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Federal Register

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2019–0202]

RIN 3150–AK39

List of Approved Spent Fuel Storage Casks: TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16

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 September 14, 2020, for the direct final rule that was published in the **Federal Register** on June 30, 2020. The direct final rule amends the spent fuel storage regulations by revising the TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 16 to Certificate of Compliance No. 1004.

DATES: The effective date of September 14, 2020, for the direct final rule published June 30, 2020 (85 FR 39049), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2019–0202 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0202. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals 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, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML19262E152. The final amendment to the certificate, the final changes to the technical specifications, and the final safety evaluation report are available in ADAMS under Accession No. ML20226A014.

FOR FURTHER INFORMATION CONTACT: Norma García Santos, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6999; email: *Norma.GarciaSantos@nrc.gov* or Torre Taylor, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–7900; email: *Torre.Taylor@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On June 30, 2020 (85 FR 39049), 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 TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 16 to Certificate of Compliance No. 1004. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on September 14, 2020. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated August 25, 2020.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

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

[FR Doc. 2020–19028 Filed 9–2–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1070; Product Identifier 2019–NM–178–AD; Amendment 39–21218; AD 2020–17–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 and 787–9 airplanes. This AD was prompted by reports that the cabin air compressor (CAC) outlet check valve failed due to fatigue of the aluminum flappers, and exposed the Y-duct to temperatures above its design limit. This AD requires installing new inboard and outboard CAC outlet check valves on the left-side and right-side cabin air conditioning and temperature control system (CACTCS) packs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 8, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2020.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this

material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1070.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1070; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Craig, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3566; email: *Michael.S.Craig@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8 and 787–9 airplanes. The NPRM published in the **Federal Register** on January 10, 2020 (85 FR 1295). The NPRM was prompted by reports that the CAC outlet check valve failed due to fatigue of the aluminum flappers, and exposed the Y-duct to temperatures above its design limit. The NPRM proposed to require installing new inboard and outboard CAC outlet check valves on the left-side and right-side CACTCS packs.

The FAA is issuing this AD to address failed CAC outlet check valves, which could expose the flight deck and passenger cabin to smoke and fumes, and lead to reduced crew performance or produce passenger discomfort. Off-gassed compounds could cause respiratory distress and could cause serious injury for an individual with a compromised respiratory system.

Comments

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

Support for the NPRM

The Air Line Pilots Association, International, stated that it supports the NPRM.

Request to Reference Part Number for Parts Installation Prohibition Within the AD

All Nippon Airways (ANA) requested that the FAA reference CAC outlet check valve, part number (P/N) 7010105H01, directly in paragraph (i) of the proposed AD. ANA noted that paragraph (i) of the proposed AD stated that ''no person may install a CAC outlet check valve, with a part number listed in paragraph 1.B, 'Spares Affected' of Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019, on any airplane.'' ANA pointed out that only CACTCS Pack P/Ns are listed in paragraph 1.B, ''Spares Affected'' of Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019 (''SB B787–81205–SB210108–00, Issue 002''), and the part number of the CAC outlet check valve that is of concern is not listed.

The FAA agrees with the request for the reasons provided. Although SB B787–81205–SB210108–00, Issue 002, does list CAC outlet check valves part numbers in paragraph 1.B of the service bulletin, the CAC outlet check valve part number that is of concern, P/N 7010105H01, is not listed in paragraph 1.B of the service bulletin. The CAC outlet check valve part number of concern, P/N 7010105H01, was intended to be a part prohibited from installation. The Accomplishment Instructions of SB B787–81205–SB210108–00, Issue 002, Note 9 of the General Information section states, among other things, that any CAC outlet check valve having P/N 7010105H01 cannot be installed again and must be made unserviceable. Additionally, supplier service information UTC Aerospace Systems Service Bulletin 7110097/098/188/189–21–4, dated May 3, 2018; and UTC Aerospace Systems Service Bulletin 7010097/098/188/189–21–9, dated May 3, 2018, which are referenced in SB B787–81205–SB210108–00, Issue 001; dated May 25, 2018 (''SB B787–81205–SB210108–00, Issue 001''), and SB B787–81205–SB210108–00, Issue 002, also state that all replaced CAC outlet check valves having P/N 7010105H01 cannot be installed again and must be made unserviceable. The FAA has revised paragraph (i) of this AD to specify that no person may install a CAC outlet check valve with a part number listed in paragraph 1.B of SB B787–81205–SB210108–00, Issue 002, or P/N 7010105H01 on any airplane as of the effective date of this AD.

Request To Clarify Part Marking Requirements

American Airlines (AA) and United Airlines (UA) requested that the FAA clarify the requirements for marking the MOD DOT number on the CACTCS pack identification plate. Both commenters noted that paragraphs 2.A.(2), 2.A.(3), 2.B.(2), and 2.B.(3) of the Accomplishment Instructions of SB B787–81205–SB210108–00, Issue 002, are listed as ''RC'' (Required for Compliance) and specify to replace the CAC outlet check valve and mark the MOD DOT number on the CACTCS pack identification plate. The commenters pointed out that paragraph (j) of the proposed AD provides credit for actions accomplished in accordance with Boeing Service Bulletin B787–81205–SB210108–00, Issue 001, which does not have instructions for marking the MOD DOT number on the CACTCS pack identification plate. Because SB B787–81205–SB210108–00, Issue 002, specifies to mark the MOD DOT number on the CACTCS pack identification plate, but SB B787–81205–SB210108–00, Issue 001, does not, the commenters requested clarification on this requirement.

The FAA agrees to clarify. SB B787–81205–SB210108–00, Issue 001, specifies to do actions ''in accordance with'' the supplier service information, which included instructions for part marking. Therefore, operators that accomplished this issue of the service bulletin should have also marked the MOD DOT number on the CACTCS pack identification plate. However, the FAA acknowledges that SB B787–81205–SB210108–00, Issue 001 specified only replacing the parts, not marking them. If operators otherwise complied with SB B787–81205–SB210108–00, Issue 001, but did not mark the MOD DOT number on the CACTCS pack identification plate, they cannot claim credit for part marking and must mark the part as specified in SB B787–81205–SB210108–00, Issue 002. The FAA has not changed this AD in this regard.

Request To Clarify Part Marking of an ''X'' on the CACTCS Pack Identification Plate

UA requested that the FAA clarify the requirement to part mark an ''X'' on the CACTCS pack identification plate. UA pointed out that paragraphs 2.A.(2), 2.A.(3), 2.B.(2), and 2.B.(3) of the Work Instructions of SB B787–81205–SB210108–00, Issue 002, specify to mark the MOD DOT number on the CACTCS pack identification plate. In

the associated tables, footnote [1] specifies to ''also part mark an 'X' on the applicable number in the MOD DOT area of the identification plate . . .'' UA stated that the result is that MOD DOT markings are required in two places, which UA maintains is redundant and not consistent.

The FAA agrees to clarify. Footnote [1] of Tables 1 through 8 of the Work Instructions of SB B787–81205–SB210108–00, Issue 002, specifies to mark an ''X'' on the identification plate for the appropriate MOD DOT for CACTCS pack configuration H05 and H09 only, which is a separate action from marking the MOD DOT number on the CACTCS pack identification plate. The FAA has not changed this AD in this regard.

Requests To Update Supplier Warranty Information

Boeing requested that the FAA update the Costs of Compliance section of the NPRM to reflect a name change for the supplier warranty information from UTC Aerospace Systems to Collins Aerospace. The FAA has revised the Costs of Compliance section of this AD accordingly.

Request To Clarify Discussion

Boeing requested that the FAA modify portions of the Discussion of the NPRM to clarify the cause of failing CAC outlet check valves and more clearly explain the sequence of events leading to the unsafe condition. Whereas the NPRM described the cause of the flapper fatigue as ''increasing open/close cycles,'' Boeing stated that the flapper fatigue was due to ''open/close cycles exceeding design requirements.'' Boeing also requested that the FAA modify the Discussion of the NPRM to clarify that ''This [open/close cycles exceeding design requirements] can cause reverse flow through the broken check valve during times of single CAC operation. With repeated exposure to temperatures in excess of the Y-Duct design limit, the duct may degrade and this can lead to failure of the Y-Duct if not addressed. Dual CAC operation with a failed Y-Duct may lead to high temperatures that can result in off gassing from the duct material.''

The FAA agrees that the description in the NPRM was inaccurate and is clarified in the previous paragraph. Since that section of the preamble does not reappear in the final rule, no change to the final rule is necessary.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019. The service information describes procedures for installing new inboard and outboard CAC outlet check valves on the left-side and right-side CACTCS packs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 90 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace CAC outlet check valves	3 work-hours × $85 per hour = $255 per check valve.	$0	$255 per check valve.	$22,950 per check valve.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–17–13 The Boeing Company: Amendment 39–21218; Docket No. FAA–2019–1070; Product Identifier 2019–NM–178–AD.

(a) Effective Date

This AD is effective October 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as identified in Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports that the cabin air compressor (CAC) outlet check valve failed due to fatigue of the aluminum flappers, and exposed the Y-duct to temperatures above its design limit. The FAA is issuing this AD to address this condition, which could expose the flight deck and passenger cabin to smoke and fumes, and lead to reduced crew performance or produce passenger discomfort. Off-gassed compounds could cause respiratory distress and could cause serious injury for an individual with a compromised respiratory system.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: At the applicable times specified in paragraph 5., ''Compliance,'' of Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019.

(h) Exceptions to Service Information Specifications

Where Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019, uses the phrase ''the Issue 002 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a CAC outlet check valve, with a part number listed in paragraph 1.B, ''Spares Affected'' of Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019, or CAC outlet check valve P/N 7010105H01, on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB210108–00, Issue 001, dated May 25, 2018.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

For more information about this AD, contact Scott Craig, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3566; email: *Michael.S.Craig@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin B787–81205–SB210108–00, Issue 002, dated October 15, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on August 13, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–19387 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0448; Product Identifier 2020–NM–050–AD; Amendment 39–21219; AD 2020–17–14]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model Falcon 10 airplanes. This AD was prompted by a report of hydraulic fluid on the ground near the main landing gear (MLG) brake assembly. The hydraulic leakage started in a cracked hydraulic pipe, with the crack likely due to chafing between two

hydraulic pipes or between hydraulic pipes and structure. This AD requires an inspection for chafing or interference of certain hydraulic pipes and certain rib passage holes, and, depending on findings, modification or repair, as specified in a European Union Aviation Safety Agency (EASA), which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 8, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0448.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0448; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0072, dated March 26, 2020 (''EASA AD 2020–0072'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model Falcon 10 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model Falcon 10 airplanes. The NPRM published in the **Federal Register** on May 7, 2020 (85 FR 27170). The NPRM was prompted by a report of hydraulic fluid on the ground near the MLG brake assembly. The hydraulic leakage started in a cracked System #2 hydraulic pipe, with the crack likely due to chafing between two hydraulic pipes or between hydraulic pipes and structure. The NPRM proposed to require an inspection for chafing or interference of the hydraulic pipes and certain rib passage holes, and, depending on findings, modification or repair, as specified in an EASA AD.

The FAA is issuing this AD to address chafed or cracked hydraulic pipes, which could lead to hydraulic fluid leakage near an ignition source and possibly result in an uncontained fire. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. Hailey Berk indicated support for the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0072 describes procedures for an inspection for chafing or interference of the System #2 hydraulic pipes and rib 1 to rib 2a passage holes, and, depending on findings, modification to prevent interference or chafing at rib passage holes or repair. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 85 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	None	$170	$14,450

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 24 work-hours × $85 per hour = $2,040	Up to $5,500	Up to $7,540.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–17–14 Dassault Aviation: Amendment 39–21219; Docket No. FAA–2020–0448; Product Identifier 2020–NM–050–AD.

(a) Effective Date

This AD is effective October 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model Falcon 10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a report of hydraulic fluid on the ground near the main landing gear brake assembly. The hydraulic leakage started in a cracked System #2 hydraulic pipe, with the crack likely due to chafing between two hydraulic pipes or between hydraulic pipes and structure. The FAA is issuing this AD to address chafed or cracked hydraulic pipes, which could lead to hydraulic fluid leakage near an ignition source and possibly result in an uncontained fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0072, dated March 26, 2020 (''EASA AD 2020–0072'').

