC Bulletin 2018–14, May 23, 2018), *https://www.occ.treas.gov/news-issuances/bulletins/2018/bulletin-2018-14.html. See also* 83 FR 58566, 58567 (Nov. 20, 2018). Given these changes, it is likely that these firms will more seriously consider offering these products under this rule.

[358] In this part, the Bureau's references to RISes generally include firms in any stage of becoming an RIS, whether they would have been preliminarily approved, provisionally registered, or would have completed the process at the time this rule will go into effect.

balloon-payment loans. No lenders are required to comply with the 2017 Final Rule until the compliance date (which currently is November 19, 2020) and until the court in litigation challenging the 2017 Final Rule lifts its stay of the compliance date. Accordingly, since the Bureau is finalizing this Rule before lenders have to comply with the Mandatory Underwriting Provisions in the 2017 Final Rule, no lenders have had to comply with them. As a practical matter, imposing regulatory requirements and eliminating them before covered entities have had to actually comply with them means there is little real-world effect on stakeholders from the combined effect of the imposition and the elimination of the requirements, that is, the combined effect is returning to the status quo prior to the Bureau issuing the 2017 Final Rule.[359]

Nevertheless, the Bureau is considering the Bureau's two regulatory actions (*i.e.,* issuing the 2017 Final Rule and eliminating the Mandatory Underwriting Provisions of the 2017 Final Rule prior to its compliance date) separately for section 1022(b)(2) analysis purposes. The effects of these provisions were evaluated in a section 1022(b)(2) analysis when the Bureau issued the 2017 Final Rule. The elimination of these same provisions is evaluated in this section 1022(b)(2) analysis.

The Bureau takes the 2017 Final Rule as the baseline, and considers economic attributes of the relevant markets as the Bureau projected them to be under the 2017 Final Rule and the existing legal and regulatory structures (*i.e.,* those that have been adopted or enacted, even if compliance is not yet required) applicable to providers.[360] This approach assumes that any actions already undertaken and those that will be necessary to take in anticipation of the compliance date would also be reversed following elimination of the provisions.[361]

The Bureau has considered the same information as it considered in the section 1022(b)(2) analysis of the 2017 Final Rule and has chosen not to revisit the specific methodologies in that analysis given the lack of new evidence that would suggest a change to that analysis. As such, the expected impacts articulated in those analyses are assumed to be features of the baseline here.

The baseline specifically recognizes regulatory differences across States and consumers in the data simulations discussed below as detailed in the proposal.[362] In general, the Bureau believes that the State laws have become more restrictive over the past seven years, so that in this respect the simulations here are more likely to overstate than understate the effects of the final rule.[363]

5. Major Impacts of the Rule

The primary impact of this final rule relative to the baseline in which compliance with the Mandatory Underwriting Provisions of the 2017 Final Rule becomes mandatory will be a substantial increase in the volume of short-term payday and vehicle title loans (measured in both number and total dollar value), and a corresponding increase in the revenues lenders realize from these loans. The simulations set forth in the section 1022(b)(2) analysis accompanying the 2017 Final Rule based on the Bureau's data indicate that relative to the chosen baseline payday loan volumes will increase by 104 percent to 108 percent, with an increase in revenue for payday lenders between 204 percent and 213 percent.[364] Simulations of the impact on short-term vehicle title lending predict an increase in loan volumes of 809 percent to 1,329 percent relative to the chosen baseline, with an approximately equivalent increase in revenues.

The Bureau expects, again relative to the chosen baseline, that these increases will result in an increase in the number of storefronts relative to the market projected to exist under the 2017 Final Rule based on the changes in storefronts in States which adopted restrictive regulations.[365] This might in turn improve physical access to credit for consumers, especially for consumers in rural areas. Additionally, the increase in storefronts is likely to impact small lenders and lenders in rural areas more than larger lenders and those in areas of greater population density. However, the practical improvements in consumer physical access to payday loans are not likely to be as substantial as the increase in storefronts may imply, as explained in the 2017 Final Rule.[366] The Bureau also anticipates that online options would be available to the vast majority of current payday borrowers, including those in rural areas.[367] Therefore, the improved physical access to payday storefronts will likely have the largest impact on a small set of rural consumers who would have needed to travel substantially longer to reach a storefront, and who lack access to online payday loans (or strongly prefer loans initiated at a storefront to those initiated online).

Increased revenues (more precisely, increased profits) relative to the chosen baseline are expected to lead many current firms that would have exited the market under the Rule to remain in the market. Additionally, many of the restrictions imposed by the 2017 Final Rule could have been voluntarily adopted by lenders absent the 2017 Final Rule, but the Bureau has no evidence that they were. That lenders did not voluntarily adopt these provisions implies the 2017 Final Rule's impacts are welfare-decreasing for lenders. Reversing these restrictions should therefore be welfare-enhancing for lenders.

As for the overall effects on consumers, as the Bureau noted in the 2017 Final Rule, the evidence on the impacts of the availability of payday

[359] For this section 1022(b)(2) analysis, only the costs of eliminating the requirements are relevant, but the Bureau notes that lenders are under no obligation to reverse any changes made to their processes and procedures to comply with the 2017 Final Rule, and so any lender that would incur costs to do so could simply not reverse the modifications to avoid incurring them. Additionally, the Bureau does not have any evidence that any lenders making covered loans made any such modifications to fully comply with the 2017 Final Rule.

[360] The Bureau has discretion in each rulemaking to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking in its analysis under section 1022(b)(2)(A) of the Dodd-Frank Act.

[361] The Bureau also notes that compliance readiness is ongoing, and lenders may or may not continue to incur costs in anticipation of needing to comply unless and until uncertainty around the Mandatory Underwriting Provisions is resolved.

[362] 84 FR 4252, 4823.

[363] Another possible change that could affect the baseline is the June 2018 Community Financial Services of America (a trade association representing payday and small-dollar lenders) revision of its best practices to add that its members should, before extending credit, ''undertake a reasonable, good-faith effort to determine a customer's creditworthiness and ability to repay the loan.'' This practice applies to other small-dollar loans the member makes. *See* Cmty. Fin. Servs. of Am., *Best Practices for the Small-Dollar Loan Industry, https://www.cfsaa.com/files/files/CFSA-BestPractices.pdf* (last visited Apr. 28, 2020).

[364] These calculations are based on the same simulations the Bureau described in the 2017 Final Rule. The Bureau ran a number of simulations based on different market structures that may occur as a result of the Rule. The estimates cited here come from the specifications where lenders would make loans under both the mandatory underwriting and principal step-down approaches. *See* the 2017 Final Rule for descriptions of all the simulations conducted by the Bureau, and their results. 82 FR 54472, 54824.

[365] Supplemental Findings, chapter 3 part B.

[366] In States with substantial regulatory changes that led to substantial decreases in payday storefronts, over 90 percent of borrowers had to travel an additional five miles or less. 82 FR 54472, 54842.

[367] This geographic impact on borrowers was discussed specifically in the 2017 Final Rule's section on *Reduced Geographic Availability of Covered Short-Term Loans* in part VII.F.2.b.v which relies heavily on chapter 3 of the Bureau's Supplemental Findings. 82 FR 54472, 54842.

loans on consumer welfare varies.[368] The Bureau stated that ''access to payday loans may well be beneficial for those borrowers with discrete, short-term needs, but only if they are able to successfully avoid long sequences of loans.'' [369] Given the available evidence, the Bureau concluded that the overall impacts of the decreased loan volumes resulting from the 2017 Final Rule's Mandatory Underwriting Provisions on consumers would be positive,[370] and it follows that the inverse effects would ensue, relative to the chosen baseline, from eliminating the requirements in the 2017 Final Rule.

The Bureau has also considered new and additional evidence that was not available at the time of the 2017 Final Rule. There are few such studies that deal with the pecuniary effects of payday loans on consumers, and none that specifically deal with the effects of the loans that would be eliminated by the 2017 Final Rule (*e.g.,* those beyond the fourth loan in a sequence or the seventh non-underwritten loan in a year). As a result, the new studies do not affect the Bureau's analysis as set forth above.

Relative to the considerations above, the remaining benefits and costs of this final rule—again relative to the baseline in which compliance with the 2017 Final Rule will become mandatory—are much smaller in their magnitudes and economic importance. Most of these impacts manifest as reductions in administrative, compliance, or time costs that compliance with the 2017 Final Rule would entail; or as potential costs from revoking aspects of the 2017 Final Rule that could have decreased fraud or increased transparency. The Bureau expects most of these impacts to be fairly small on a per loan/consumer/lender basis. These impacts include, among other things, those applicable to the RISes under the 2017 Final Rule; those associated with reduced furnishing requirements on lenders and consumers (*e.g.,* avoiding the costs to establish connection with RISes, forgone benefits from reduced fraud); those associated with making an ability-to-repay determination for loans that require one (*e.g.,* avoiding the cost to obtain all necessary consumer reports, forgoing the benefit of decreased defaults); those associated with avoiding the 2017 Final Rule's record retention obligations that are specific to the Mandatory Underwriting Provisions; those associated with eliminating the need for disclosures regarding principal step-down loans; and the additional impacts associated with increased loan volumes (*e.g.,* changes in defaults or account closures, non-pecuniary changes to consumer welfare). Each of these benefits and costs, broken down by type of market participant, was discussed in detail in the proposal for this rule and the Bureau received no new evidence to change that analysis.[371]

B. Potential Benefits and Costs of the Final Rule to Consumers and Covered Persons—Provisions Relating Specifically to Ability-To-Repay Determinations for Covered Short-Term and Longer-Term Balloon-Payment Loans

Eliminating the Mandatory Underwriting Provisions, and the associated restrictions on reborrowing, is likely to have a substantial impact on the markets for these products relative to the markets that would exist under the Mandatory Underwriting Provisions in the 2017 Final Rule. In order to present a clear analysis of the benefits and costs of this final rule, this section first describes the benefits and costs of this final rule to covered persons relative to the baseline if compliance with the Mandatory Underwriting Provisions in the 2017 Final Rule were required and then discusses the implications of this compliance for the markets for these products.[372] The benefits and costs to consumers are then described.

1. Benefits and Costs to Covered Persons

As this final rule removes restrictions on the operational requirements for lenders, allowing them to not incur the costs associated with complying with the Mandatory Underwriting Provisions in the 2017 Final Rule, this section discusses the overall benefits and costs to lenders associated with not having to comply with the Mandatory Underwriting Provisions in the 2017 Final Rule rather than having to do so.

a. Elimination of the Operational Requirements Associated With Mandatory Underwriting and Principal Step-Down Approach

Under this amendment to the 2017 Final Rule, lenders will not need to consult their own records and the records of their affiliates to determine whether the borrower has taken out any prior covered short-term or longer-term balloon-payment loans that were still outstanding or were repaid within the prior 30 days. Lenders will not need to maintain the ability-to-repay-related records required under the 2017 Final Rule's Mandatory Underwriting Provisions. Lenders will not need to obtain a consumer report from an RIS (if available) in order to obtain information about the consumer's borrowing history across lenders. Lenders also will no longer be required to furnish information regarding covered short-term and longer-term balloon-payment loans they originate to all RISes. Lenders will also be freed from the obligation imposed by the 2017 Final Rule to obtain and verify information about the amount of an applicant's income (unless not reasonably available) and major financial obligations.

The amendment to the 2017 Final Rule's elimination of each of these operational requirements reduces costs that lenders would have incurred under the 2017 Final Rule for loan applications (not just for loans that are originated). Additionally, under the amendment, lenders will not be required to develop or adhere to procedures to comply with each of these operational requirements and train their staff in them. The Bureau believes that many lenders use automated systems when originating loans, and would modify those systems, or purchase upgrades to those systems, to address many of the operational requirements associated with the Mandatory Underwriting Provisions of the 2017 Final Rule. As further discussed in the 2019 NPRM's proposal to amend the Mandatory Underwriting Provisions in the 2017 Final Rule, reversing the obligation to incur operational costs should be of relatively minimal benefit to lenders. Reversing the obligation in fact could result in small costs for any lenders who changed their processes and procedures in anticipation of having to comply with the Rule; however, lenders are under no obligation to reverse these modifications, and so any lender that would incur costs to do so could simply not reverse the modifications to avoid incurring them. Additionally, most lenders making covered loans

[368] *See, e.g., id.* at 54818, 54842–46.

[369] *Id.* at 54846.

[370] *Id.* at 54835, 54842.

[371] 84 FR 4252, 4286–95.

[372] The range of credit options available to borrowers with short-term credit needs is likely to continue to evolve, and if the 2017 Final Rule were to become effective it would affect that evolution along with other factors, such as changes to State laws and regulations, technological changes, and general economic trends. The Bureau is not in a position to estimate the specific impact the 2017 Final Rule would have on the offering of substitute products. Therefore the Bureau does not attempt to assess here any strategic de-evolution of the market that will result if compliance with the 2017 Final Rule becomes mandatory. Likewise, the Bureau stated that the potential evolution of lender offerings that may arise in response to the 2017 Final Rule was beyond the scope of the section 1022(b)(2) analysis in the 2017 Final Rule. *See* 82 FR 54472, 54818, 54835.

apparently have not changed their processes and procedures to fully comply with the Mandatory Underwriting Provisions in the 2017 Final Rule.

Each of the costs lenders would not incur as a result of amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions is discussed in the 2017 Final Rule 1022(b)(2) analysis at part X.F.

b. Effect on Loan Volumes and Revenue From Eliminating Underwriting Requirements and Restrictions on Certain Reborrowing

In order to simulate the effects of the 2017 Final Rule on lender revenue, it was necessary to impose an analytic structure and make certain assumptions about the impacts of the Rule and apply them to the data. The results of the simulations are reviewed here; the structure, assumptions, and data used by the Bureau were described in detail in the 2017 Final Rule.[373] None of the underlying data, assumptions, or structures have changed in the Bureau's analysis of the impacts of this rule. As such, the description in the 2017 Final Rule also describes the simulations used here.[374]

The Bureau's simulations suggest that storefront payday loan volumes will increase between 104 percent and 108 percent under this final rule relative to the 2017 Final Rule baseline. The Bureau estimates that revenues of storefront payday lenders will be between 204 percent and 213 percent higher if they do not have to comply with the requirements in the 2017 Final Rule.[375] For vehicle title lending, the simulated impacts are larger. The Bureau's simulations suggest that relative to the 2017 Final Rule baseline vehicle title loan volumes will increase under the final rule by between 809 percent and 1,329 percent, with a corresponding increase in revenues for vehicle title lenders.[376] Using CFSI's most recent estimated revenues for vehicle title lenders, this would mean the elimination of the Mandatory Underwriting Provisions of the 2017 Final Rule will translate into an increase in annual revenues for these lenders of approximately $3.9 billion to $4.1 billion.[377]

A notable impact of this increase in loan volumes and revenues is that many storefronts will likely exist under this final rule that would not if they had to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule. A pattern of contractions in storefronts has played out in States that have imposed laws or regulations that resulted in similar reductions in volume as those projected under the 2017 Final Rule. To the extent that lenders cannot replace reductions in revenue by adapting their products and practices, it follows that such a contraction—or, in the case of vehicle title, an elimination—would be a likely (perhaps inevitable) response to complying with the Mandatory Underwriting Provisions of the 2017 Final Rule. It likewise follows that, under this amendment to the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions, there will be a corresponding increase in the number of storefronts relative to the number of them that would exist if they had to comply with the Mandatory Underwriting Provisions in the 2017 Final Rule.

The Bureau notes that in recent years there has been a gradual shift in the market towards longer-term loans where permitted by State law. The Bureau does not have sufficient data to assess whether that trend has accelerated since the issuance of the 2017 Final Rule in anticipation of the compliance date.[378] This trend was considered in the 2017 Final Rule as well.[379] To the extent these lenders have already made these adaptations, and would not shift their business practices back following adoption of this amendment to the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions, the loan volume and revenue estimates above may be somewhat overstated.

Several industry commenters stated in response to the 2019 NPRM that either all lenders would close unless the Mandatory Underwriting Provisions were eliminated or that these particular lenders would not offer any products covered by the 2017 Final Rule. They further argued that, as a result, the estimates based on the simulations understate the true change in lending. The Bureau does not agree that all payday lenders would close if the Bureau did not amend the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions. While many storefronts would close without this intervention and some lenders may stop offering covered products or continuing to operate, evidence from States that have implemented restrictions on lending suggest that the industry would not disappear entirely under the 2017 Final Rule baseline and commenters did not offer any specific evidence to the contrary. As a result, the Bureau does not believe the estimated benefits to payday lenders are larger than stated in the 2019 NPRM.

One credit reporting company suggested in response to the 2019 NPRM that lenders are increasingly underwriting covered loans and reporting these loans to an information system thereby negating any need for the Bureau to mandate lenders do so. While the Bureau does not have and did not receive data to verify whether lenders have moved toward increased underwriting and reporting of loans, the Bureau did offer the possibility that some lenders may have already made changes in response to the Mandatory Underwriting Provisions of the 2017 Final Rule. As a result, amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions

[373] 82 FR 54472, 54824.

[374] The numbers cited here are simply the reverse of the numbers cited in the 2017 Final Rule as being the most likely. There, the Bureau estimated a decrease in loan volumes of 51 to 52 percent and a decrease in revenues of 67 percent to 68 percent for payday loans, and a decrease in both loan volumes and revenues of 89 to 93 percent for vehicle title loans. *Id.* at 54827, 54834. Taking the decreased values as the baseline and reintroducing the reduced loan volumes and revenues yields the numbers cited here.

[375] The loan volume and revenue estimates differ for payday loans as the 2017 Final Rule imposed limits on the sizes of loans issued under the principal step-down approach, as well as limits on the sizes of reborrowed loans. In the 2017 Final Rule, the Bureau estimated that approximately 40 percent of the reduction in revenues resulted from limits on loan sizes, while the remaining 60 percent was the result of decreased loan volumes. *Id.* at 54827. The increases in revenues presented here are estimated to stem from the same sources, in the same proportions (*i.e.,* approximately 40 percent from larger loans, and approximately 60 percent from additional loans).

[376] As vehicle title loans are ineligible for the principal step-down approach under the 2017 Final Rule, there was no binding limit on the size of these loans. This resulted in a larger decrease in volumes for vehicle title loans relative to payday (as loans could only be issued under the mandatory underwriting approach) but ensured the corresponding decrease in revenues was more similar to the decrease in loan volumes (since all issued loans were unrestricted in their amounts relative to the Rule's baseline). The increases cited here follow a similar pattern, for similar reasons.

[377] Based on pre-2017 Final Rule estimated revenues for vehicle title lenders of approximately $4.4 billion, reported in Eric Wilson & Eva Wolkowitz, *2017 Financially Underserved Market Size Study,* at 46 (Ctr. for Fin. Servs. Innovation (Dec. 2017)), *https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2017/04/27001546/2017-Market-Size-Report_FINAL_4.pdf,* with medium confidence.

[378] Since the issuance of the 2017 Final Rule, Florida has amended its laws to open the door to longer-term loans at interest rates above the standard usury limit. *See* Fla. Stat. Ann. § 560.404. On the other hand, a voter referendum in Colorado has resulted in a law, effective February 1, 2019, that capped interest rates on certain longer-term loans. *See* Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement, https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf; see also* Colo. Sec'y of State, *Official Certified Result—State Offices & Questions, https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/C_2* (Proposition 111).