(h) Exceptions to EASA AD 2020–0072

(1) Where EASA AD 2020–0072 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0072 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0072, dated March 26, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0072, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0448.

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

Issued on August 13, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–19389 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0338; Product Identifier 2020–NM–047–AD; Amendment 39–21224; AD 2020–18–03]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by the results of laboratory tests on non-rechargeable lithium batteries installed in certain emergency locator transmitters (ELTs), which highlighted a lack of protection against current injections of 28 volts direct current (DC) or 115 volts alternating current (AC) that could lead to thermal runaway and a battery fire. This AD requires modifying a certain ELT by installing a diode between the ELT and the terminal block, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 8, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0338.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0338; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0070, dated March 24, 2020 (''EASA AD 2020–0070'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on April 27, 2020 (85 FR 23262). The NPRM was prompted by the results of laboratory tests on non-rechargeable lithium batteries installed in certain ELTs, which highlighted a lack of protection against current injections of 28 volts DC or 115 volts AC that could lead to thermal runaway and a battery fire. The NPRM proposed to require modifying a certain ELT by installing a diode between the ELT and the terminal block, as specified in an EASA AD.

The FAA is issuing this AD to address local fires in non-rechargeable lithium batteries installed in ELTs, which could result in damage to the airplane and injury to occupants. See the MCAI for additional background information.

Comments

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

Request To Withdraw NPRM

Delta Air Lines (DAL) noted that the NPRM was based on the failure mode where a wire from the ELT is shorted to another wire carrying 28 volts DC or 115 volts AC causing voltage to be induced into the ELT's battery, resulting in a battery fire. The commenter explained that on Airbus Model A321 and A330 airplanes this failure mode could occur because the wiring is characterized by four discrete wires run in bundles with other discrete wires carrying 28 volts DC or 115 volts AC. The commenter questioned whether the NPRM should be applicable to Airbus Model A350 airplanes because these airplanes have a cable assembly with its four wires inside an outer jacket and shielding, which would therefore mitigate the unsafe condition addressed in the NPRM.

The FAA infers that the commenter is requesting that the NPRM be withdrawn because of the unique configuration of certain airplanes, including Airbus SAS Model A350–941 and –1041 airplanes. The FAA disagrees with the commenter's request. EASA, the State of Design Authority for these airplane models, conducted a risk assessment, and concluded that the type design of the applicable airplanes are susceptible to the current injection of 28 volts DC or 115 volts AC, that is not limited to just wire chafing. Therefore, the FAA is requiring the applicable corrective actions in this AD to mitigate the risk of the thermal runaway and battery fire. The FAA has determined that it is necessary to issue this final rule.

Request To Allow Any Color and Width of Tape

DAL also requested that operators be allowed to use any color and width of reinforced silicon tape instead of part number ASNA51072503, to protect the wiring in the area where the diode is secured to the harness. The commenter explained that part number ASNA51072503 is specified in Airbus Service Bulletin A350–25–P152, dated January 10, 2020 (''Airbus Service Bulletin A350–25–P152''), and is for the 1-inch orange tape under the ASNA5107 standard [which is an aerospace industry standard for a silicone rubber tape]. The commenter requested approval to use any color and width of tape meeting the specifications of the broader ASNA5107 standard.

The FAA partially agrees with the commenter's request. EASA AD 2020–0070 refers to Airbus Service Bulletin A350–25–P151, dated January 10, 2020 (''Airbus Service Bulletin A350–25–P151''), and Airbus Service Bulletin

A350–25–P152, as the sources of service information for modifying the affected ELTs. Although the commenter mentioned only Airbus Service Bulletin A350–25–P152 in its comment, silicone tape having part number ASNA51072503 is specified in both service bulletins. The FAA agrees that operators can use any brightly colored tape because orange does not have a specific safety function. The FAA disagrees that operators can use any width of tape because the width could provide a safety function. The FAA has added paragraph (h)(3) to this AD to specify that operators may use any brightly colored 1-inch tape that meets the criteria specified in the ASNA5107 standard.

Request To Allow an Alternative Continuity Check

In addition, DAL requested and provided an option to replace Step 3.C.(g) specified in Airbus Service Bulletin A350–25–P152. The commenter explained that Step 3.C.(g) in Airbus Service Bulletin A350–25–P152 requires a continuity test of the modified wiring and provides no specific steps for this test other than referencing Electrical Standard Practices (ESP) section A350–A–20–52–21–00ZZZ–36AZ–A. The commenter noted that although this ESP section does provide basic continuity procedures, it fails to provide a procedure for a wire with a diode installed.

The FAA disagrees with the commenter's request. Based on the report from EASA, the State of Design Authority for these airplane models, the FAA has determined that the procedures described in Step 3.C.(g) of Airbus Service Bulletin A350–25–P152 do include a continuity test that considers an installed diode. Operators may, however, request alternative methods of compliance to replace Step 3.C.(g) specified in Airbus Service Bulletin A350–25–P152 by using the procedures described in paragraph (i)(1) of this AD and demonstrating how this alternative addresses the unsafe condition. The FAA has not changed this AD regarding this issue.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0070 describes procedures for modifying a certain ELT by installing a diode between the ELT and the terminal block. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	$400	$825	$5,775

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–18–03 Airbus SAS: Amendment 39–21224; Docket No. FAA–2020–0338; Product Identifier 2020–NM–047–AD.

(a) Effective Date

This AD is effective October 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0070, dated March 24, 2020 (''EASA AD 2020–0070'').

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by the results of laboratory tests on non-rechargeable lithium batteries installed in certain emergency locator transmitters (ELTs), which highlighted a lack of protection against current injections of 28 volts direct current (DC) or 115 volts alternating current (AC) that could lead to thermal runaway and a battery fire. The FAA is issuing this AD to address local fires in non-rechargeable lithium batteries installed in ELTs, which could result in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0070.

(h) Exceptions to EASA AD 2020–0070

(1) Where EASA AD 2020–0070 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0070 does not apply to this AD.

(3) Where the service information specified in EASA AD 2020–0070 specifies to use tape having part number ASNA51072503, this AD requires using any brightly colored 1-inch tape that meets the criteria specified in the ASNA5107 standard.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0070 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0070, dated March 24, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0070, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0.

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

Issued on August 19, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–19402 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0332; Product Identifier 2020–NM–037–AD; Amendment 39–21227; AD 2020–18–06]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by a report that cracks were detected on the left-hand (LH) and right-hand (RH) sides of the first rivet hole of the frame (FR) 43 foot coupling during scheduled maintenance. This AD requires a rotating probe test of the fastener holes at FR43 on the LH and RH sides for any cracking, and on-condition actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 8, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South

216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0332.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0332; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0037, dated February 27, 2020; corrected February 28, 2020 (''EASA AD 2020–0037'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on April 17, 2020 (85 FR 21334). The NPRM was prompted by a report that cracks were detected on the LH and RH sides of the first rivet hole of the FR43 foot coupling during scheduled maintenance. The NPRM proposed to require a rotating probe test of the fastener holes at FR43 on the LH and RH sides for any cracking, and on-condition actions if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address cracking in the foot coupling, which could affect the structural integrity of the airplane. See the MCAI for additional background information.

Comments

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

Support for the NPRM

Olivia Lawless stated support for the NPRM.

Request for Operator Training

Olivia Lawless requested that training for operators should be implemented, or at least explored. The commenter stated concern about the implications that may result from requiring ''on-condition actions including a high frequency eddy current (rototest) inspection for cracks of the affected fastener holes, modification, and repair.'' The commenter noted that the NPRM suggests that the materials are available through the parties' normal course of business, however, it would be unlikely that employees would know how to perform these tests, or how to determine when on-condition actions occur without significant amounts of training.

The FAA agrees to clarify. The service information needed to comply with the required actions will be available in the AD docket. That service information contains detailed instructions for operators and their employees to follow. In addition, the FAA notes that it is the operators' responsibility to have adequate tools and provide adequate training for its employees to accomplish the required actions in an AD. The FAA has not changed this AD in this regard.

Request To Revise the Compliance Time

Delta Airlines (DAL) requested that the compliance time be limited to flight cycles and not flight hours. DAL stated that Airbus Service Bulletin A320–53–1269, Revision 02, dated February 7, 2019, specifies that the cracks which prompted the development of modification 153126 and modification 153742, were identified as a part of the full scale fatigue test campaign. DAL commented that because the failure mode is fatigue driven, there is no reason to include a compliance time requirement based upon flight hours.

The FAA disagrees with the commenter's request. The requirements in this AD align with the requirements specified in EASA AD 2020–0037, which include compliance times in both flight hours and flight cycles. In addition, the FAA notes that the commenter did not submit any substantiating data to support using only a flight cycle requirement. However, under the provisions of paragraph (j)(1) of this AD, the FAA will consider requests for approval of a revision to the compliance time if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. The FAA has not changed this AD in this regard.

Request To Use an Alternate Chemical Corrosion Surface Pretreatment

DAL requested the use of CML 10ABE1 as a more appropriate choice of a chemical corrosion surface pretreatment. DAL stated that after the cold expansion is completed using Airbus Structural Repair Manual (SRM) 51–48–00, but prior to the installation of the new fastener, Airbus Service Bulletin A320–53–1270, Revision 02, dated April 11, 2014, specifies an application of chemical conversion surface pretreatment CML 10ABC1, which is intended for use in fuel tank applications.

The FAA disagrees with the commenter's request. The FAA has not received any information from either the state of design, EASA, or Airbus allowing alternate CML 10ABE1. CML 10ABC1 is a suitable pretreatment product that meets the requirements of this AD and addresses the identified unsafe condition. However, under the provisions of paragraph (j)(1) of this AD, the FAA will consider requests for approval of application of alternative chemical corrosion surface pretreatment products if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. The FAA has not changed this AD in this regard.

Request To Add an Exception to the NPRM

DAL requested that the application of corrosion inhibiting compounds (CICs) be added to paragraph (h) of the proposed AD, ''Exceptions to EASA AD 2020–0037,'' and not be a requirement

for AD compliance. DAL stated that paragraph 3.C.(4)(c) of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1270, Revision 02, dated April 11, 2014, requires that corrosion preventative compound CML 12ADB1 be applied to the cold worked area. DAL commented that each operator has a corrosion prevention and control program (CPCP) to control corrosion and may revise CIC products as necessary. DAL also commented that requiring the application of CML 12ADB1 within the required for compliance paragraph is problematic in maintaining perpetual compliance with the NPRM if a CPCP maintenance program task is applicable to the same area.

The FAA disagrees with the commenter's request. Since this AD affects multiple operators, and the FAA is not aware of the details of CIC compounds used as an inherent part of each operator's CPCP maintenance task, it is not practical for the FAA to revise this AD based on DAL's unique maintenance program. If DAL intends to use an approved substitution of the CIC that is not included in the SRM as an alternate to the CIC required by this AD, then DAL may request an alternative method of compliance (AMOC) under the provisions of paragraph (j)(1) of this AD. The FAA has not changed this AD regarding this issue.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0037 describes procedures for a rotating probe test (special detailed inspection) of the fastener holes at FR43 on the LH and RH sides for any cracking, and on-condition actions including a high frequency eddy current (rototest) inspection for cracks of the affected fastener holes, modification, and repair.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 867 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
9 work-hours × $85 per hour = $765	$0	$765	$663,255

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
22 work-hours × $85 per hour = $1,870	$338	$2,208

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–18–06 Airbus SAS: Amendment 39–21227; Docket No. FAA–2020–0332; Product Identifier 2020–NM–037–AD.

(a) Effective Date

This AD is effective October 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0037, dated February 27, 2020; corrected February 28, 2020 (''EASA AD 2020–0037'').

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that cracks were detected on the left- and right-hand sides of the first rivet hole of the frame (FR) 43 foot coupling during scheduled maintenance. The FAA is issuing this AD to address cracking in the foot coupling, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0037.

(h) Exceptions to EASA AD 2020–0037

(1) Where EASA AD 2020–0037 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0037 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0037 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0037 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0037, dated February 27, 2020; corrected February 28, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0037, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0332.

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

Issued on August 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–19401 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0783; Project Identifier MCAI–2020–01026–T; Amendment 39–21225; AD 2020–18–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report of a slat system jam during landing. This AD requires a one-time health check of the slat power control unit (PCU) torque sensing unit (TSU) for discrepancies, and corrective actions if necessary; a detailed inspection of the left-hand (LH) and right-hand (RH) slat transmission systems for discrepancies, and corrective actions if necessary; and LH and RH track 12 slat gear rotary actuator (SGRA) water drainage and vent plug cleaning (which includes an inspection for moisture), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective September 18, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 18, 2020.

The FAA must receive comments on this AD by October 19, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; internet: *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0783.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0783; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3218; email: *kathleen.arrigotti@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0163R1, dated August 7, 2020 (''EASA AD 2020–0163R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

This AD was prompted by a report of a slat system jam during landing. The FAA is issuing this AD to address a slat system jam during landing phase which could lead to a double shaft disconnection or rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat wing tip brake or the slat PCU, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0163R1 describes procedures for a one-time health check of the slat PCU TSU for discrepancies (*i.e.,* for certain TSU values), and corrective actions (corrective actions include repairing discrepancies, and repeating the slat PCU TSU health check, and replacing the slat PCU); a detailed inspection of the LH and RH slat transmission systems for discrepancies (*e.g.,* wear, scratches, and abrasion), and corrective actions (corrective actions may include replacing parts); and LH and RH track 12 SGRA water drainage and vent plug cleaning (which includes an inspection for moisture). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2020–0163R1, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0163R1 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0163R1 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0163R1 that is required for compliance with EASA AD 2020–0163R1 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0783.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a slat system jam during landing could lead to a double shaft disconnection/rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat

wing tip brake or the slat PCU, possibly resulting in reduced control of the airplane. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore this rule must be issued immediately, to ensure the safety of the flight crews conducting such flights. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0783; Project Identifier MCAI–2020–01026–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will consider all comments received by the closing date and may amend this AD based on those comments.

The FAA will post all comments the FAA receives, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the FAA receives about this AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Interim Action

The FAA considers this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the issue, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 14 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
11 work-hours × $85 per hour = $935	$0	$935	$13,090

* Table does not include estimated costs for reporting.

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting on U.S. operators to be $1,190, or $85 per product

The FAA has received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this AD will not have federalism implications

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–18–04 Airbus SAS: Amendment 39–21225; Docket No. FAA–2020–0783; Project Identifier MCAI–2020–01026–T.

(a) Effective Date

This AD becomes effective September 18, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by a report of a slat system jam during landing. The FAA is issuing this AD to address a slat system jam during landing which could lead to a double shaft disconnection/rupture, potentially causing one or more slat surfaces to be no longer connected to either the slat wing tip brake or the slat power control unit (PCU), possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0163R1, dated August 7, 2020 (''EASA AD 2020–0163R1'').

(h) Exceptions to EASA AD 2020–0163

(1) Where EASA AD 2020–0163R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2020–0163R1 refers to July 27, 2020, this AD requires using the effective date of this AD.

(3) Where EASA AD 2020–0163R1 requires certain actions to be done ''before exceeding the thresholds specified in the AOT [alert operators transmission],'' this AD requires those actions to be done ''at the applicable compliance time specified in paragraph 4.2.3.1 of the AOT.''

(4) The ''Remarks'' section of EASA AD 2020–0163R1 does not apply to this AD.

(5) Paragraph (5) of EASA AD 2020–0163R1 specifies to report the results of the actions specified in paragraph (1) of EASA AD 2020–0163R1 to Airbus within a certain compliance time. For this AD, report the results at the applicable time specified in paragraph (h)(5)(i) or (ii) of this AD.

(i) If the action was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the action was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0163R1 that contains paragraphs that are labeled as RC: Except as required by paragraphs (h)(5) and (i)(2) of this AD, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under that paragraph, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under that paragraph, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(4) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3218; email: *kathleen.arrigotti@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0163R1, dated August 7, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0163R1, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; internet: *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0783.

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

Issued on August 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–19386 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0456; Product Identifier 2020–NM–053–AD; Amendment 39–21221; AD 2020–17–16]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. This AD was prompted by a report indicating that the allowable load limits on the vertical tail plane could be reached and possibly exceeded in cases of multiple rudder doublet inputs. This AD requires upgrading the flight control data concentrator (FCDC), associated flight control primary computer (FCPC), and flight warning computer (FWC), and activation of the stop rudder input aural warning (SRIW) device, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 8, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2020.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0456.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0456; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0077, dated March 31, 2020 (''EASA AD 2020–0077'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes. The NPRM published in the **Federal Register** on May 22, 2020 (85 FR 31083). The NPRM was prompted by a report indicating that the allowable load limits on the vertical tail plane could be reached and possibly exceeded in cases of multiple rudder doublet inputs. The NPRM proposed to require upgrading the FCDC, associated FCPC, and FWC, and activation of the SRIW device, as specified in EASA AD 2020–0077.

The FAA is issuing this AD to address cases of multiple rudder doublet inputs, which could lead to excessive load on the vertical tail plane and a subsequent loss of control of the airplane. See the MCAI for additional background information.

Comments

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

Supportive Comment

Air Line Pilots Association, International (ALPA), indicated its support for the NPRM.

Request To Revise Applicability Paragraph

Delta Air Lines requested revising the Applicability paragraph (paragraphs (c)(1) through (4) of this AD) to add the phrase ''except those that have embodied Airbus modification 49144.'' Delta noted that the phrase is in EASA AD 2020–0077. Delta suggested that including the phrase in paragraph (c) of the NPRM would allow a definitive determination of whether an airplane is affected, without reading EASA AD 2020–0077.

The FAA disagrees with the commenter's request. Paragraph (c) of this AD states the airplane models as identified in EASA AD 2020–0077. EASA AD 2020–0077 states in their applicability statement that airplanes on which Airbus modification 49144 has been embodied are excluded from the requirements. In the interest of streamlining the process for this AD and to minimize the potential for errors, the FAA has used incorporation by reference, the process which allows the FAA to refer to material published elsewhere without republishing that material in this AD or the **Federal Register**. Because EASA AD 2020–0077 is incorporated by reference in this AD under 1 CFR part 51, referring to the document itself is the same as specifically stating the language used in the Applicability section of EASA AD 2020–0077 directly in this AD.

Therefore it is not necessary to restate that language directly in this AD. This is similar to the FAA's process of referencing serial numbers of airplanes that are identified in service information that is incorporated by reference in an AD instead of listing those numbers directly in the AD. No change has been made to this AD.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0077 describes procedures for upgrading the FCDC, associated FCPC, and FWC, and activation of the SRIW device. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 10 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 10 work-hours × $85 per hour = $850	Up to $31,038	Up to $31,888	Up to $318,880.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–17–16 Airbus SAS: Amendment 39–21221; Docket No. FAA–2020–0456; Product Identifier 2020–NM–053–AD.

(a) Effective Date

This AD is effective October 8, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0077, dated March 31, 2020 (''EASA AD 2020–0077'').

(1) Model A330–202, –203, –223, and –243 airplanes.

(2) Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes.

(3) Model A340–211, –212, and –213 airplanes.

(4) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a report indicating that the allowable load limits on the vertical tail plane could be reached and possibly exceeded in cases of multiple rudder doublet inputs. The FAA is issuing this AD to address cases of multiple rudder doublet inputs, which could lead to excessive load on the vertical tail plane and a subsequent loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0077.

(h) Exceptions to EASA AD 2020–0077

(1) Where EASA AD 2020–0077 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0077 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate

principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0077 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0077, dated March 31, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0077, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0456.

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

Issued on August 14, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–19390 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31329; Amdt. No. 3920]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 3, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2020.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs.

The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 21, 2020.