[379] 82 FR 54472, 54835.

might increase costs for these lenders if they chose to undo those changes, but they would not be required to do so. To the extent that any lenders have increased their underwriting of covered loans for reasons unrelated to the 2017 Final Rule, some of the effects of this amendment to the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions would be overstated.

One advocacy group argued the Bureau should net out from the benefits from amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions the transfers between consumers and lenders which would reduce the benefit to lenders in the analysis. The Bureau does not net out transfers between different groups in its analyses and instead delineates costs and benefits for covered persons and consumers separately. It is not double-counting to describe increased revenues as a benefit to lenders and increased fees as a cost to consumers.[380]

2. Benefits and Costs to Consumers

a. Benefits to Consumers and Access to Credit

Borrowers would likely have experienced reduced access to new loans—*i.e.,* loans that are not part of an existing loan sequence—from the restrictions and operational requirements of the Mandatory Underwriting Provisions of the 2017 Final Rule. Some borrowers also would have been prevented from rolling loans over or reborrowing shortly after repaying a prior loan under the 2017 Final Rule. Some borrowers might still have been able to borrow, but for smaller amounts or with different loan structures, and might have found this less preferable to them than the terms they would have received absent the 2017 Final Rule. This amendment to eliminate the 2017 Final Rule's Mandatory Underwriting Provisions reverses each of the effects that would otherwise result from the 2017 Final Rule, decreasing the time and effort consumers would need to expend to obtain a covered short-term or longer-term balloon-payment loan, and improving their access to credit, which may carry pecuniary and non-pecuniary benefits.

The Bureau's simulations (discussed above) suggest that the 2017 Final Rule's requirements (again including the principal step-down exemption) would have prevented between 5.9 and 6.2 percent of payday borrowers from initiating a sequence of loans that they would have initiated absent the Rule.[381] That is, since most consumers take out six or fewer loans each year, and are not engaged in long sequences of borrowing, the 2017 Final Rule as a whole would not have limited their borrowing. However, under this final rule, consumers will be able to extend their sequences beyond three loans and will not be required to repay one-third of the loan each time they reborrow. As a result, many loans will be taken out beyond the sequence limitations imposed by the 2017 Final Rule (*e.g.,* fourth and subsequent loans within 30 days of the prior loan); these loans account for the vast majority of the additional volume in the Bureau's simulations.

Elimination of Operational Requirements

The Bureau is amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions, which removes the operational requirements associated with underwriting loans originated under the Mandatory Underwriting Provisions, and the various recordkeeping procedures associated with the principal step-down approach. As such, under the amendment consumers should obtain funds faster than under the 2017 Final Rule. Consumers obtaining loans that would have been subject to the 2017 Final Rule's Mandatory Underwriting Provisions will experience the most significant gains from the amendment of the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions. Estimates of the time required to manually process an application suggest that eliminating the Mandatory Underwriting Provisions will make the borrowing process 15 to 45 minutes faster, a consideration many of these consumers may find important given than convenience is an important product feature on which payday lenders compete for customers.[382]

Additionally, borrowers will not need to obtain and provide to the lender certain documentation required under the Mandatory Underwriting Provisions of the 2017 Final Rule; amending the 2017 Final Rule to eliminate these Mandatory Underwriting Provisions will minimize the complexity of the process, and obviate the need for repeat trips to the lender if the borrower did not bring all the required documents initially, thereby making the payday loan process more convenient for consumers seeking loans that would otherwise have been subject to the Mandatory Underwriting Provisions.

Industry commenters stated in comments submitted in response to the 2019 NPRM that eliminating the Mandatory Underwriting Provisions of the 2017 Final Rule would save consumers both time and money as they would not pursue marginally faster, but more expensive options. The Bureau agrees consumers would save time and effort as a result of this final rule.

Improved Access to Initial Loans

Because the Bureau's amendment of the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions would remove the restrictions on obtaining loans, consumers will have increased access to loans. Initial covered short-term loans—*i.e.,* those taken out by borrowers who have not recently had a covered short-term loan—are presumably taken out because of a need for credit that is not the result of prior borrowing of covered short-term loans. Consumers newly able to access these loans may experience a variety of benefits as detailed below.

Based on the simulations discussed in the 2017 Final Rule, the Bureau estimates that amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions would result in lenders making about 5 percent more initial payday loans (*i.e.,* those that are not part of an existing sequence) due to the elimination of the annual loan limits, and roughly 6 percent more borrowers will be able to initiate a new sequence of loans that they could not start under the 2017 Final Rule. That is, amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions would result in lenders being able to make 5 percent more payday loans to satisfy a likely new need for credit (based on the removal of the annual limits on borrowing) and 6 percent of payday borrowers will have access to new sequences of loans. Vehicle title borrowers are likely to

[380] Given that the Bureau counts fees consumers pay as a cost to consumers, subtracting out those fees from lenders' revenues in its consideration of benefits to covered persons would double-count those fees. Likewise, subtracting fees from lenders' revenues and not including them as costs to consumers would obfuscate the effect on consumers. To clearly identify the costs and benefits for each group, the Bureau considers them separately.

[381] *See id.* at 54599–601. The simulation did not attempt to estimate which type(s) of consumers would be prevented from initiating a sequence of loans under the 2017 Final Rule or which type(s) of consumer would be able to obtain loans under the principal step-down exemption.

[382] The Bureau noted in the 2017 Final Rule that it anticipated that most lenders would use automation to make the ability-to-repay determination, which would take substantially less time to process. *See* 82 FR 54472, 54631, 54632 n.767. To the extent that lenders would have used automation, the time savings under this rule will be substantially smaller.

realize greater increases in access to loans relative to payday borrowers since a greater share of vehicle title borrowers were expected to lose access under the 2017 Final Rule. As discussed in the section 1022(b)(2) analysis for the 2017 Final Rule, this difference in the change in access was in part because the 2017 Final Rule's principal step-down approach did not provide for vehicle title loans and borrowers may not have been able to substitute to payday loans for several reasons.[383]

Consumers who would be able to obtain a new loan because of the elimination of the Mandatory Underwriting Provisions in the 2017 Final Rule will not be subject to some of the costs of those provisions, including not being forced to forgo certain purchases, incur high costs from delayed payment of existing obligations, or incur high costs and other negative impacts by simply defaulting on bills; nor will they face the need to borrow from sources that may be more expensive or otherwise less desirable than payday or vehicle title loans. These borrowers may avoid overdrafting their checking accounts, which may be more expensive than taking out a payday or single-payment vehicle title loan. Similarly, they may avoid ''borrowing'' by paying a bill late, which can lead to late fees (which may or may not be more expensive than a payday or vehicle title loan) or other negative consequences like the loss of utility service. The section 1022(b)(2) analysis in the 2019 NPRM discussed survey evidence which provides some information about what borrowers are likely to do if they do not have access to these loans.[384]

Industry commenters stated in comments in response to the 2019 NPRM that there are no good alternatives for some payday loan borrowers, often stating the alternatives are expensive (overdraft, non-sufficient funds (NSF), pawn). Some further stated that an ability-to-repay requirement would limit access for those who most need payday loans, such as those with no short-term income, those with high income volatility, and gig economy workers. The Bureau discussed these alternatives in the 2017 Final Rule taking their relative costs into account there and in the analysis for this amendment to the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions.[385]

Several consumer groups and State attorneys general stated in comments in response to the 2019 NPRM that the increase in credit access is smaller than stated in the 2019 NPRM because consumers increasingly have access to other alternatives such as installment loans which they willingly take up. These groups cited the experiences of consumers in several States such as Texas. Many of these commenters stated these alternatives were better for consumers than payday or title loans and supported this by noting that other products can help to build credit for borrowers or are used to finish repaying payday loans. Consumer groups also commented that the Bureau overstated costs in the 2017 Final Rule to be conservative (by not accounting for product changes when considering access to credit) and since this analysis reverses those effects, benefits to consumers were overstated in the 2019 NPRM. As stated in this analysis and that of the 2017 Final Rule, the Bureau does not consider changes in lenders' product offerings (including newly offering installment loans) in response to the 2017 Final Rule or more generally. The Bureau noted in the proposal that changes in industry structure likely cause the Bureau's estimates of increased revenues and benefits of access to be upper bounds as some lenders were already shifting to installment loans in some areas prior to this amendment to the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions.

Elimination of Limits on Loan Size

The 2017 Final Rule placed limits on the size of loans lenders may issue via the principal step-down approach, which, as discussed above, is one of the requirements for the principal step-down exemption from the Mandatory Underwriting Provisions for covered short-term loans. Eliminating the Mandatory Underwriting Provisions from the 2017 Final Rule will allow borrowers (specifically, borrowers who cannot satisfy the Mandatory Underwriting Provisions for covered short-term loans and thus who can only borrow under the principal step-down approach) to take out larger initial loans (where allowed by State law), and reborrow these loans in their full amount. In the simulation that the 2017 Final Rule stated best approximates the market as it would exist under the 2017 Final Rule,[386] around 40 percent of the increase in payday loan revenues described in part VIII.B.1.c above will be the result of eliminating the $500 cap on initial loans and step-down requirements on loans issued via the principal step-down approach.

Some commenters stated in response to the 2019 NPRM that because loan size caps are a price ceiling, they reduce the supply of loans so that eliminating the Mandatory Underwriting Provisions would increase access to more than 1 million consumers. The Bureau agrees that price ceilings generally reduce supply in competitive markets, but notes that a cap on the loan amount (as opposed to a cap on the interest rate) is not a price ceiling.[387] Further, it is not clear that borrowers who would otherwise choose a loan amount above the cap would not still use a payday loan in the presence of a cap and instead borrow a smaller amount. Meanwhile, other comments stated that loan size caps cause consumers to take more loans than they otherwise would, either simultaneously or sequentially, and that loan prices do not always rise to State caps. The Bureau notes consumers may take a greater number of loans as a result of a cap on loan sizes, at least in States without a state-mandated tracking database, but the Bureau does not have evidence that this necessarily occurs. Additionally, recent research discussed below provides additional evidence that lenders do charge the prevailing cap in each State.[388]

Elimination of Limits on Reborrowing

For storefront payday borrowers, most of the increase in the availability of credit as a result of amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions will be due to borrowers who have recently taken out loans being able to roll over their loans or borrow again within a shorter period of time as compared to the baseline of the 2017 Final Rule. This is because the Mandatory Underwriting Provisions (including the principal step-down provision) in the 2017 Final Rule impose limits on the frequency, timing, and amount of reborrowing and eliminating the Mandatory

[383] 82 FR 54472, 54840–41.

[384] 84 FR 4252, 4289.

[385] 82 FR 54472, 54842–46.

[386] In the 2017 Final Rule, the Bureau describes the results from simulations under three sets of assumptions. This rule presents results from the simulation approach preferred by the Bureau in the 2017 Final Rule as the one most likely to reflect the effects of the Rule, wherein borrowers are assumed to: Take principal step-down loans initially, apply for loans subject to an ability-to-repay determination only after exhausting the principal step-down loans, and be approved for each loan under the mandatory underwriting approach with a probability informed by industry estimates.

[387] As discussed below, new research also provides evidence that a price cap on the interest rate of payday loans does not necessarily reduce the supply of loans. *See* Amir Fekrazad, *Impacts of Interest Rate Caps on the Payday Loan Market: Evidence from Rhode Island,* J. Banking & Fin. (2020).

[388] *Id.*

Underwriting Provisions lifts these limitations.

The lessened constraints on reborrowing will additionally benefit consumers who wish to reborrow loans that would have been made via the principal step-down approach under the 2017 Final Rule but are unable to decrease the principal of their loans. This improved access to credit could result in numerous benefits for consumers, including avoiding delinquencies on the loan and the potential NSF fees associated with such delinquencies, or avoiding the negative consequences of being compelled to make unaffordable amortizing payments on the loan. However, the Bureau's simulations suggest that the majority of the increased access to credit as a result of elimination of the Mandatory Underwriting Provisions will result from lifting of the reborrowing restrictions, rather than removing of the initial loan size cap and the forced step-down features of loans made via the principal step-down approach.

The Bureau does not believe eliminating the Mandatory Underwriting Provisions in the 2017 Final Rule will lead to a substantial decrease in instances of borrowers defaulting on payday loans. The Bureau believes the 2017 Final Rule's principal step-down provisions would likely encourage many consumers to reduce their debt over subsequent loans rather than to default, and eliminating this provision will reverse this effect. It is necessarily true, however, that some borrowers may avoid a default that would have occurred under the 2017 Final Rule because they are able to reborrow the full amount of the initial loan with the elimination of the Mandatory Underwriting Provisions in the Rule.

Increased Geographic Availability of Covered Short-Term Loans

Consumers will also have somewhat greater physical access to payday storefront locations with the elimination of the Mandatory Underwriting Provisions in the 2017 Final Rule. Using the loan volume impacts previously calculated above for storefront lenders, the Bureau forecasts that a large number of storefronts will remain open with the elimination of the Mandatory Underwriting Provisions that would have closed had the lenders been required to comply with these Provisions. However, that consumers' geographic access to stores will not be substantially increased in most areas as a result of eliminating the Mandatory Underwriting Provisions in the 2017 Final Rule. As discussed in the 2017 Final Rule, evidence from States that have enacted laws or regulations that led to a substantial decrease in the number of stores suggest that there is usually a store that remains open near one that closes.[389] Consequently, the Bureau believes that the increase in the number of storefront locations will not substantially increase access for most consumers and the Bureau received no evidence to the contrary. The Bureau noted, however, that for consumers seeking single-payment vehicle title loans, the benefits would be far larger as the 2017 Final Rule's estimated impacts would lead to an 89 to 93 percent reduction in revenue which could affect the viability of the industry.[390]

Several industry commenters and think tank groups stated in comments in response to the 2019 NPRM that competition would increase with the elimination of the Mandatory Underwriting Provisions in the 2017 Final Rule, which, in turn, would lower costs or provide other benefits to consumers. By contrast, a consumer group stated there is no evidence of effects on non-price competition in this market and noted that the same lender typically offers the same product at different rates in different States based on the regulatory caps they face. In the 2019 NPRM, the Bureau discussed benefits to consumers from increased competition via additional storefront locations and shorter wait times. However, based on pricing differences across different State regulatory regimes and over time and the lack of evidence offered by commenters to the contrary, the Bureau concludes that this increased competition is unlikely to decrease prices for consumers, as discussed in the 2017 Final Rule's 1022(b) analysis.[391] Some industry commenters stated that innovation by banks and lenders would be higher if the Bureau eliminated the Mandatory Underwriting Provisions of the 2017 Final Rule, and this innovation would further increase access and other benefits for consumers. The Bureau agrees that some lenders that would have ceased operations if the Bureau had not eliminated the Mandatory Underwriting Provisions, as suggested by some industry commenters in response to the 2016 NPRM. Such lenders may make changes to their product offerings or procedures and such changes may increase access for consumers, though the Bureau has no evidence that these lenders will do so.

b. Costs to Consumers

Relative to the 2017 Final Rule baseline, the available evidence suggests that amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions would impose potential costs on consumers by increasing the risks of: experiencing costs associated with extended sequences of payday loans and single-payment vehicle title loans; experiencing the effects (pecuniary and non-pecuniary) of delinquency and default on these loans; defaulting on other major financial obligations; and/or being unable to cover basic living expenses in order to pay off covered short-term and longer-term balloon-payment loans.[392] These costs are detailed below as well as in the section 1022(b)(2) analysis in the 2019 NPRM.[393] The Bureau received no new evidence that changed this analysis.

Extended Loan Sequences

Eliminating the 2017 Final Rule's limitations on making loans to borrowers who have recently had relevant covered short-term and longer-term balloon-payment loans will enable borrowers to continue to borrow in these longer sequences of loans. Studies have suggested that potential consequences from such reborrowing include increases in the delays in payments on other financial obligations, involuntary checking account closures, NSF and overdraft fees, financial instability, stress and related health measures, and decreases in consumption.[394] (The elimination of the step-down structure imposed by the 2017 Final Rule's Mandatory Underwriting Provisions may have similar effects; however, the Bureau is not aware of any studies that address this possibility.)

The Bureau's synopsis of the available evidence is that access to payday loans may well be beneficial for those borrowers with discrete, short-term

[389] 82 FR 54472, 54487. There may also be benefits to consumers from other "convenience factors" associated with increased competition. However, the Bureau lacks data or evidence that would allow for a conclusion that such benefits would result from this rule.

[390] *See id.* at 54817, 54834–35.

[391] *See id.* at 54834. *See also* Fekrazad, *supra.*

[392] As mentioned previously, the effects associated with longer-term balloon-payment loans are likely to be small relative to the effects associated with payday and vehicle title loans. This is because longer-term balloon-payment loans are uncommon in the baseline against which costs are measured.

[393] 84 FR 4252, 4290–92.

[394] The studies describing these results are discussed in the section 1022(b)(2) analysis of the 2017 Final Rule (82 FR 54472, 54842–46) and below. As described therein, some of these studies differentiate between shorter and longer loan sequences. The majority of studies, however, rely on access to loans as their source of variation, and cannot make such distinctions. Similarly, few of these studies distinguish between the effects of loan amount independent of sequence length.

needs, but only if they are able to successfully avoid unanticipated long sequences of loans. As the Bureau concluded in the 2017 Final Rule, the available evidence, primarily the data from the Mann study, suggests that, while many consumers accurately predict their borrowing sequence length, consumers who end up engaging in long sequences of reborrowing generally do not anticipate those outcomes *ex ante* [395] and that the 2017 Final Rule, on average (and taking into account potential alternatives to which consumers might turn if long sequences were proscribed), is welfare enhancing for such consumers.[396] Moreover, new research discussed further below that has become available since the 2017 Final Rule provides some additional support for this conclusion.[397]

The increase in access to credit due to the elimination of the Mandatory Underwriting Provisions in the 2017 Final Rule is concentrated in long durations of indebtedness. The evidence concerning the welfare impacts on consumers who take out loans in these long sequences is limited, but suggests the welfare impacts are negative on average, meaning that the estimated effect on average consumer surplus from these extended loan sequences would be negative relative to the chosen baseline.

Several consumer groups stated in their comments in response to the 2019 NPRM that there is evidence outside of the data the Bureau cited from the Mann study showing that many consumers are not informed about the full costs of extended loan sequences and that access to extended loan sequences is not a benefit, but a cost to consumers. Another group similarly stated that the lack of effect of new disclosures in one State (Texas) does not mean consumers are well-informed about payday loans. Many industry commenters stated there is no empirical evidence that consumers are not well-informed, and several of these commenters cited the Mann study data as evidence that most borrowers are aware of the consequences of payday loans. Other industry commenters criticized the Mann study data as unrepresentative or limited and argued it could not be used to show that consumers are not well informed about payday loan borrowing. The Bureau notes that the evidence cited by commenters had been considered by the Bureau in developing the proposal, and no new data or evidence was offered to support a change in how the costs to consumers of extended loan sequences is characterized. The Bureau therefore has not changed its interpretation of the evidence as to the effect of eliminating the Mandatory Underwriting Provisions in the 2017 Final Rule for consumers in extended loan sequences.