Wade Terrell,

Aviation Safety Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Oct–20	AZ	Coolidge	Coolidge Muni	0/0863	8/14/20	GPS RWY 23, Orig.
8–Oct–20	AR	Harrison	Boone County	0/0864	8/12/20	RNAV (GPS) RWY 18, Orig-A.
8–Oct–20	AR	Harrison	Boone County	0/0865	8/12/20	RNAV (GPS) RWY 36, Amdt 1.
8–Oct–20	NE	Neligh	Antelope County	0/0866	8/12/20	RNAV (GPS) RWY 1, Orig.
8–Oct–20	NE	Neligh	Antelope County	0/0867	8/12/20	RNAV (GPS) RWY 19, Orig.
8–Oct–20	VT	Bennington	William H Morse State	0/0873	8/11/20	RNAV (GPS) RWY 13, Orig-D.
8–Oct–20	NE	Cozad	Cozad Muni	0/0874	8/12/20	RNAV (GPS) RWY 13, Amdt 1A.
8–Oct–20	NE	Cozad	Cozad Muni	0/0875	8/12/20	RNAV (GPS) RWY 31, Amdt 1B.
8–Oct–20	NE	Cozad	Cozad Muni	0/0877	8/12/20	VOR RWY 13, Amdt 2A.
8–Oct–20	OR	Portland	Portland Intl	0/0885	8/14/20	ILS OR LOC RWY 10L, Amdt 4B.
8–Oct–20	OR	Portland	Portland Intl	0/0886	8/14/20	ILS OR LOC RWY 10R, Amdt 35.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Oct–20	OR	Portland	Portland Intl	0/0888	8/14/20	LOC/DME RWY 21, Amdt 8C.
8–Oct–20	OR	Portland	Portland Intl	0/0889	8/14/20	RNAV (GPS) Y RWY 10L, Amdt 2B.
8–Oct–20	OR	Portland	Portland Intl	0/0890	8/14/20	RNAV (GPS) Y RWY 10R, Amdt 2B.
8–Oct–20	OR	Portland	Portland Intl	0/0892	8/14/20	VOR–A, Amdt 10.
8–Oct–20	PA	Honesdale	Cherry Ridge	0/1352	7/30/20	RNAV (GPS)-B, Orig.
8–Oct–20	MS	West Point	Mccharen Field	0/2151	7/31/20	RNAV (GPS) RWY 36, Orig-B.
8–Oct–20	MS	West Point	Mccharen Field	0/2154	7/31/20	RNAV (GPS) RWY 18, Orig-A.
8–Oct–20	MS	West Point	Mccharen Field	0/2155	7/31/20	VOR/DME–B, Amdt 5B.
8–Oct–20	KY	Lexington	Blue Grass	0/2175	8/13/20	ILS OR LOC RWY 4, Amdt 17C.
8–Oct–20	KY	Lexington	Blue Grass	0/2176	8/13/20	ILS OR LOC RWY 22, Amdt 20C.
8–Oct–20	KY	Lexington	Blue Grass	0/2177	8/13/20	RNAV (GPS) RWY 9, Orig-A.
8–Oct–20	KY	Lexington	Blue Grass	0/2180	8/13/20	RNAV (GPS) RWY 22, Amdt 1B.
8–Oct–20	FL	Naples	Naples Muni	0/2182	7/31/20	VOR RWY 23, Amdt 6E.
8–Oct–20	FL	Naples	Naples Muni	0/2183	7/31/20	VOR RWY 5, Amdt 5A.
8–Oct–20	ND	Pembina	Pembina Muni	0/2184	8/3/20	VOR–A, Orig.
8–Oct–20	ND	Pembina	Pembina Muni	0/2185	8/3/20	RNAV (GPS) RWY 33, Orig-A.
8–Oct–20	NC	New Bern	Coastal Carolina Regional	0/2189	7/31/20	VOR RWY 22, Amdt 3B.
8–Oct–20	NC	New Bern	Coastal Carolina Regional	0/2190	7/31/20	RNAV (GPS) RWY 22, Amdt 1A.
8–Oct–20	KY	Lexington	Blue Grass	0/2194	8/13/20	RNAV (GPS) RWY 27, Orig-A.
8–Oct–20	KY	Lexington	Blue Grass	0/2195	8/13/20	VOR–A, Amdt 9B.
8–Oct–20	NE	Ainsworth	Ainsworth Rgnl	0/2204	8/14/20	VOR RWY 17, Amdt 3.
8–Oct–20	NE	Ainsworth	Ainsworth Rgnl	0/2205	8/14/20	VOR RWY 35, Amdt 4A.
8–Oct–20	KS	Johnson	Stanton County Muni	0/2209	8/14/20	RNAV (GPS) RWY 35, Amdt 2.
8–Oct–20	KS	Johnson	Stanton County Muni	0/2210	8/14/20	RNAV (GPS) RWY 17, Amdt 2.
8–Oct–20	TX	Robstown	Nueces County	0/2248	8/3/20	VOR/DME–A, Amdt 3A.
8–Oct–20	NV	Las Vegas	Henderson Executive	0/2250	7/28/20	RNAV (GPS)-B, Amdt 1A.
8–Oct–20	IL	Fairfield	Fairfield Muni	0/2256	8/3/20	NDB RWY 9, Amdt 3B.
8–Oct–20	MO	New Madrid	County Memorial	0/2257	8/3/20	VOR/DME–A, Amdt 4.
8–Oct–20	OK	Seminole	Seminole Muni	0/2260	8/3/20	NDB RWY 16, Amdt 4A.
8–Oct–20	NM	Albuquerque	Albuquerque Intl Sunport	0/2265	8/3/20	RNAV (GPS) Y RWY 8, Orig-B.
8–Oct–20	NM	Belen	Belen Rgnl	0/2267	8/3/20	VOR–A, Amdt 1B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Oct–20	MS	Laurel	Hesler-Noble Field	0/2269	7/31/20	RNAV (GPS) RWY 13, Amdt 1B.
8–Oct–20	MS	Laurel	Hesler-Noble Field	0/2270	7/31/20	RNAV (GPS) RWY 31, Amdt 1B.
8–Oct–20	TX	Houston	Ellington	0/2271	8/3/20	RNAV (GPS) RWY 4, Amdt 1B.
8–Oct–20	TX	Houston	Ellington	0/2272	8/3/20	RNAV (GPS) RWY 17R, Amdt 1B.
8–Oct–20	TX	Houston	Ellington	0/2273	8/3/20	RNAV (GPS) RWY 35L, Amdt 1A.
8–Oct–20	TX	Houston	Ellington	0/2274	8/3/20	TACAN RWY 4, Orig-A.
8–Oct–20	TX	Houston	Ellington	0/2276	8/3/20	TACAN RWY 17R, Orig-A.
8–Oct–20	TX	Houston	Ellington	0/2277	8/3/20	TACAN RWY 22, Orig-B.
8–Oct–20	TX	Houston	Ellington	0/2278	8/3/20	TACAN RWY 35L, Orig-A.
8–Oct–20	MI	Cheboygan	Cheboygan County	0/2287	8/3/20	RNAV (GPS) RWY 10, Amdt 3B.
8–Oct–20	MI	Cheboygan	Cheboygan County	0/2288	8/3/20	RNAV (GPS) RWY 28, Amdt 2A.
8–Oct–20	MI	Cheboygan	Cheboygan County	0/2289	8/3/20	VOR RWY 10, Amdt 9B.
8–Oct–20	MI	Sault Ste Marie	Chippewa County Intl	0/2292	8/3/20	ILS OR LOC RWY 16, Amdt 8E.
8–Oct–20	MI	Sault Ste Marie	Chippewa County Intl	0/2294	8/3/20	NDB RWY 34, Amdt 5A.
8–Oct–20	MI	Sault Ste Marie	Chippewa County Intl	0/2295	8/3/20	RNAV (GPS) RWY 10, Orig-A.
8–Oct–20	MI	Sault Ste Marie	Chippewa County Intl	0/2297	8/3/20	RNAV (GPS) RWY 16, Amdt 1B.
8–Oct–20	MI	Sault Ste Marie	Chippewa County Intl	0/2298	8/3/20	RNAV (GPS) RWY 28, Orig-A.
8–Oct–20	MI	Sault Ste Marie	Chippewa County Intl	0/2306	8/3/20	RNAV (GPS) RWY 34, Amdt 1A.
8–Oct–20	SC	Myrtle Beach	Myrtle Beach Intl	0/2684	8/14/20	VOR/DME–A, Amdt 2.
8–Oct–20	WI	Madison	Blackhawk Airfield	0/2762	8/17/20	VOR OR GPS–A, Orig-E.
8–Oct–20	GA	Statesboro	Statesboro-Bulloch County	0/2786	8/17/20	ILS OR LOC RWY 32, Amdt 3.
8–Oct–20	WA	Tacoma	Tacoma Narrows	0/2829	7/28/20	RNAV (GPS) RWY 17, Orig-B.
8–Oct–20	WA	Tacoma	Tacoma Narrows	0/2830	7/28/20	RNAV (GPS) RWY 35, Orig-B.
8–Oct–20	SC	Sumter	Sumter	0/3342	7/29/20	RNAV (GPS) RWY 5, Orig.
8–Oct–20	SC	Sumter	Sumter	0/3344	7/29/20	NDB RWY 23, Amdt 3.
8–Oct–20	MA	Nantucket	Nantucket Memorial	0/3452	8/18/20	VOR RWY 24, Amdt 14A.
8–Oct–20	IL	Paris	Edgar County	0/3453	8/18/20	VOR/DME–A, Amdt 8.
8–Oct–20	OR	Portland	Portland-Hillsboro	0/3605	8/18/20	ILS OR LOC RWY 13R, Amdt 11.
8–Oct–20	TX	Bridgeport	Bridgeport Muni	0/3780	8/3/20	VOR/DME RWY 18, Amdt 1.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Oct–20	TX	Bridgeport	Bridgeport Muni	0/3782	8/3/20	RNAV (GPS) RWY 18, Orig-A.
8–Oct–20	OH	Washington Court House	Fayette County	0/3784	8/3/20	NDB RWY 23, Amdt 5A.
8–Oct–20	MA	Southbridge	Southbridge Muni	0/3803	7/29/20	RNAV (GPS) RWY 2, Orig-B.
8–Oct–20	NM	Santa Teresa	Dona Ana County Intl Jetport	0/3805	7/28/20	RNAV (GPS) RWY 10, Orig-B.
8–Oct–20	TX	Rocksprings	Edwards County	0/4064	8/3/20	VOR RWY 14, Amdt 5B.
8–Oct–20	TX	Rocksprings	Edwards County	0/4065	8/3/20	RNAV (GPS) RWY 14, Orig-B.
8–Oct–20	ME	Augusta	Augusta State	0/4432	7/29/20	ILS OR LOC RWY 17, Amct 3B.
8–Oct–20	ME	Augusta	Augusta State	0/4433	7/29/20	RNAV (GPS) RWY 17, Orig-A.
8–Oct–20	ME	Augusta	Augusta State	0/4434	7/29/20	VOR RWY 35, Amdt 6A.
8–Oct–20	FL	Tampa	Tampa Intl	0/4465	7/29/20	RNAV (GPS) RWY 1L, Amdt 2C.
8–Oct–20	FL	Tampa	Tampa Intl	0/4466	7/29/20	RNAV (GPS) RWY 1R, Amdt 3.
8–Oct–20	FL	Tampa	Tampa Intl	0/4467	7/29/20	RNAV (GPS) RWY 19R, Amdt 2C.
8–Oct–20	FL	Tampa	Tampa Intl	0/4468	7/29/20	RNAV (GPS) RWY 28, Amdt 1B.
8–Oct–20	FL	Tampa	Tampa Intl	0/4469	7/29/20	RNAV (GPS) Z RWY 19L, Amdt 2E.
8–Oct–20	WV	Philippi	Philippi/Barbour County Rgnl	0/4491	7/29/20	RNAV (GPS) RWY 26, Orig-A.
8–Oct–20	CA	Bakersfield	Meadows Field	0/5190	8/18/20	RNAV (GPS) RWY 12L, Amdt 1C.
8–Oct–20	KS	Atchison	Amelia Earhart	0/5895	8/4/20	RNAV (GPS) RWY 16, Orig.
8–Oct–20	LA	Lake Charles	Lake Charles Rgnl	0/6069	7/31/20	RNAV (GPS) RWY 15, Amdt 1B.
8–Oct–20	LA	Lake Charles	Lake Charles Rgnl	0/6070	7/31/20	RNAV (GPS) RWY 33, Amdt 2B.
8–Oct–20	LA	Lake Charles	Lake Charles Rgnl	0/6071	7/31/20	VOR–A, Amdt 14.
8–Oct–20	LA	Lake Charles	Lake Charles Rgnl	0/6072	7/31/20	VOR/DME–B, Amdt 8.
8–Oct–20	NM	Tucumcari	Tucumcari Muni	0/6085	7/31/20	RNAV (GPS) RWY 21, Orig.
8–Oct–20	NM	Tucumcari	Tucumcari Muni	0/6086	7/31/20	VOR RWY 21, Amdt 6.
8–Oct–20	TX	Cotulla	Cotulla-La Salle County	0/6448	8/3/20	VOR–A, Amdt 13.
8–Oct–20	NJ	Somerville	Somerset	0/6449	7/31/20	VOR RWY 8, Amdt 12A.
8–Oct–20	TX	Taylor	Taylor Muni	0/6450	8/3/20	VOR RWY 17, Amdt 1D.
8–Oct–20	WI	Sturgeon Bay	Door County Cherryland	0/6459	8/4/20	RNAV (GPS) RWY 10, Orig-B.
8–Oct–20	WI	Sturgeon Bay	Door County Cherryland	0/6460	8/4/20	RNAV (GPS) RWY 28, Orig-B.
8–Oct–20	WI	Juneau	Dodge County	0/6461	8/3/20	LOC RWY 26, Amdt 1.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Oct–20	WI	Juneau	Dodge County	0/6463	8/3/20	RNAV (GPS) RWY 2, Amdt 1.
8–Oct–20	WI	Juneau	Dodge County	0/6466	8/3/20	RNAV (GPS) RWY 8, Orig.
8–Oct–20	WI	Juneau	Dodge County	0/6467	8/3/20	RNAV (GPS) RWY 20, Amdt 1.
8–Oct–20	WI	Juneau	Dodge County	0/6468	8/3/20	RNAV (GPS) RWY 26, Orig.
8–Oct–20	VA	Norfolk	Norfolk Intl	0/6479	7/31/20	RNAV (GPS) RWY 32, Orig-E.
8–Oct–20	VA	Norfolk	Norfolk Intl	0/6480	7/31/20	VOR/DME RWY 32, Amdt 4E.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6491	8/3/20	RNAV (GPS) RWY 17, Orig-A.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6492	8/3/20	RNAV (GPS) RWY 30, Orig-A.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6493	8/3/20	RNAV (GPS) RWY 35, Orig-A.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6494	8/3/20	VOR RWY 35, Amdt 2A.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6495	8/3/20	VOR/DME RWY 12, Orig- B.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6496	8/3/20	VOR/DME RWY 17, Amdt 2A.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6497	8/3/20	VOR/DME RWY 30, Amdt 1A.
8–Oct–20	KS	Garden City	Garden City Rgnl	0/6498	8/3/20	VOR RWY 17, Amdt 11A.
8–Oct–20	TX	Harlingen	Valley Intl	0/6513	8/3/20	LOC/DME BC RWY 35L, Orig.
8–Oct–20	TX	Harlingen	Valley Intl	0/6514	8/3/20	RNAV (GPS) RWY 17L, Amdt 2B.
8–Oct–20	TX	Harlingen	Valley Intl	0/6515	8/3/20	RNAV (GPS) RWY 35R, Orig-A.
8–Oct–20	TX	Harlingen	Valley Intl	0/6517	8/3/20	RNAV (GPS) Y RWY 13, Amdt 2A.
8–Oct–20	TX	Harlingen	Valley Intl	0/6518	8/3/20	RNAV (GPS) Y RWY 17R, Amdt 2B.
8–Oct–20	TX	Harlingen	Valley Intl	0/6519	8/3/20	RNAV (GPS) Y RWY 35L, Amdt 2A.
8–Oct–20	TX	Harlingen	Valley Intl	0/6520	8/3/20	VOR/DME RWY 35L, Orig-A.
8–Oct–20	TX	Harlingen	Valley Intl	0/6521	8/3/20	VOR/DME Y OR TACAN RWY 31, Amdt 1A.
8–Oct–20	IA	Davenport	Davenport Muni	0/6549	8/3/20	ILS OR LOC RWY 15, Amdt 1C.
8–Oct–20	IA	Davenport	Davenport Muni	0/6550	8/3/20	RNAV (GPS) RWY 15, Amdt 2C.
8–Oct–20	IA	Davenport	Davenport Muni	0/6551	8/3/20	RNAV (GPS) RWY 21, Amdt 1E.
8–Oct–20	IA	Davenport	Davenport Muni	0/6555	8/3/20	RNAV (GPS) RWY 3, Amdt 1D.
8–Oct–20	IA	Davenport	Davenport Muni	0/6556	8/3/20	RNAV (GPS) RWY 33, Amdt 1D.
8–Oct–20	IA	Davenport	Davenport Muni	0/6557	8/3/20	VOR RWY 21, Amdt 8C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Oct–20	IA	Davenport	Davenport Muni	0/6558	8/3/20	VOR RWY 3, Amdt 9B.
8–Oct–20	MS	Mc Comb	Mc Comb/Pike County/John E Lewis Field.	0/6571	7/31/20	VOR/DME–A, Amdt 8.
8–Oct–20	TX	Port Lavaca	Calhoun County	0/6574	8/3/20	VOR/DME–A, Amdt 4C.
8–Oct–20	LA	Monroe	Monroe Rgnl	0/6575	8/3/20	ILS OR LOC RWY 4, Amdt 23B.
8–Oct–20	LA	Monroe	Monroe Rgnl	0/6576	8/3/20	RNAV (GPS) RWY 4, Amdt 1B.
8–Oct–20	LA	Monroe	Monroe Rgnl	0/6577	8/3/20	RNAV (GPS) RWY 32, Orig-C.
8–Oct–20	LA	Monroe	Monroe Rgnl	0/6578	8/3/20	RADAR 1, Amdt 7A.
8–Oct–20	OH	Harrison	Cincinnati West	0/6923	8/4/20	Takeoff Minimums and Obstacle DP, Amdt 2.
8–Oct–20	IA	Shenandoah	Shenandoah Muni	0/7808	8/6/20	VOR/DME RWY 12, Amdt 4B.
8–Oct–20	FL	West Palm Beach	North Palm Beach County General Aviation.	0/7824	8/4/20	RNAV (GPS) RWY 14, Amdt 1.
8–Oct–20	FL	St Augustine	Northeast Florida Rgnl	0/7828	8/4/20	RNAV (GPS) RWY 13, Orig-E.
8–Oct–20	OR	Astoria	Astoria Rgnl	0/7831	8/3/20	VOR RWY 8, Amdt 12A.
8–Oct–20	IN	Indianapolis	Indianapolis Intl	0/7833	8/6/20	ILS OR LOC RWY 5L, ILS RWY 5L (CAT II AND III), Amdt 5.
8–Oct–20	OK	Hinton	Hinton Muni	0/7836	8/5/20	RNAV (GPS) RWY 17, Amdt 1A.
8–Oct–20	CA	Hawthorne	Jack Northrop Field/Hawthorne Muni	0/7837	8/4/20	LOC RWY 25, Amdt 12.
8–Oct–20	MD	Clinton	Washington Executive/Hyde Field	0/7838	8/6/20	RNAV (GPS) RWY 5, Orig-B.
8–Oct–20	OH	Fostoria	Fostoria Metropolitan	0/7839	8/6/20	VOR–A, Amdt 4B.
8–Oct–20	NJ	Manville	Central Jersey Rgnl	0/7844	8/4/20	RNAV (GPS) RWY 7, Amct 1C.
8–Oct–20	WI	Land O' Lakes	Kings Land O' Lakes	0/7849	8/6/20	RNAV (GPS) RWY 14, Orig-A.
8–Oct–20	WI	Land O' Lakes	Kings Land O' Lakes	0/7850	8/6/20	RNAV (GPS) RWY 32, Orig-A.
8–Oct–20	IA	Des Moines	Des Moines Intl	0/7854	8/6/20	ILS OR LOC RWY 5, Amdt 1.
8–Oct–20	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	0/8446	8/5/20	RNAV (GPS) RWY 36, Amdt 1B.
8–Oct–20	AL	Oneonta	Robbins Field	0/8451	8/5/20	RNAV (GPS) RWY 24, Orig-A.
8–Oct–20	LA	Abbeville	Abbeville Chris Crusta Memorial	0/8464	8/6/20	RNAV (GPS) RWY 16, Amdt 1A.
8–Oct–20	LA	Abbeville	Abbeville Chris Crusta Memorial	0/8465	8/6/20	RNAV (GPS) RWY 34, Amdt 1A.
8–Oct–20	LA	Abbeville	Abbeville Chris Crusta Memorial	0/8466	8/6/20	VOR/DME–B, Amdt 3B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Oct–20	SD	Pierre	Pierre Rgnl	0/8471	8/6/20	RNAV (GPS) RWY 7, Amdt 2.
8–Oct–20	SD	Pierre	Pierre Rgnl	0/8472	8/6/20	RNAV (GPS) RWY 13, Amdt 2.
8–Oct–20	SD	Pierre	Pierre Rgnl	0/8473	8/6/20	VOR/DME OR TACAN RWY 7, Amdt 5B.
8–Oct–20	SD	Pierre	Pierre Rgnl	0/8474	8/6/20	VOR OR TACAN RWY 25, Orig-B.
8–Oct–20	TX	Tyler	Tyler Pounds Rgnl	0/8968	8/6/20	RNAV (GPS) RWY 4, Amdt 4.
8–Oct–20	IL	Chicago/West Chicago	Dupage	0/9013	8/6/20	ILS OR LOC RWY 2L, Amdt 2F.
8–Oct–20	TX	Decatur	Decatur Muni	0/9026	8/6/20	RNAV (GPS) RWY 17, Orig.
8–Oct–20	TX	Decatur	Decatur Muni	0/9027	8/6/20	RNAV (GPS) RWY 35, Orig-A.
8–Oct–20	TX	Decatur	Decatur Muni	0/9028	8/6/20	VOR/DME RWY 17, Amdt 2A.