Increased Defaults and Delinquencies

Default rates on payday loans prior to the 2017 Final Rule were fairly low when calculated on a per loan basis (2 percent in the data the Bureau analyzed).[398] A potentially more meaningful measure of the frequency with which consumers experience default is therefore the share of loan sequences that end in default—including single-loan sequences where the consumer immediately defaults and multi-loan sequences which end in default after one or more instances of reborrowing. The Bureau's data show that, using a 30-day sequence definition (*i.e.,* a loan taken within 30 days of paying off a prior loan is considered part of a sequence of borrowing), 20 percent of loan sequences ended in default prior to the 2017 Final Rule. Other researchers have found similarly high levels of default. A study of payday borrowers in Texas found that 4.7 percent of loans were charged off, but 30 percent of borrowers had a loan charged off in their first year of borrowing.[399] It is reasonable to assume a return to these market conditions under this final rule.

As previously discussed, the Bureau believes that, with the elimination of the Mandatory Underwriting Provision, some borrowers who would be able to reborrow the full amount of the initial loan may avoid a default that would have occurred if lenders had to comply with the Mandatory Underwriting Provisions. However, the Bureau believes that some borrowers taking out payday loans may experience additional defaults under this final rule than they would under the 2017 Final Rule. If eliminating the Mandatory Underwriting Provisions in the 2017 Final Rule were to increase defaults on net, this will represent a potential cost to consumers.[400] However, the Bureau does not know the prevalence of the possible increased defaults nor can it provide an estimate of the total potential cost per default to consumers.[401]

In addition to default costs resulting from lenders' access to consumers' checking accounts, as noted in the 2017 Final Rule, borrowers who default may be subject to collection efforts which can take aggressive forms, including repeated phone calls, in-person visits to the consumer's home or workplace, and calls or visits to consumers' friends or relatives.[402]

Additionally, both the loss of the option value of future borrowing and non-pecuniary costs of failing to pay may add to the consumer's perception of the cost of default. The option value refers to the opportunity to borrow again in the future, at least from the specific lender, which is decreased after a default. This results in additional costs to the consumer in terms of decreased access to credit, or additional search beyond their preferred lender, that may, or may not, be accurately understood by the consumer at the time of initial borrowing. Default may also impose non-pecuniary costs, such as the loss of access to the borrower's preferred lender. In the 2019 NPRM, the Bureau sought additional information on the expected change in the prevalence of default and the costs associated therewith but did not receive any comments addressing this.

For borrowers who will take out short-term vehicle title loans under this final rule, the impacts will be greater. The range of potential ancillary impacts on a borrower from losing a vehicle to repossession depends on the transportation needs of the borrower's household and the available transportation alternatives. The Bureau received no new information in response to the 2019 NPRM on the prevalence and costs of the possible ancillary effects of repossession.

Similarly, to the extent eliminating the Mandatory Underwriting Provisions will increase the number of payday and vehicle title loans and length of loan sequences relative to the 2017 Final Rule, doing so likely will increase the

[395] *See id.* at 54568–70, 54816–17 (discussing the Bureau's analysis of certain data from the Mann study including statistical evidence showing, in Professor Mann's words, ''that there is no significant relationship between the predicted number of days and the days to clearance''); *see also* Email from Ronald Mann, Professor, Columbia Law School to Jialian Wang and Jesse Leary, Bureau of Consumer Fin. Prot. (Sept. 24, 2013) (on file).

[396] For a discussion of alternative sources of credit, *see* 82 FR 54472, 54609–11, 54841.

[397] Carvalho *et al.,* NBER Working Paper No. 26328, *supra.*

[398] Default here is defined as a loan not being repaid as of the end of the period covered by the data or 30 days after the maturity date of the loan, whichever is later.

[399] *See* Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default* (Vand. Law Sch. L. & Econ. Working Paper No. 08–33 (2008)). Note that it may not be the case that all defaulted loans were charged off.

[400] For a more detailed discussion of the costs of defaults and delinquencies, as well as the reasoning behind their likely increased prevalence under this final rule, *see* 82 FR 54472, 54838.

[401] *See* Skiba & Tobacman, *supra,* for a structural model examining reborrowing behavior including potential default costs.

[402] For purposes of the section 1022(b)(2) analysis, the Bureau considers any consequences that consumers perceive as harmful to be a cost to consumers, regardless of whether collection efforts violate applicable law. 82 FR 54472, 54574.

frequency of delinquencies and lead consumers to incur costs associated with those delinquencies.[403] In response to the 2019 NPRM, the Bureau did not receive additional information on the total potential cost of any increased delinquencies.

One consumer group stated the Bureau understated the consequences of default (bank account closure, negative credit reporting, inability to open a new account, and vehicle repossession). The Bureau discussed these costs to consumers in its analysis and in reference to the 2017 Final Rule, while noting that it did not have data or know of any research that would allow it to quantify these effects for this analysis.[404] One think tank stated that the Bureau misstated some costs in this analysis and claimed that the repossession rates cited by the Bureau are too high. The Bureau disagrees with the argument that the repossession rates cited from prior Bureau work are incorrect. The only evidence the commenter cited regarding this claim uses a more restricted time frame for analysis, which is the likely source of the discrepancy.

c. New Evidence on the Benefits and Costs to Consumers of Access to Payday and Other Covered Short-Term and Longer-Term Balloon-Payment Loans

There have been several studies made available since the 2017 Final Rule that address the welfare effects of payday loans. The 2019 NPRM discussed several such studies.[405] Three further studies which became available since the proposal are discussed below. As noted earlier, and as discussed in the 2019 NPRM, the evidence in these studies does not alter the Bureau's views based on earlier evidence; however, it is important to include these in the discussion of the evidence that bears on the benefits and costs. The Bureau sought comment on any additional relevant research, information, or data that has arisen since the 2017 Final Rule was published.[406]

Studies of the Direct Effects of Payday Loans and Small Dollar Loan Regulations

Fekrazad (2020) evaluates changes in the payday market in Rhode Island following a decrease in the State's interest rate cap from 15 to 10 percent.[407] The author finds payday loan use increased as measured by the number of borrowers, number of loans, average loan amounts, and loan sequence lengths. While there was no change in the loan default rate, he also finds an increase in loan sequence defaults. Under some assumptions, the author also computes the welfare gain for consumers in Rhode Island due to this change and notes it is an upper bound to the extent that the some of the increase in borrowing may be driven by overborrowing due to present bias. The author also finds no change in the number of storefronts or lenders in Rhode Island after the decrease and argues this suggests lenders had market power prior to the change. The Bureau notes the consistency of the alignment between the charged and state-allowed maximum for interest rates and lack of change in lenders supports the argument that changes in physical access as a result of this final rule are unlikely to change prices consumers face for these loans.

Studies Describing the Circumstances and Decision-making of Consumers

A recent study of consumers in Iceland shows that payday users are especially financially constrained when they take out a payday loan, though a quarter of borrowers have access to a few hundred dollars of cheaper credit.[408] They also assess the decision-making ability of consumers by characterizing how consistent their choices on incentivized survey questions are with utility maximization. They show that more than half of payday loan dollars go to borrowers who are in the bottom quintile of the decision-making ability distribution. Consumers with lower decision-making ability are also much more likely to make ''financial mistakes'' such as incurring NSF fees, but the study does not directly evaluate these consumers' decisions regarding the use of payday loans. Finally, the authors offer evidence that their Icelandic data align well with survey data from the U.S. to suggest that their results hold for U.S. consumers, as well.

The Allcott study surveyed borrowers at a lender in Indiana to evaluate their borrowing expectations and attitudes toward restrictions on payday lending. After exiting a payday storefront, borrowers were asked survey questions about their expected probability of borrowing another loan within the next eight weeks. On average, borrowers predicted they had a 70 percent chance of reborrowing, not far from the actual 74 percent reborrowing rate for the sample, but those who used payday loans less frequently in the six months prior to the survey were much more likely to underestimate their likelihood of reborrowing.

Most surveyed borrowers said they would ''very much'' like to give themselves extra motivation to avoid payday loan debt and a supermajority (about 90 percent) would at least somewhat like to give themselves extra motivation. Consistent with this response, borrowers were also willing to pay a large premium for an incentive to avoid reborrowing. Finally, the authors use the survey responses as inputs to a model to estimate borrower awareness of present bias and consumer welfare responses to potential policy interventions. They find borrowers in their sample do put more weight on near-term payoffs, but that they are also aware of this. They use simulations to predict the effect of different restrictions on payday lending, finding that consumer welfare decreases under full payday loan bans or under caps on loan sizes, but consumer welfare slightly increases in many scenarios under a three-loan rollover restriction.

The Bureau notes that this study uses a subsample of survey respondents meeting a set of pre-registered restrictions.[409] While these conditions are mostly standard, and in most cases necessary for the main analysis in the study, at least some of the omitted borrowers would likely be classified as low decision-making ability types as in the Carvalho study.

Summary of Research Findings on the Welfare Effects of Consumers of Payday Loan Use

The Bureau believes the new research described here and in the proposal for this final rule supplements, and does not contradict, the research described in the 2017 Final Rule so the analysis presented here and in the 2019 NPRM, which is based on the assumptions detailed in the 2017 Final Rule, is unchanged.

[403] 84 FR 4252, 4292.

[404] *Id.* at 4290–92.

[405] *Id.* at 4292–94.

[406] The Bureau received comments discussing in-progress, potentially relevant research, but these projects had only preliminary results, none of which had direct implications for the costs and benefits discussed in this analysis.

[407] Fekrazad, *supra.*

[408] Carvalho *et al.,* NBER Working Paper No. 26328, *supra.*

[409] The resulting analysis subsample is 62 percent of the borrowers who completed the survey and could be matched to administrative data. The Allcott study does not provide information on how the omitted borrowers compare to the study's analysis sample, so the extent to which the study's results hold for the broader payday borrower population cannot be determined.