[FR Doc. 2020–19425 Filed 9–2–20; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31328 Amdt. No. 3919]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 3, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2020.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete

description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 21, 2020.

Wade Terrell,

Aviation Safety Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113,40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 8 October 2020

Plymouth, MA, Plymouth Muni, ILS OR LOC RWY 6, Amdt 1G
Bowie, MD, Freeway, RNAV (GPS) RWY 36, Amdt 2A
Bar Harbor, ME, Hancock County-Bar Harbor, ILS OR LOC RWY 22, Amdt 6D
Mooreland, OK, Mooreland Muni, RNAV (GPS) RWY 17, Orig-A
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 13, Amdt 3A

Effective 5 November 2020

Alamosa, CO, San Luis Valley Rgnl/Bergman Field, VOR–A, Amdt 7, CANCELLED
Hartford, CT, Hartford-Brainard, RNAV (GPS) RWY 2, Orig-C
Meriden, CT, Meriden Markham Muni, RNAV (GPS) RWY 36, Orig-F
Palm Coast, FL, Flagler Executive, RNAV (GPS) RWY 29, Amdt 1B
Atlanta, GA, Fulton County Airport-Brown Field, VOR–A, Amdt 1C, CANCELLED
Butler, GA, Butler Muni, RNAV (GPS) RWY 19, Amdt 2A
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 9C, ILS RWY 9C (SA CAT I), ILS RWY 9C (CAT II), ILS RWY 9C (CAT III), Orig
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 27C, ILS RWY 27C (SA CAT I), ILS RWY 27C (CAT II), ILS RWY 27C (CAT III), Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 9C, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 27C, Orig
Clay Center, KS, Clay Center Muni, NDB RWY 35, Amdt 2A, CANCELLED
Lake Charles, LA, Lake Charles Rgnl, RADAR–1, Amdt 5D
Churchville, MD, Harford County, Takeoff Minimums and Obstacle DP, Amdt 1A
Rockland, ME, Knox County Rgnl, RNAV (GPS) RWY 31, Orig-B
Alma, MI, Gratiot Community, RNAV (GPS) RWY 27, Amdt 2
Muskegon, MI, Muskegon County, RNAV (GPS) RWY 6, Amdt 2A
Muskegon, MI, Muskegon County, RNAV (GPS) RWY 14, Amdt 1C
Muskegon, MI, Muskegon County, RNAV (GPS) RWY 24, Amdt 2A
Muskegon, MI, Muskegon County, RNAV (GPS) RWY 32, Amdt 2D
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 23, Amdt 1F
Rochester, MN, Rochester Intl, ILS OR LOC RWY 13, Amdt 9A
Rochester, MN, Rochester Intl, RNAV (GPS) RWY 20, Amdt 2C
Kosciusko, MS. Kosciusko-Attala County, RNAV (GPS) RWY 14, Orig-C
Salem, OR, Mcnary Fld, LOC BC RWY 13, Amdt 9B
Salem, OR, Mcnary Fld, LOC Y RWY 31, Amdt 4B
Somerset, PA, Somerset County, NDB RWY 25, Amdt 7B, CANCELLED
Lancaster, SC, Lancaster County-McWhirter Field, VOR/DME–A, Amdt 1, CANCELLED
Lakeway, TX, Lakeway Airpark, VOR/DME–A, Amdt 2, CANCELLED
Wichita Falls, TX, Kickapoo Downtown, RNAV (GPS) RWY 35, Amdt 1A
Moab, UT, Canyonlands Field, VOR–A, Amdt 11A
Cable, WI, Cable Union, RNAV (GPS) RWY 35, Orig-B
Eagle River, WI, Eagle River Union, Takeoff Minimums and Obstacle DP, Orig-A
La Crosse, WI, La Crosse Rgnl, RNAV (GPS) RWY 4, Amdt 1C
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 17, Amdt 2
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 35, Amdt 2
Rhinelander, WI, Rhinelander-Oneida County, Takeoff Minimums and Obstacle DP, Amdt 4B
Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 22, Amdt 4

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BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

[Docket Number OFAC–2020–0001]

Inflation Adjustment of Civil Monetary Penalties Related to Reporting and Recordkeeping

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this interim final rule to further implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, by adjusting for inflation its civil monetary penalties for failure to comply with certain recordkeeping and reporting requirements, which are contained in OFAC's Economic Sanctions Enforcement Guidelines in OFAC's Reporting, Procedures and Penalties Regulations.

DATES: This rule is effective October 5, 2020. Comments must be received on or before October 5, 2020.

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

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. Refer to Docket Number OFAC–2020–0001.

Mail: Attn: Request for Comments (Inflation Adjustment of Civil Monetary Penalties Related to Reporting and Recordkeeping), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Refer to Docket Number OFAC–2020–0001.

Instructions: All submissions received must include the agency name and the docket number that appears at the end of this document. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

The Federal Civil Penalties Inflation Adjustment Act

Section 4 of the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (collectively, the FCPIA Act), requires each federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments.

The FCPIA Act directs agencies to adjust the level of CMPs for inflation with an initial ''catch-up'' adjustment to be effective no later than August 1, 2016, followed by annual adjustments. The FCPIA directs the Office of Management and Budget (OMB) to provide agencies with guidance and Consumer Price Index for all Urban Consumers (CPI–U)-related multipliers for the initial catch-up adjustment and subsequent annual adjustments.

OFAC currently is authorized to impose CMPs pursuant to five statutes: The Trading with the Enemy Act (50 U.S.C. 4315) (TWEA); the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA); the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2339B) (AEDPA); the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1906) (FNKDA); and the Clean Diamond Trade Act (19 U.S.C. 3907) (CDTA).

OFAC issued an initial catch-up adjustment rule for CMPs pursuant to these statutes on August 1, 2016 (81 FR 43070, July 1, 2016), and issued annual CMP increases on February 10, 2017 (82 FR 10434, February 10, 2017), March 19, 2018 (83 FR 11876, March 19, 2018), June 14, 2019 (84 FR 27714, June 14, 2019), and April 9, 2020 (85 FR 19884, April 9, 2020).

OFAC inadvertently omitted from its initial catch-up regulation and subsequent annual increases its CMPs for failure to comply with a requirement to furnish information, the late filing of a required report, and failure to maintain records, which are located in its Economic Sanctions Enforcement Guidelines in appendix A to 31 CFR part 501. This interim final rule combines the catch-up adjustment that would have become effective August 1, 2016, plus the annual adjustments for 2017 through 2020 for these CMPs.

In addition, OFAC is making technical edits to the authority citation for part 501 to conform to **Federal Register** guidance.

Calculation Method for Catch-Up Adjustments

In order to complete the catch-up adjustment for CMPs, the FCPIA Act directs agencies to identify when the CMP amount or range was established or last adjusted, other than adjustments pursuant to the FCPIA Act. Agencies are directed to use that amount or range as a starting point for performing calculations. The catch-up calculations therefore exclude prior inflationary adjustments under the FCPIA Act. The FCPIA Act directs agencies to calculate initial catch-up adjustments based on the percent change between the CPI–U for the month of October in the year of the last non-FCPIA-Act-based adjustment and the October 2015 CPI–U. In accordance with the FCPIA Act, the amount of the CMP catch-up adjustment shall not exceed 150 percent of the corresponding level in effect on November 2, 2015 (the ''maximum adjustment''), and agencies must round all CMP levels to the nearest dollar after applying the multiplier.

On February 24, 2016, OMB issued written guidance providing agencies with CPI–U-related multipliers to use when adjusting the CMP level or range of CMP levels based on the year the CMP was established or last adjusted by statute or regulation. (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Catch-Up Guidance)).

Catch-Up Adjustments for Failure To Comply With a Requirement To Furnish Information and the Late Filing of a Required Report

OFAC's CMPs for failure to comply with a requirement to furnish information pursuant to 31 CFR 501.602 and the late filing of a report set forth in regulations or a specific license are contained in sections IV.A and B, respectively, of appendix A to 31 CFR part 501. OFAC established these CMPs

on September 8, 2008 (73 FR 51933, September 8, 2008), and OFAC has not adjusted them since. Pursuant to the OMB Catch-Up Guidance, the inflation factor for catch-up adjustments for these CMPs is 1.09819, with a maximum allowable adjustment of 150 percent of the CMP that was in effect on November 2, 2015.

The CMP established in 2008 for failure to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged is $20,000. Applying the multiplier of 1.09819 results in a catch-up CMP of $21,964. The CMP established in 2008 for failure to furnish information pursuant to 31 CFR 501.602 where OFAC has reason to believe that the apparent violation(s) involves a transaction(s) valued at greater than $500,000, irrespective of whether any other violation is alleged, is $50,000. Applying the multiplier of 1.09819 results in a catch-up CMP amount of $54,910. The CMP established in 2008 for the late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due, is $2,500. Applying the multiplier of 1.09819 results in a catch-up CMP amount of $2,745. The CMP established in 2008 for the late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due, is $5,000. Applying the multiplier of 1.09819 results in a catch-up CMP amount of $5,491. The 2008 CMP for the late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, is an additional $1,000 for every 30 days that the report is overdue, up to five years. Applying the multiplier of 1.09819 results in a catch-up CMP amount of $1,098. None of these catch-up increases exceeds the maximum adjustment amount. These catch-up increases are shown in Column 2 of Table 1.

Catch-Up Adjustment for Failure To Maintain Records in Conformance With the Requirements of OFAC's Regulations or of a Specific License

OFAC last adjusted its CMP for failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license, which is located in section IV.C of appendix A to 31 CFR part 501, on November 9, 2009 (74 FR 57593, November 9, 2009). The 2009 adjustment of this CMP provides for a penalty in an amount up to $50,000. Pursuant to the OMB Catch-Up Guidance, the relevant inflation factor for the catch-up adjustment for this CMP is 1.10020, with a maximum allowable adjustment of 150 percent of the CMP that was in effect on November 2, 2015. Applying the multiplier of 1.10020 to this CMP results in the catch-up amount up to $55,010, which does not exceed the maximum adjustment. This catch-up figure is shown in Column 2 of Table 2.

Calculation Method for 2017, 2018, 2019, and 2020 Adjustments

The FCPIA Act requires agencies to adjust CMPs annually for inflation subsequent to the initial catch-up adjustment. These annual adjustments are to be based on the percent change between the CPI–U for the October preceding the date of the adjustment and the prior year's October CPI–U. Each December, OMB issues the adjustment multiplier for the upcoming year's calculations. In order to complete the annual adjustment, each CMP (as revised by the catch-up adjustment) is multiplied by the adjustment multiplier for that year. Under the FCPIA Act, any increases in CMPs must be rounded to the nearest multiple of $1.

The adjustment multiplier for the 2017 CMP increase was 1.01636, as set forth in OMB Memorandum M–17–11 of December 16, 2016 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of the 2017 Annual Adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*). For the 2018 CMP increase, OMB Memorandum M–18–03 of December 15, 2017 provided an adjustment multiplier of 1.02041 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*). For the 2019 CMP increase, OMB Memorandum M–19–04 of December 14, 2018 stated the adjustment multiplier was 1.02522 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,*). For the 2020 CMP increase, OMB Memorandum M–20–05 of December 16, 2019 provided an adjustment multiplier of 1.01764 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*).

Adjustments for 2017, 2018, 2019, and 2020 for Failure To Comply With a Requirement To Furnish Information and the Late Filing of a Required Report

If OFAC had calculated the 2017 annual adjustment for its CMPs for failure to comply with a requirement to furnish information and the late filing of a report, each of the catch-up CMP amounts would have been multiplied by the OMB-provided factor of 1.01636. The resulting amounts for the 2017 CMPs are shown in Column 3 of Table 1. If OFAC had calculated the 2018 annual adjustment, the 2017 CMPs would have been multiplied by the OMB-provided factor of 1.02041. The resulting amounts for the 2018 CMPs are shown in Column 4 of Table 1. If OFAC had calculated the 2019 CMP adjustment, the 2018 CMPs would have been multiplied by the OMB-provided factor of 1.02522. The resulting amounts for the 2019 CMPs are shown in Column 5 of Table 1.

For the 2020 CMP increases, OMB provided an adjustment factor of 1.01764. OFAC multiplied the 2019 CMP amounts by this factor, resulting in the 2020 CMP amounts as shown in Column 6 of Table 2. These 2020 CMP amounts will be effective October 5, 2020 for associated violations that occurred after November 2, 2015 for which penalties were assessed on or after October 5, 2020.

Adjustments for 2017, 2018, 2019, and 2020 for Failure To Maintain Records in Conformance With the Requirements of OFAC's Regulations or of a Specific License

If OFAC had calculated the 2017 annual adjustment for its CMP for failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license, the catch-up CMP amount would have been multiplied by the OMB-provided factor of 1.01636. The resulting amount for the 2017 CMP is shown in Column 3 of Table 2. If OFAC had calculated the 2018 annual CMP adjustment, the 2017 CMP would have been multiplied by the OMB-provided factor of 1.02041. The resulting amount for the 2018 CMP is shown in Column 4 of Table 2. If OFAC had calculated the 2019 CMP adjustment, the 2018 CMP would have been multiplied by the OMB-provided factor of 1.02522. The resulting amount for the 2019 CMP is shown in Column 5 of Table 2.

For the 2020 CMP increase, OMB provided an adjustment factor of 1.01764. OFAC multiplied the 2019 CMP amount by this factor, resulting in the 2020 CMP amount as shown in

Column 6 of Table 2. This 2020 CMP amount will be effective October 5, 2020 for associated violations that occurred after November 2, 2015 for which penalties were assessed on or after October 5, 2020.

Summary of CMP Increases in This Rule

The CMP for failure to comply with the requirement to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged will increase from $20,000 to $23,765. The CMP for failure to comply with a requirement to furnish information, where OFAC has reason to believe that the apparent violation(s) that is the subject of the requirement to furnish information involves a transaction(s) valued at greater than $500,000, irrespective of whether any other violation is alleged, will increase from $50,000 to $59,413. The CMP for late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due will increase from $2,500 to $2,970. The CMP for late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due, will increase from $5,000 to $5,942. The CMP for late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, an additional CMP for every 30 days that the report is overdue, up to five years, will increase from $1,000 to $1,189. The CMP for failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license will increase from a maximum of $50,000 to $59,522.

TABLE 1—CMPS FOR FAILURE TO COMPLY WITH A REQUIREMENT TO FURNISH INFORMATION AND THE LATE FILING OF A REPORT

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Violation	Existing CMP.	2016 catch-up CMP (catch-up factor of 1.09819 applied to existing CMP).	2017 adjusted CMP (factor of 1.01636 applied to catch-up CMP).	2018 CMP (factor of 1.02041 applied to 2017 CMP).	2019 CMP (factor of 1.02522 applied to 2018 CMP).	2020 CMP (factor of 1.01764 applied to 2019 CMP) This is the penalty effective October 5, 2020.
Failure to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged.	$20,000	$21,964	$22,323	$22,779	$23,353	$23,765.
Failure to furnish information pursuant to 31 CFR 501.602 where OFAC has reason to believe that the apparent violation(s) involves a transaction(s) valued at greater than $500,000, irrespective of whether any other violation is alleged.	$50,000	$54,910	$55,808	$56,947	$58,383	$59,413.
Late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due.	$2,500	$2,745	$2,790	$2,847	$2,919	$2,970.
Late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due.	$5,000	$5,491	$5,581	$5,695	$5,839	$5,942.
Late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, an additional CMP for every 30 days that the report is overdue, up to five years.	$1,000	$1,098	$1,116	$1,139	$1,168	$1,189.

TABLE 2—CMPS FOR FAILURE TO MAINTAIN RECORDS IN CONFORMANCE WITH THE REQUIREMENTS OF OFAC'S REGULATIONS OR OF A SPECIFIC LICENSE

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Violation	Existing CMP.	2016 catch-up CMP (catch-up factor of 1.10020 applied to existing CMP).	2017 adjusted CMP (factor of 1.01636 applied to catch-up CMP).	2018 CMP (factor of 1.02041 applied to 2017 CMP).	2019 CMP (factor of 1.02522 applied to 2018 CMP).	2020 CMP (factor of 1.01764 applied to 2019 CMP) This is the penalty effective October 5, 2020.
Failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license.	$50,000	$55,010	$55,910	$57,051	$58,490	$59,522.

The adjusted CMP amounts described in this rule are applicable only to CMPs assessed after October 5, 2020, whose associated violations occurred after November 2, 2015, the date of enactment of the FCPIA Act.

Procedural Requirements

Notice and Comment

As required by the FCPIA Act, these amendments are being published as an interim final rule with an effective date of October 5, 2020. Although other notice and comment procedures are not required, OFAC invites comments on this rule related to the catch-up adjustment only. The FCPIA Act expressly exempts the inflation adjustments from the notice and comment requirements of the Administrative Procedure Act, by directing agencies to adjust CMPs for inflation ''notwithstanding section 553 of title 5, United States Code'' (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects for 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Blocking of assets, Enforcement guidelines, Exports, Foreign trade, Licensing, Penalties, Recordkeeping, Sanctions.

For the reasons set forth in the preamble, 31 CFR part 501 is amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 is revised to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c, 2370(a), 6009, 6032, 7205, 8501–8551; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1701–1706, 4301–4341.

Appendix A to Part 501—[Amended]

■ 2. In appendix A to part 501:
■ a. Amend paragraph IV.A. as follows:
■ i. Remove ''$20,000'' and in its place add ''$23,765''.
■ ii. Remove ''$50,000'' and in its place add ''$59,413''.
■ b. Amend paragraph IV.B. as follows:
■ i. Remove ''$2,500'' and add in its place ''$2,970''.
■ ii. Remove ''$5,000'' and add in its place ''$5,942''.
■ iii. Remove ''$1,000'' and add in its place ''$1,189''.
■ 5. In paragraph IV.C., remove ''$50,000'' and add in its place ''$59,522''.

Dated: August 27, 2020.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2020–19237 Filed 9–2–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2020–HA–0050]

RIN 0720–AB82

TRICARE Coverage of Certain Medical Benefits in Response to the COVID–19 Pandemic

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Interim final rule with request for comments.

SUMMARY: The Assistant Secretary of Defense for Health Affairs (ASD(HA)) issues this interim final rule (IFR) with comment to temporarily modify the TRICARE regulation by: Waiving the three-day prior hospital qualifying stay requirement for coverage of skilled nursing facility (SNF) care; adding coverage for treatment use of investigational drugs under expanded access authorized by the United States (U.S.) Food and Drug Administration (FDA) when for the treatment of coronavirus disease 2019 (COVID–19); temporarily waiving certain provisions for acute care hospitals that will permit authorization of temporary hospital facilities and freestanding ambulatory surgical centers (ASCs) providing inpatient and outpatient hospital services; and, consistent with similar changes under the Centers for Medicaid and Medicare Services (CMS), revising diagnosis related group (DRG) reimbursement by temporarily reimbursing DRGs at a 20 percent higher rate for COVID–19 patients and temporarily waiving certain requirements for long term care hospitals (LTCHs). Finally, this IFR will also adopt Medicare's New Technology Add-On Payments (NTAPs) adjustment to DRGs for new medical services and technologies and adopt Medicare's Hospital Value Based Purchasing (HVBP) Program.