C. Potential Benefits and Costs of the Final Rule to Consumers and Covered Persons—Recordkeeping Requirements

The 2017 Final Rule requires lenders to maintain sufficient records to demonstrate compliance with the Rule. Those requirements include, among other records to be kept, loan records; materials collected during the process of originating loans, including the information used to determine whether a borrower had the ability to repay the loan, if applicable; records of reporting loan information to RISes, as required; and records of attempts to withdraw payments from borrowers' accounts, and the outcomes of those attempts. The Bureau's amending the 2017 Final Rule to eliminate the Mandatory Underwriting Provisions will eliminate the recordkeeping requirements set forth in the 2017 Final Rule that are not related to payment withdrawal attempts, and therefore lenders will benefit from not having to bear these costs.

1. Benefits and Costs to Covered Persons

The Bureau estimated in the 2017 Final Rule that the costs associated with electronic storage of records was small. As such, the Bureau estimates the benefits from avoiding these costs with the elimination of the Mandatory Underwriting Provisions to be small as well, as detailed in the 2019 NPRM.[410] Lenders will also avoid the need to develop procedures and train staff to retain records in the absence of the Mandatory Underwriting Provisions; these benefits are included in earlier estimates of the benefits of no longer needing to develop procedures, upgrade systems, and train staff.

2. Benefits and Costs to Consumers

Consumers will be minimally affected by the elimination of the recordkeeping requirements in the Mandatory Underwriting Provisions.

D. Potential Benefits and Costs of the Final Rule to Consumers and Covered Persons—Requirements Related to Information Furnishing and Registered Information Systems

As discussed above, the 2017 Final Rule requires lenders to report covered short-term and longer-term balloon-payment loans to every RIS. This requirement will be eliminated as part of the elimination of the Mandatory Underwriting Provisions, as will the potential benefits and costs from the existence of, and reporting to, every RIS.

1. Benefits and Costs to Covered Persons

Eliminating the Mandatory Underwriting Provisions of the 2017 Final Rule will eliminate the requirement on lenders to furnish information regarding covered short-term and longer-term balloon-payment loans to every RIS and to obtain a consumer report from at least one RIS before originating such loans. This, in turn, will eliminate the benefits, described in the 2017 Final Rule, that are afforded to firms that apply to become RISes.

Eliminating the Mandatory Underwriting Provisions of the 2017 Final Rule will also eliminate the benefits to lenders from access to RISes. Most of these benefits would result from decreased fraud and increased transparency. These benefits include, *inter alia,* easier identification of borrowers with past defaults on payday loans issued by other lenders, avoiding issuing loans to borrowers who currently have outstanding loans from other lenders, etc. This represents a cost to lenders from eliminating the Mandatory Underwriting Provisions of the 2017 Final Rule.

2. Benefits and Costs to Consumers

The elimination of the RIS-related requirements will have minimal impact on consumers. The largest benefit for consumers from the RIS-related provisions, as noted in the 2017 Final Rule, was compliance by lenders with the Rule's Mandatory Underwriting Provisions. This benefit is moot, given the elimination of the Rule's Mandatory Underwriting Provisions. The remaining benefits and costs from eliminating the Mandatory Underwriting Provisions are small.

E. Other Unquantified Benefits and Costs

Some of these impacts noted above associated with eliminating the Mandatory Underwriting Provisions in the 2017 Final Rule are difficult if not impossible to quantify, because their magnitudes or values are unknown or unknowable as described in the 2019 NPRM.[411] Additionally, there are other, less direct effects of this final rule that are also left unquantified. These impacts include (but are not limited to): intrinsic utility (''warm glow'') from access to loans that are not available under the 2017 Final Rule; innovative regulatory approaches by States that would have been discouraged by the 2017 Final Rule; public and private health costs that may (or may not) result from payday loan use; suicide-related costs that may (or may not) result from increased access to loans; changes to the profitability and industry structure in response to the 2017 Final Rule (*e.g.,* industry consolidation that may create scale efficiencies, movement to installment product offerings) that will not occur under this final rule; concerns about regulatory uncertainty and/or inconsistent regulatory regimes across markets; benefits or costs to outside parties associated with the change in access to payday loans (*e.g.,* revenues of providers of payday substitutes like pawnshops, overdraft fees paid by consumers and received by financial institutions, the cost of late fees and unpaid bills, etc.); indirect costs arising from increased repossessions of vehicles in response to non-payment of title loans; non-pecuniary effects associated with financial stress that may be alleviated or exacerbated by increased access to/use of payday loans; and any impacts on lenders of fraud and opacity related to a lack of industry-wide RISes (*e.g.,* borrowers circumventing lender policies against taking multiple concurrent payday loans, lenders having more difficulty identifying chronic defaulters, etc.). In the 2019 NPRM, the Bureau asked for comments providing credible quantitative estimates of the impacts discussed above in this paragraph, but commenters did not provide such estimates or data from which the Bureau could calculate such estimates.

Consumer groups stated that the costs to consumers from eliminating the Mandatory Underwriting Provisions will be higher than stated due to health effects of payday loan use. The Bureau noted these potential health effects in the discussion of costs to consumers above in the discussion of other unquantified benefits and costs. Further, much of the same literature noted by commenters was cited in the discussion of new research in the 2019 NPRM.[412] These costs are already considered in this analysis, though the Bureau notes that much of the research on the relationship between payday loan use and health outcomes show correlations and not causal links. Some consumer groups also stated there would additional costs due to decreased financial stability for low income families and reduced economic activity. In the 2019 NPRM, the Bureau also noted many indirect costs of payday loans in its discussion of unquantified benefits and costs.

[410] 84 FR 4252, 4294.

[411] *Id.* at 4294–95.

[412] *Id.* at 4293.

F. Potential Impact on Depository Creditors With $10 Billion or Less in Total Assets

The Bureau believes that depository institutions and credit unions with less than $10 billion in assets are minimally constrained by the 2017 Final Rule's Mandatory Underwriting Provisions. To the limited extent depository institutions and credit unions did make loans in this market, many of those loans were conditionally exempted from the 2017 Final Rule under § 1041.3(e) or (f) as alternative or accommodation loans. As such, this final rule will have minimal impact on these institutions.

However, it is possible that the removal of the 2017 Final Rule's restrictions will allow depository institutions and credit unions with less than $10 billion in assets to develop products that are not viable under the 2017 Final Rule (subject to applicable Federal and State laws and under the supervision of their prudential regulators).[413] To the extent these products are developed and successfully marketed, they will represent a benefit for these institutions from the elimination of the Mandatory Underwriting Provisions in the 2017 Final Rule.

Some industry commenters stated that innovation by banks and lenders would be higher in the absence of the Mandatory Underwriting Provisions of the 2017 Final Rule. The Bureau discussed the potential benefits to small depository institutions and credit unions from increased flexibility to develop new products in the absence of the Mandatory Underwriting Provisions. Meanwhile, a few credit union commenters stated that eliminating the Mandatory Underwriting Provisions will increase relative costs for small credit unions and banks that this final rule does not cover, because they will have to continue to use tougher underwriting standards that covered lenders will no longer be required to use. Credit unions also stated they would face additional costs of competing with covered lenders since the presentation of and lack of underwriting for these covered loans makes their characteristics less transparent, making it less likely consumers will realize that installment loans offered by other lenders (such as credit unions) are potential substitutes. They also stated costs would increase for them due to account closures resulting from their members' use of covered loans. The Bureau agrees that lenders that offer competing products not covered by this final rule will face increased competition as a result of the changes made by amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions. The Bureau also noted there would be changes in benefits and costs to outside parties due to changes in access to payday loans, specifically noting both changes in revenues for competing products and costs related to fees. The Bureau does not, however, have evidence to suggest this will have differential costs to smaller institutions.

G. Potential Impact on Consumers in Rural Areas

With the elimination of the Mandatory Underwriting Provisions, consumers in rural areas will have a greater increase in the availability of covered short-term and longer-term balloon-payment loans originated through storefronts relative to consumers living in non-rural areas. As described above, the Bureau estimates that removing the restrictions in the 2017 Final Rule on making these loans will likely lead to a substantial increase in the markets for storefront payday loans and storefront single-payment vehicle title loans.[414] While many borrowers who live outside of Metropolitan Statistical Areas do travel somewhat far to take out a payday loan, many do not. As such, the expected increase in brick-and-mortar stores that would result from eliminating the Mandatory Underwriting Provisions should improve access to storefront payday loans for those borrowers unwilling or unable to travel greater distances for these loans. While rural borrowers for whom visiting a storefront payday lender is impracticable under the 2017 Final Rule retain the option to seek covered short-term or longer-term balloon-payment loans from online lenders, restrictions imposed by State and local law may not allow this in some jurisdictions. Additionally, not all of these would-be borrowers necessarily have access to the internet, a necessity in order to originate online loans.[415] For those consumers who are unable or unwilling to seek loans from an online lender, amending the 2017 Final Rule to eliminate its Mandatory Underwriting Provisions will provide more, and potentially more desirable, borrowing options.

The Bureau expects that the relative impacts on rural and non-rural consumers of vehicle title loans will be similar to what would occur in the payday market. That is, rural consumers will be likely to experience a greater increase in the physical availability of single-payment vehicle title loans made through storefronts than borrowers living in non-rural areas.

Finally, the Bureau notes that it received a number of comments on the 2016 NPRM indicating that some online payday lenders operate in rural areas and comprise large shares of their local economies. Given that eliminating the Mandatory Underwriting Provisions in the 2017 Final Rule will allow these lenders to avoid decreases in loan volume and revenues, it is likely to substantially and positively affect some rural lenders, thereby benefiting their local economies.

Given the available evidence, the Bureau believes that, other than the relatively greater increase in the physical availability of covered short-term loans made through storefronts, consumers living in rural areas will not experience substantially different effects of this final rule than other consumers.[416]

Some industry commenters stated that the increase in access for rural consumers would be larger than the Bureau stated in the 2019 NPRM since rural borrowers have fewer alternatives and higher income volatility. Consumer groups similarly stated that rural borrowers have fewer alternatives due to less access to depository institutions and therefore these borrowers are more susceptible to payday lenders and suggested increased access was not a benefit. Another group stated vehicle access is especially important for rural

[413] As discussed previously, this may be even more likely than it would have been at the time the 2017 Final Rule was drafted. The OCC not only rescinded guidance on deposit advance products but has also encouraged banks to explore additional small-dollar installment lending products. Additionally, the FDIC is seeking comment on small-dollar products that its banks could offer. These factors might allow for additional lending if not for the 2017 Final Rule (*e.g.,* some additional product offerings may result from this final rule that would have been inviable under the 2017 Final Rule).