DATES:

Effective date: This interim final rule with comment is effective on September 3, 2020 through either the end of the President's national emergency (Proclamation 9994, 85 **Federal Register** (FR) 15337 (Mar. 18, 2020)) or the end of the declared public health emergency, including any extensions, (as determined by 42 United States Code (U.S.C.) 247d, except for NTAPs and HVBP, which will not expire). The ASD(HA) will publish a document announcing the expiration date. See the **SUPPLEMENTARY INFORMATION** section for more information.

Applicability date: Some policies in this IFR are applicable prior to the effective date of this IFR. The temporary waiver of the SNF three-day prior stay rule is applicable beginning March 1, 2020. The temporary DRG and LTCH reimbursement adjustments are applicable beginning January 27, 2020, and the adoption of the NTAPs and HVBP are applicable beginning January 1, 2020. All other changes are applicable on the effective date of this IFR.

Comment date: Comments are invited and must be submitted on or before November 2, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identification Number (RIN) number and title, by any of the following methods:

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

• *Mail:* The Department of Defense (DoD) cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Erica Ferron, Medical Benefits and Reimbursement Section, 303–676–3626, *erica.c.ferron.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Expiration date: Unless extended after consideration of submitted comments, the medical benefit provisions in this IFR will cease to be in effect upon termination of the President's declared national emergency, in accordance with applicable law and regulation (*e.g.,* 50 U.S.C. 1622(a)), except the temporary

waiver of certain acute care hospital requirements for temporary hospitals and freestanding ASCs, which will expire when Medicare's ''Hospitals without Walls'' provision expires. The temporary reimbursement waivers under this IFR will cease to be effective upon termination of the Secretary of Health and Human Services' (HHS) Public Health Emergency (PHE), or upon other guidance, regulations, or modifications made by Medicare, in accordance with the statutory requirement that TRICARE reimburse like Medicare (10 U.S.C. 1079(i)(2)). The adoption of NTAPs and HVBP are permanent and will not expire. Because TRICARE operates both in the United States and in overseas locations, the ASD(HA), or designee, may determine that it is appropriate to continue exemptions to permanent regulation provisions for some or all of TRICARE's overseas locations serviced by the TRICARE Overseas Program contractor under 32 CFR 199.1(b) beyond termination of the President's declared national emergency based on the status of COVID–19 community spread in those locations. Such continuation of these provisions for overseas locations will be published in TRICARE's implementing instructions (TRICARE manuals), available at *http://manuals.health.mil.*

If the ASD(HA) determines it would be appropriate to make these changes permanent, the ASD(HA) will follow-up with final rulemaking. The ASD(HA) will publish a document in the **Federal Register** announcing the expiration date.

I. Executive Summary

A. Purpose of the Rule

A novel coronavirus (SARS–CoV–2), which causes COVID–19, was first detected in December 2019 and has spread rapidly throughout the world. On January 31, 2020, the Secretary of the HHS determined that a PHE had existed since January 27, 2020.[1] On March 13, 2020, the President declared a national emergency due to the COVID–19 outbreak, retroactive to March 1, 2020 (Proclamation 9994, 85 FR 15337). Following the declaration of the national emergency, the President signed into law multiple statutes to provide economic and health care relief for individuals and businesses, including health care providers. One such law was the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136), which in part provided for waivers of certain reimbursement provisions under Medicare.

According to World Health Organization data on May 3, 2020, there were 3,349,786 confirmed cases of COVID–19 worldwide (238,628 confirmed deaths), with 1,093,880 confirmed cases in the U.S. (62,406 confirmed deaths), with the number of cases rapidly expanding each day. Medical experts from the National Institute of Allergy and Infectious Disease anticipate more cases in the U.S. and overseas in the coming months.[2]

In light of the rapid spread of COVID–19, the Centers for Disease Control and Prevention has urged Americans to work and engage in schooling from home whenever possible as well as to avoid congregating in groups. Many States (*e.g.,* Washington, New York) and cities (*e.g.,* Los Angeles) imposed stay-at-home orders during the early months of the pandemic, closing all but essential businesses such as medical care and grocery stores, all to prevent further spread of the disease.

While stay-at-home orders and recommendations for social distancing have slowed the spread of COVID–19, there is currently no cure, nor are there any FDA approved vaccines indicated for the prevention of COVID–19. It is likely that the health care system, in the U.S. and abroad, will need to contend with this threat for months, if not years. Many COVID–19 treatments are being tried, including convalescent plasma from patients recovered from COVID–19 and new potential antiviral drugs.

A TRICARE COVID–19-related IFR published on May 12, 2020 (85 FR 27921), provides a temporary exception to the regulatory exclusion prohibiting audio-only telehealth services, temporarily eliminates copayments and cost-shares for TRICARE Prime and Select beneficiaries utilizing authorized telehealth services provided by network providers as a necessary incentive to prevent further spread of COVID–19, and temporarily authorizes reimbursement of interstate practice by providers (both in-person and remotely) for care provided to TRICARE beneficiaries when such practice is permitted by federal or state law, even if the provider is not licensed in the state where practicing. That IFR was focused on temporary changes to the TRICARE program to aid in slowing community transmission of COVID–19. This second IFR continues efforts by the ASD(HA) to implement temporary regulation changes in response to COVID–19 by focusing on temporary benefit and reimbursement changes that will support treatment of TRICARE beneficiaries. It also implements two permanent regulation changes consistent with the statutory requirement that TRICARE reimburse like Medicare, to the extent practicable.

Pursuant to the President's national emergency declaration and as a result of the worldwide COVID–19 pandemic, the ASD(HA) hereby modifies the following regulations, but in each case, only to the extent determined necessary to ensure that TRICARE beneficiaries have access to the most up-to-date care required for the diagnosis and treatment of COVID–19, and that TRICARE continues to reimburse like Medicare, to the extent practicable, as required by statute. The following regulations are temporarily modified (except NTAPs and HVBP, which are permanently modified):

a. 32 CFR 199.4(b)(3)(xiv): As required by law, 10 U.S.C. 1074j(b)(1), the TRICARE skilled nursing facility (SNF) benefit is provided in the manner and under the conditions established for the Medicare SNF benefit. Consistent with Medicare, then, TRICARE's regulation adopted Medicare's requirement that an individual was an inpatient of a hospital for not less than 3 consecutive calendar days before his discharge from the hospital (three-day prior hospital stay), for coverage of a SNF admission. Medicare, under its authority granted by Sections 1812(f) of the Social Security Act, has waived this requirement during the COVID–19 pandemic. As required by the TRICARE statute for the SNF benefit to mirror that of Medicare, this provision of the IFR temporarily waives the regulatory requirement for a three-day prior hospital stay for TRICARE beneficiaries, providing temporary emergency coverage for those beneficiaries who need to be transferred during the period of the COVID–19 pandemic. This temporary waiver is in effect for the duration of the President's national emergency for the COVID–19 outbreak, retroactive to March 1, 2020.

b. 32 CFR 199.4(g)(15): This change temporarily adds coverage for the use of investigational drugs for the treatment of COVID–19 under FDA's expanded access provision at 21 CFR 312, subpart I. Under this provision, TRICARE coverage of investigational drugs provided under expanded access will include both costs associated with administration of the investigational drug, as well as the cost of the investigational drug itself when the investigational drug is for the treatment

[1] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[2] *https://www.niaid.nih.gov/news-events/covid-19-reminder-challenge-emerging-infectious-diseases.*

of COVID–19. This will include investigational drugs and associated costs provided for treatment of patients under expanded access INDs and protocols s authorized by the FDA, but will not include use of investigational drugs in clinical trials. The temporary modification under paragraph 199.4(g)(15)(i)(A) is effective for the period of the President's national emergency for the COVID–19 outbreak, and will only apply to treatments for COVID–19. However, we plan to re-evaluate our current exclusion preventing coverage of investigational drugs provided for treatment use under expanded access and may make permanent revisions to the regulation, if appropriate, after a thorough evaluation of the costs, benefits, risks, and other considerations. We invite comment on the temporary coverage of investigational drugs provided under expanded access for the treatment of COVID–19, as well as potential future coverage of investigational drugs for treatment use under expanded access for individuals with serious or life-threatening diseases (not including clinical trials not otherwise covered by TRICARE) for potential inclusion in a future final rule.

c. 32 CFR 199.6(b)(4)(i): This change will temporarily exempt certain temporary hospital facilities and locations, and freestanding ASCs that enroll as hospitals with Medicare from the institutional provider requirements for acute care hospitals in 32 CFR 199.6(b)(4)(i), but only to the extent that such exemptions are required to ensure adequate beneficiary access to acute care facilities during the COVID–19 national emergency. Under current regulatory requirements, temporary hospital facilities (to include hospitals that are already TRICARE-authorized providers operating in a temporary location, such as a parking lot, or at a temporary facility, such as a repurposed convention center or an erected tent) and freestanding ASCs which provide inpatient and outpatient hospital services are not TRICARE-authorized providers because they do not meet the institutional provider requirements for hospitals. This temporary waiver of institutional requirements is consistent with Medicare's ''Hospitals without Walls'' initiative. It also is consistent with the statutory requirement at 10 U.S.C. 1079(i)(2), which establishes that the amount paid to hospitals and other institutional providers is in accordance with the same reimbursement methodology as apply to payments to providers of services of the same type under Medicare, when practicable. This temporary change is in effect for the duration of Medicare's ''Hospitals without Walls'' initiative for COVID–19.

d. 32 CFR 199.14(a)(1)(iii)(E): Adjustments to the DRG-based reimbursement amounts. TRICARE shall reimburse acute care hospitals a 20 percent increase of the DRG for an individual diagnosed with COVID–19, confirmed through documentation of a positive COVID–19 laboratory test in the patient's medical record, discharged during the COVID–19 PHE period, retroactive to January 27, 2020. Further, TRICARE shall permanently adopt (1) Medicare's NTAP payment adjustment to DRGs, for new technologies approved by Medicare, and (2) Medicare's HVBP Program. These changes are in accordance with the statutory requirement that TRICARE inpatient care ''payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.'' The ASD(HA) has determined that it is practicable to adopt this Medicare adjustment to the TRICARE DRG-based reimbursement amounts.

e. 32 CFR 199.14(a)(9): Reimbursement for inpatient services provided by a LTCH. By statute, 10 U.S.C. 1079(i)(2), TRICARE shall, to the extent practicable, reimburse institutional providers in accordance with Medicare reimbursement rules. As such, TRICARE has generally adopted the Medicare inpatient prospective payment system for LTCHs (32 CFR 199.14(a)(9)), including Medicare's site neutral payment provisions (adopted December 29, 2017). Section 3711 of the CARES Act directs Medicare to waive the site neutral payment provisions for LTCHs during the COVID–19 PHE period. The ASD(HA) has determined that it is practicable to temporarily adopt this Medicare LTCH reimbursement waiver of the site neutral payment provisions for LTCHs for a discharge if the admission occurs during the COVID–19 PHE, retroactive to January 27, 2020, and is in response to the COVID–19 PHE. The effective and expiration dates are consistent with Medicare's dates for their temporary waiver of LTCH site neutral payment provisions in response to COVID–19, as required by the statutory mandate that TRICARE reimburse like Medicare, where practicable.

f. Dates. These modifications will become effective on September 3, 2020, and will cease to be in effect upon termination of the President's declared national emergency, except as otherwise noted in this paragraph. The NTAPs and HVBP provisions are applicable beginning January 1, 2020, and will not expire. The SNF three-day prior stay waiver is applicable beginning March 1, 2020. The temporary hospital and freestanding ASC acute care hospital requirements waiver expires upon expiration of Medicare's ''Hospitals without Walls'' initiative. The temporary reimbursement changes (20 percent increased DRG for COVID–19 patients and LTCH changes) are applicable beginning January 27, 2020, and will cease to be in effect upon termination of the HHS Secretary's PHE. The Secretary of HHS used his authority in the Public Health Service Act to declare a PHE in the entire United States on January 31, 2020, effective January 27, 2020. Since Medicare's applicable period for the PHE began on January 27, 2020, TRICARE will also begin the applicable period for the PHE on January 27, 2020, for the increase of the DRG by 20 percent for COVID–19 discharges and for waiver of site neutral payment provisions for LTCHs with admissions occurring during the COVID–19 PHE and in response to the PHE. With TRICARE beneficiaries located worldwide, the ASD(HA), or designee, may allow the provisions of this IFR to continue after termination of the President's national emergency for some or all of TRICARE's overseas locations based on the status of COVID–19 community transmission in those locations. Such continuation of these provisions for overseas locations will be published in TRICARE's implementing instructions (TRICARE manuals), available at *http://manuals.health.mil.*

Certain provisions of this IFR may be made permanent while others are anticipated to be removed when the COVID–19 pandemic has concluded. The DoD may issue a final rule to make permanent changes.