[414] 82 FR 54472, 54853.

[415] In considering this in the 2017 Final Rule, the Bureau noted that "rural populations are less likely to have access to high-speed broadband compared to the overall population," but that "the bandwidth and speed required to access an online payday lender is minimal," and that "most potential borrowers in rural communities will likely be able to access the internet by some means (*e.g.,* dial up, or access at the public library or school)." 82 FR 54472, 54853. However, there are likely to be at least some rural borrowers that were displaced from the market by the 2017 Final Rule.

[416] In the 2017 Final Rule, the Bureau noted the potential for small effects on a few local labor markets in which online lenders comprise a significant share of employment. *Id.* Corresponding effects may result from this final rule as well. However, the specifics of these impacts would depend on the competitive characteristics of these labor markets (both as they currently exist and in the counterfactual) that are not easily discernable or generalizable and are of a second-order concern relative to the more direct impacts noted above.

consumers and suggested increased access to title loans was not a benefit for these consumers due to the risk of repossession. To the extent that rural payday and title borrowers have higher income volatility than other consumers, they may have fewer alternatives to these products. However, the Bureau does not have data on the income volatility of payday and title borrowers generally or by geography that it could use to evaluate this claim.

XI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) [417] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 [418] requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[419] The RFA defines a ''small business'' as a business that meets the size standard developed by the SBA pursuant to the Small Business Act.[420]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[421] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[422]

As discussed above, this final rule will revoke the Mandatory Underwriting Provisions of the 2017 Final Rule. The section 1022(b)(2) analysis above describes how this final rule will reduce the costs and burdens on covered persons, including small entities, relative to a baseline where compliance with the 2017 Final Rule becomes mandatory. Additionally, the 2017 Final Rule's FRFA contains a discussion of the specific costs and burdens imposed by the 2017 Final Rule on small entities, including those imposed by the Mandatory Underwriting Provisions that this final rule will reverse.[423] In addition to the removal of costs and burdens, all operations under current law, as well as those that would be adopted if compliance with the Mandatory Underwriting Provisions becomes mandatory, will remain available to small entities under this final rule. Thus, a small entity that is in compliance with the law will not need to take any additional action to remain in compliance. Based on these considerations, this final rule will not have a significant economic impact on any small entities.

In the 2019 NPRM, the Bureau's Director certified that the 2019 NPRM would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel was required for the 2019 NPRM. The Bureau requested comments on its analysis and any relevant data.

Some consumer group commenters asserted that the benefits to lenders from the revocation of the Mandatory Underwriting Provisions mean that this rule has a significant economic impact. The Bureau does not agree that the benefits to small entities of this rule are capable of qualifying as a ''significant economic impact'' on a substantial number of small entities such that an IRFA and FRFA are required under the RFA.[424] That specific phrase is used several times in the RFA, and under accepted principles of statutory interpretation there is a presumption that a specific phrase bears the same meaning throughout a statutory text. Other uses of the phrase make clear that it refers to adverse effects on small entities, not benefits. For example, an IRFA must discuss alternatives considered by the agency that ''minimize any significant economic impact'' on small entities, and a FRFA must discuss steps taken by the agency to ''minimize the significant economic impact'' on small entities.[425] Congress could not have intended through the RFA to minimize benefits to small entities, and accordingly the Bureau does not believe that the benefits of this rule qualify as a significant economic impact. Further reinforcing this conclusion, the other required elements of an IRFA and FRFA generally focus on adverse effects on small entities, and none specifically focuses on benefits to small entities.[426] Thus, performing an IRFA or FRFA for a rule as a result of its benefits to small entities and not based on significant adverse effects on them would serve little purpose.

Several commenters that offer competing products not covered by the 2017 Final Rule argued this final rule will raise costs for them by increasing competition via reduced transparency for payday lenders. They further claimed that small banks and credit unions will experience increased costs due to closed deposit accounts. The Bureau believes that small entities not offering products directly covered by the 2017 Final Rule are outside of the scope of the RFA analysis for this final rule.

A few groups also offered comments related to RISes and the RFA analysis. Specifically, some consumer groups stated that payday lenders will face increased costs due to fraud in the absence of RISes. The Bureau agrees that there will be increased risk of costs due to fraud under this final rule due to the absence of the RIS requirement for all lenders, including small lenders. However, the Bureau does not believe this increased cost will be significant. Some of these consumer groups also argued that any small RISes will be negatively affected by the proposal because lenders would no longer be required to use their services. It is true that RISes, if any had come into existence, would have experienced significantly less business as a result of this final rule relative to the baseline of the 2017 Final Rule since lenders will no longer be required to report to or use these RISes. However, the Bureau believes that it is unlikely any small RISes would have existed under the 2017 Final Rule as the scale involved in efficiently collecting, maintaining, and sharing data would not be conducive to a small business as seen in the market with other credit reporting systems. Finally, several industry commenters and State legislators supported the Bureau's proposed rule stating that the 2017 Final Rule would have resulted in the closure of many small businesses due to revenue decreases or increased costs related to training or the use of RISes. The Bureau agrees that small lenders will experience a reduction in costs and training related to the use of RISes which may avoid the closure of some small lenders. The Bureau

[417] Public Law 96–354, 94 Stat. 1164 (1980).

[418] Public Law 104–21, sec. 241, 110 Stat. 847, 864 (1996).

[419] 5 U.S.C. 601 through 612. The term '' 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].'' 5 U.S.C. 601(4). The term '''small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(5).

[420] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

[421] 5 U.S.C. 601 through 612.

[422] 5 U.S.C. 609.

[423] 82 FR 54472, 54853.

[424] 5 U.S.C. 605(b).

[425] 5 U.S.C. 603(c), 604(a)(6). *See also* 5 U.S.C. 610(a) (periodic review of rules); Public Law 96–354, sec. 2(a)(7), 94 Stat. 1164 (congressional findings).

[426] *See* 5 U.S.C. 603, 604.

generally agrees with these comments, but because these costs to small entities are either not significant or do not apply to persons covered by the 2017 Final Rule, the Bureau's certification still holds.

Accordingly, the Director of the Bureau hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, a FRFA is not required for this final rule.

XII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[427] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to, an information collection, unless the information collection displays a valid control number assigned by OMB. This final rule revokes the mandatory underwriting requirements of 12 CFR part 1041; thereby removing the information collection requirements previously contained in §§ 1041.5, 1041.6, 1041.10, and 1041.11. The Bureau is continuing to seek OMB approval for the information collection requirements remaining in 12 CFR part 1041 concerning the Payment Provisions as contained in §§ 1041.8, 1041.9, and 1041.12. As noted in the 2019 NPRM, the collections of information related to the 2017 Final Rule (concerning both the Mandatory Underwriting Provisions and the Payment Provisions) were submitted to OMB in 2017 in accordance with the PRA and assigned OMB Control Number 3170–0065 for tracking purposes. That control number is not active because OMB has not acted on those information collection requests. The Bureau has submitted a revised information collection request seeking a new OMB control number for the provisions of 12 CFR part 1041 not affected by this final rule for OMB review under PRA section 3507(d). This submission to OMB was made under OMB Control Number 3170–0071, which OMB assigned for tracking purposes at the 2019 NPRM stage of this rulemaking. The Bureau will publish a separate **Federal Register** notice once OMB concludes its review of this request.

When the 2019 NPRM was published, the Bureau invited comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. The Bureau did not receive comments concerning these specific topics.

The Bureau did receive two other comments that addressed PRA matters other than the four topics on which the Bureau requested comment. First, consumer groups stated it was improper for the Bureau to request comments on the PRA information collection request with respect to the Payment Provisions since the proposal did not address payments. The Bureau agrees with this comment.

In the second comment made by these groups, they stated that there is implied OMB approval for the Payment Provisions data collections for the 2017 Final Rule. Because the Payment Provisions are outside the scope of this rulemaking, the extent to which the Bureau can infer OMB approval by OMB's inaction on the information collection requirements in the 2017 Final Rule is an issue that is beyond the scope of this rulemaking.[428]

XIII. Congressional Review Act

Pursuant to the Congressional Review Act,[429] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' as defined by 5 U.S.C. 804(2).

XIV. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1041

Banks, Banking, Consumer protection, Credit, Credit unions, National banks, Reporting and recordkeeping requirements, Savings associations, Trade practices.

Authority and Issuance

For the reasons set forth above, the Bureau amends 12 CFR part 1041 as set forth below:

PART 1041—PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH–COST INSTALLMENT LOANS

■ 1. The authority citation for part 1041 continues to read as follows:

Authority: 12 U.S.C. 5511, 5512, 5514(b), 5531(b), (c), and (d), 5532.

Subpart A General

§ 1041.1 [Amended]

■ 2. Amend § 1041.1 by removing the last sentence of paragraph (b).

§ 1041.2 [Amended]

■ 3. Amend § 1041.2 by removing and reserving paragraphs (a)(14) and (19).

Subpart B—[Removed and Reserved]

■ 4. Remove and reserve subpart B, consisting of §§ 1041.4 through 1041.6.

■ 5. Revise the heading for subpart D to read as follows:

Subpart D—Recordkeeping, Anti-Evasion, Severability, and Dates

§§ 1041.10 and 1041.11 [Removed and Reserved]

■ 6. Remove and reserve §§ 1041.10 and 1041.11.

■ 7. Amend § 1041.12 by revising paragraph (b)(1) and removing and reserving paragraphs (b)(2) and (3) to read as follows:

§ 1041.12 Compliance program and record retention.

* * * * *

(b) * * *

(1) *Retention of loan agreement for covered loans.* To comply with the requirements in this paragraph (b), a lender must retain or be able to

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[427] 44 U.S.C. 3501 *et seq.*

[428] The comments are correct that there is a provision in the OMB regulations pertaining to information collection requests for an agency to request that OMB issue a control number if OMB has not acted on an information collection request within the time limits that are established in the OMB regulations. The PRA does not, however, provide for an ''inferred OMB approval.'' Rather, the PRA generally provides that if OMB does not act on an information collection request within 60 days, an agency may request that OMB ''assign an OMB control number.'' 5 CFR 1320.11(i). However, the duration for the period during which the Bureau may collect information is within OMB's discretion, and in the end, the Bureau did not need to invoke this provision of the OMB regulations. The Bureau will work with OMB when the information collections for the Payment Provisions become operative in order to ensure compliance with the PRA.

[429] 15 U.S.C. 801 *et seq.*

reproduce an image of the loan agreement for each covered loan that the lender originates.

* * * * *

§ 1041.15 [Amended]

■ 8. Amend § 1041.15 by removing paragraph (d).

Appendix A to Part 1041 [Amended]

■ 9. In appendix A to part 1041, remove and reserve Model Forms A–1 and A–2.

■ 10. In supplement I to part 1041:

■ a. Under *Section 1041.2—Definitions,* revise *2(a)(5) Consummation* and remove *2(a)(19) Vehicle Security.*

■ b. Under *Section 1041.3—Scope of Coverage; Exclusions; Exemptions,* revise *3(e)(2) Borrowing History Condition* and *3(e)(3) Income Documentation Condition.*

■ c. Remove *Section 1041.4—Identification of Unfair and Abusive Practice, Section 1041.5—Ability-to-Repay Determination Required, Section 1041.6—Conditional Exemption for Certain Covered Short-Term Loans, Section 1041.10—Furnishing Information to Registered Information Systems,* and *Section 1041.11—Registered Information Systems.*

■ d. In *Section 1041.12—Compliance Program and Record Retention:*

■ i. Revise *12(a) Compliance Program* and *12(b) Record Retention.*

■ ii. Remove *12(b)(1) Retention of Loan Agreement and Documentation Obtained in Connection With Originating a Covered Short-Term or Covered Longer-Term Balloon-Payment Loan, 12(b)(2) Electronic Records in Tabular Format Regarding Origination Calculations and Determinations for a Covered Short-Term or Longer-Term Balloon-Payment Loan Under § 1041.5, 12(b)(3) Electronic Records in Tabular Format Regarding Type, Terms, and Performance of Covered Short-Term or Covered Longer-Term Balloon-Payment Loans,* and *Paragraph 12(b)(3)(iv).*

■ iii. Revise *12(b)(5) Electronic Records in Tabular Format Regarding Payment Practices for Covered Loans.*

The revisions read as follows:

Supplement I to Part 1041—Official Interpretations

Section 1041.2—Definitions

* * * * *

2(a)(5) Consummation

1. *New loan.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law. A contractual commitment agreement, for example, that under applicable law binds the consumer to the loan terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a non-refundable fee) unless applicable law holds otherwise.

* * * * *

Section 1041.3—Scope of Coverage; Exclusions; Exemptions

* * * * *

3(e) Alternative Loans

* * * * *

3(e)(2) Borrowing History Condition

1. *Relevant records.* A lender may make an alternative covered loan under § 1041.3(e) only if the lender determines from its records that the consumer's borrowing history on alternative covered loans made under § 1041.3(e) meets the criteria set forth in § 1041.3(e)(2). The lender is not required to obtain information about a consumer's borrowing history from other persons, such as by obtaining a consumer report.

2. *Determining 180-day period.* For purposes of counting the number of loans made under § 1041.3(e)(2), the 180-day period begins on the date that is 180 days prior to the consummation date of the loan to be made under § 1041.3(e) and ends on the consummation date of such loan.

3. *Total number of loans made under § 1041.3(e)(2).* Section 1041.3(e)(2) excludes loans from the conditional exemption in § 1041.3(e) if the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.3(e) from the lender in any consecutive 180-day period. *See* § 1041.2(a)(17) for the definition of outstanding loan. Under § 1041.3(e)(2), the lender is required to determine from its records the consumer's borrowing history on alternative covered loans made under § 1041.3(e) by the lender. The lender must use this information about borrowing history to determine whether the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.3(e) from the lender in a consecutive 180-day period, determined in the manner described in comment 3(e)(2)–2. Section 1041.3(e) does not prevent lenders from making a covered loan subject to the requirements of this part.

4. *Example.* For example, assume that a lender seeks to make an alternative loan under § 1041.3(e) to a consumer and the loan does not qualify for the safe harbor under § 1041.3(e)(4). The lender checks its own records and determines that during the 180 days preceding the consummation date of the prospective loan, the consumer was indebted on two outstanding loans made under § 1041.3(e) from the lender. The loan, if made, would be the third loan made under § 1041.3(e) on which the consumer would be indebted during the 180-day period and, therefore, would be exempt from this part under § 1041.3(e). If, however, the lender determined that the consumer was indebted on three outstanding loans under § 1041.3(e) from the lender during the 180 days preceding the consummation date of the prospective loan, the condition in § 1041.3(e)(2) would not be satisfied and the loan would not be an alternative loan subject to the exemption under § 1041.3(e) but would instead be a covered loan subject to the requirements of this part.

3(e)(3) Income Documentation Condition

1. *General.* Section 1041.3(e)(3) requires lenders to maintain policies and procedures for documenting proof of recurring income and to comply with those policies and procedures when making alternative loans under § 1041.3(e). For the purposes of § 1041.3(e)(3), lenders may establish any procedure for documenting recurring income that satisfies the lender's own underwriting obligations. For example, lenders may choose to use the procedure contained in the National Credit Union Administration's guidance at 12 CFR 701.21(c)(7)(iii) on Payday Alternative Loan programs recommending that Federal credit unions document consumer income by obtaining two recent paycheck stubs.

* * * * *

Section 1041.12—Compliance Program and Record Retention

12(a) Compliance Program

1. *General.* Section 1041.12(a) requires a lender making a covered loan to develop and follow written policies and procedures that are reasonably designed to ensure compliance with the applicable requirements in this part. These written policies and procedures must provide guidance to a lender's employees on how to comply with the requirements in this part. In particular, under § 1041.12(a), a lender must develop and follow detailed written policies and procedures reasonably designed to achieve compliance, as applicable, with the payments requirements in §§ 1041.8 and 1041.9. The provisions and commentary in each

section listed above provide guidance on what specific directions and other information a lender must include in its written policies and procedures.

12(b) Record Retention

1. *General.* Section 1041.12(b) requires a lender to retain various categories of documentation and information concerning payment practices in connection with covered loans. The items listed are non-exhaustive as to the records that may need to be retained as evidence of compliance with this part.

*   *   *   *   *

12(b)(5) Electronic Records in Tabular Format Regarding Payment Practices for Covered Loans

1. *Electronic records in tabular format.* Section 1041.12(b)(5) requires a lender to retain records regarding payment practices in electronic, tabular format. Tabular format means a format in which the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a widely used spreadsheet or database program. Data formats for image reproductions, such as PDF, and document formats used by word processing programs are not tabular formats.

*   *   *   *   *

Dated: July 7, 2020.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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FEDERAL REGISTER

Vol. 85 Wednesday,

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Part III

The President

Proclamation 10056—Captive Nations Week, 2020

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 10056 of July 17, 2020

Captive Nations Week, 2020

By the President of the United States of America

A Proclamation

Tragically, hundreds of millions of people around the world continue to suffer under repressive regimes. During Captive Nations Week, we condemn the cold grip of tyranny that holds nations under unjust rule, and we reaffirm our commitment to all who are fighting to overcome oppression. We renew our deep devotion to the principles of liberty, justice, and the rule of law, and we know the United States will continue to shine as an unparalleled example for all nations.

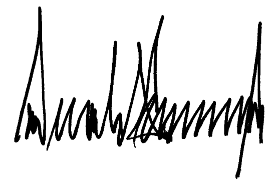
President Dwight D. Eisenhower first proclaimed Captive Nations Week in 1959 to declare our Nation's steadfast support for people throughout the world who are denied fundamental rights by their governments. The belief that a just government's powers are derived from the consent of the governed is sacrosanct in our country, but it is not shared universally. In many countries, citizens who peacefully speak their views, practice their religion, or strive to hold their governments accountable for abuses experience reckless disregard for their rights. Recently, authoritarian regimes have used the coronavirus pandemic to justify increased restrictions on individual human rights. These regimes have suppressed the free flow of timely and accurate information about the pandemic by censoring or imprisoning people who dare to share unapproved information or opinions. The most notable example today is China, where the virus originated and government suppression led directly to this global pandemic. In addition, the Chinese government has seized upon this opportunity to snuff out freedom in Hong Kong, which had been the only bastion of liberty in that captive nation.

The United States encourages all nations to respect individual liberty, uphold the rule of law, and be accountable to their people through consent-based governments. Authoritarian regimes that do not respect the inherent dignity of every individual hold the dreams and potential of their people captive, enabling poverty, repression, and anguish to flourish as they deny their people their God-given rights. We will never waver in our firm belief that liberty, justice, and the rule of law unleash the fullness of life that God intended for everyone. This week and always, we stand with all people who yearn to live freely, securely, and prosperously under rights-respecting, transparent, and accountable governments rooted in the consent of the governed.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week of July of each year as ''Captive Nations Week.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 19 through July 25, 2020, as Captive Nations Week. I call upon all Americans to reaffirm our commitment to supporting those around the world striving for liberty, justice, and the rule of law.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of July, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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