B. Interim Final Rule Justification

Agency rulemaking is governed by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* Section 553(b) requires that, unless the rule falls within one of the enumerated exemptions, the DoD must publish a notice of proposed rulemaking in the **Federal Register** that provides interested persons an opportunity to submit written data, views, or arguments, prior to finalization of regulatory requirements. Section 553(b)(B) of the APA authorizes a department or agency to dispense with the prior notice and opportunity for public comment requirement when the agency, for ''good cause,'' finds that notice and public comment thereon are impracticable, unnecessary, or contrary

to the public interest. Section 553(d)(3) requires that an agency must include an explanation of such good cause with the publication of the new rule.

As noted in this preamble, the U.S., as well as numerous other countries, have taken unprecedented measures to try to contain or slow the spread of COVID–19. While studies of potential treatments of COVID–19 are in progress, these studies are expected to take time. Unfortunately, TRICARE beneficiaries infected with COVID–19 may not have time to wait for these treatments, given the rapidity with which the disease overtakes infected individuals who develop the most severe responses to the illness. Additionally, hospital resources being flexed to respond to COVID–19 cannot wait for the reimbursement relief offered in this IFR.

Given the national emergency caused by COVID–19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay these implementing regulations until a full public notice-and-comment process is completed.

Additional good cause exists to publish as an IFR the permanent amendments to the TRICARE regulation regarding adoption of the Medicare DRG adjustments for NTAP and the HVBP Program. As previously noted, TRICARE is mandated by law, 10 U.S.C. 1079(i)(2), to reimburse institutional providers using the Medicare reimbursement methodologies, to the extent practicable. Also, TRICARE is required by section 705(a) of the National Defense Authorization Act (NDAA) to implement a value-based incentive program to encourage health care providers to improve the quality and delivery of services to TRICARE beneficiaries. The ASD(HA) is authorized by the Act to adopt value-based programs created by the CMS. As such, the ASD(HA) has determined that it is practicable to adopt as TRICARE DRG-based reimbursement adjustments, the Medicare NTAP and HVBP Program adjustments which Medicare has implemented through formal rule-making. In exercising his discretionary authority under statute, the ASD(HA) has determined that the purpose for prior notice and public comment has been satisfied by the Medicare rule-making and that good cause exists to avoid delay as further notice and public comment would be impracticable, unnecessary, or contrary to the public interest. Nonetheless, public comments on this IFR are invited and DoD is committed to considering all comments and issuing a final rule as soon as practicable.

Therefore, pursuant to 5 U.S.C. 553(b)(B), and for the reasons stated in this preamble, the ASD(HA), concludes that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule. For the same reasons, the ASD(HA) has determined, consistent with section 553(d) of the APA, that there is good cause to make this IFR effective immediately upon publication in the FR, with applicability of its provisions to coincide with the President's national emergency for the COVID–19 outbreak or the HHS Secretary's PHE, as stated in this rule.

C. Summary of Major Provisions

a. Changes to the TRICARE Benefit

SNF Three-Day Prior Hospital Waiver

This provision, 32 CFR 199.4(b)(3)(xiv), temporarily waives the requirement that an individual was an inpatient of a hospital for not less than 3 consecutive calendar days before his discharge from the hospital (three-day prior hospital stay), for coverage of a SNF admission, for those beneficiaries who need to be transferred as a result of the effect of the COVID–19 pandemic. This will align TRICARE's benefit with Medicare's for SNF admission as required by 10 U.S.C. 1074j(b), as Medicare has waived its three-day prior hospital stay requirement during the COVID–19 pandemic.

Investigational Drugs Provided Under Expanded Access for the Treatment of COVID–19

This provision, 32 CFR 199.4(g)(15)(i)(A), temporarily modifies TRICARE regulations for coverage of investigational drugs provided for treatment use under expanded access authorized by the FDA in a patient who is seriously ill or has a life threatening condition. Title 10 U.S.C. 1079(a)(12) mandates care provided to TRICARE beneficiaries to be medically or psychologically necessary, unless that care is provided by a Christian Science practitioner or in a National Institute of Health clinical trial when there is an agreement with HHS.

The existing regulations on treatment use of investigational drugs were first implemented in 1996 (62 FR 625), in a final rule that codified TRICARE procedures for determining when care provided to TRICARE beneficiaries is medically necessary under the statute. The regulations, minus minor revisions to the definition of off-label drugs and devices and removal of a list of unproven treatments, are unchanged from their establishment almost twenty-five years ago. The regulations currently allow for coverage of care associated with treatment investigational new drugs (INDs), but do not permit coverage of the treatment IND itself because a treatment IND is not labeled for commercial marketing in the U.S. Treatment INDs are one type of treatment use of investigational drugs under expanded access and are the only type mentioned in the regulation.

While we were considering potential temporary regulatory changes required in response to COVID–19, we found it appropriate to reconsider coverage of treatment INDs, and, in doing so, opted to expand our consideration to the larger universe of investigational drugs provided for treatment use under expanded access. FDA's regulations on expanded access of investigational drugs for treatment use are provided at 21 CFR, subpart I. Generally, drugs provided for treatment use under expanded access have not yet been approved for commercial marketing by the FDA. In these cases, a drug being studied in clinical trials might be used for treatment outside of such trials for patients for which there is no alternative. The FDA permits treatment use of an investigational drug under expanded access when the drug would treat a serious or life-threatening illness when there is no comparable or satisfactory alternative, the potential patient benefit justifies the potential risks of the treatment use, and providing the investigational drug will not compromise the potential development or interfere with the clinical investigations that could support marketing approval of the investigational drug for the expanded access use. Treatment use with an investigational drug under expanded access is subject to the requirements for informed consent and institutional review board review and approval.

Under this temporary provision, we will, for the first time, cover not just the care associated with administration of an investigational drug, but the investigational drug itself, when the investigational drug is for the treatment of COVID–19 or its associated sequelae. This use may be authorized in any setting for which the FDA allows treatment use of an investigational drug under expanded access to proceed. As an example, convalescent plasma, an investigational product, is the donated plasma from a person who has recovered from COVID–19, which is administered to a COVID–19 patient under the hypothesis that antibodies will aid the ill person in fighting the disease. Convalescent plasma has not yet been approved by the FDA for use in treating COVID–19, but is currently

available for administering or studying through clinical trials or expanded access. Expanded access allows for treatment of patients with serious or life-threatening symptoms of COVID–19 but who are unable to participate in clinical trials. Treatment use of an investigational drug under expanded access is being offered on a case-by-case basis as an emergency individual treatment, and on a larger scale in participating acute care facilities where authorization has already been given to the facility prior to need by the individual patient, essentially speeding access to the treatment. Allowing TRICARE beneficiaries access to investigational drugs for serious and life-threatening COVID–19 conditions under expanded access is essential given the rapid progression of the disease and the lack of FDA-approved alternatives. We note, however, that if a manufacturer, provider, or supplier does not charge other payers, including other Federal payers, then billing TRICARE for an investigational drug may constitute inappropriate billing practices under § 199.9 of this regulation. In other words, if a drug manufacturer makes an investigational drug available for treatment use under expanded access at reduced or no cost to non-TRICARE patients, they are expected to provide the investigational drug to TRICARE patients at the same reduced or no-cost.

For beneficiaries overseas, TRICARE has long had a policy exemption for non-FDA-approved drugs due to differences in the way prescription drugs are managed outside of the United States. When implementing this temporary regulation change, the DHA intends to permit coverage of similar investigational drugs for treatment use overseas when the criteria are substantially similar to the use of investigational drugs for treatment use under expanded access in the U.S. That is, the drug is intended to treat a serious or life-threatening case of COVID–19 or its sequelae when there is no satisfactory or comparable alternative, the potential patient benefit justifies the potential risks of the treatment use, and providing the investigational drug will not compromise the potential development or interfere with the clinical investigations that could support marketing approval of the investigational drug for the expanded access use.

The change under this provision is temporary for the duration of the President's national emergency for the COVID–19 outbreak. An investigational drug provided for treatment use under expanded access under the requirements of this provision may continue to be covered beyond the national emergency if the course of treatment was started prior to the end of the national emergency. We intend to use this national emergency period to re-evaluate our current exclusion on coverage of treatment INDs and may revise the regulation to cover investigational drugs for treatment use under expanded access for all indications if appropriate after a thorough evaluation of the costs, benefits, risks, and other considerations. We invite public comment on this provision.

Temporary Hospital Facilities and Freestanding ASCs Temporarily Enrolling as Hospitals

Due to the lack of hospital capacity and the strain on resources such as hospital beds as a result of the COVID–19 pandemic, state governments, existing hospitals, and other entities have begun constructing temporary hospital facilities (also known as temporary expansion sites and alternate care sites) to (1) treat patients recovering from COVID–19; and (2) treat patients with other conditions in order to mitigate their exposure to COVID–19. These temporary hospital facilities are typically operated by the U.S. Armed Forces, local or state governments, or existing hospital systems using HHS and the Army Corps of Engineers guidance on the establishment, operationalization, and management of alternate care sites. Additionally, ASCs have begun performing services typically provided in inpatient hospital settings to protect patients from exposure to COVID–19 and to reduce the strain on hospital resources.

As part of their IFR with Comment published April 6, 2020 (85 FR 19230), CMS announced their ''Hospitals without Walls'' initiative, through which CMS will permit Medicare coverage for services and supplies provided in temporary hospital locations and facilities, and allow freestanding ASCs to enroll as hospitals and provide inpatient and outpatient hospital services. Specifically, CMS is waiving requirements under the Medicare conditions of participation related to physical environment (42 CFR 482.41) and physical plant and environment (42 CFR 485.623), and the provider-based department requirements at 42 CFR 413.65. Under these waivers, Medicare is requiring that ASCs enroll as hospitals and that temporary hospital facilities meet the hospital conditions of participation in effect during the COVID–19 PHE. Temporary hospital facilities include (1) a hospital providing services at a location other than the hospital's physical structure (*e.g.,* the hospital parking lot) and (2) when a hospital is handling the majority of the operations of an alternate care site (*e.g.,* a hospital set up in a convention center).

While there are no direct corollaries in TRICARE regulation to those requirements being waived under Medicare, there do exist in TRICARE regulation certain requirements that would prevent similarly authorizing temporary hospitals and allowing freestanding ASCs to be considered as hospitals for the purposes of payment. 32 CFR 199.6(b)(4)(i) lists the requirements for providers to be considered TRICARE-authorized acute care hospital providers. It may not be possible for many temporary hospital facilities to meet all of these requirements, such as having Joint Commission (previously known as the Joint Commission on Accreditation of Hospitals) accreditation status or surveying of new facilities. Additionally, freestanding ASCs that are already TRICARE-authorized providers cannot register as hospitals because, at a minimum, they do not meet the requirement of primarily providing services to inpatients and they may not meet certain other requirements such as Joint Commission accreditation. While we assert that these institutional requirements continue to be necessary for acute care hospitals, we also recognize that during the national emergency for the COVID–19 outbreak, it may be necessary to relax some of these requirements so that beneficiaries can be assured of access to acute care settings. Unlike Medicare, TRICARE lacks the authority to waive individual regulatory requirements for any type of provider without rulemaking. Therefore, this provision will temporarily waive the acute care hospital institutional provider requirements in 32 CFR 199.6(b)(4)(i) for temporary hospital facilities and freestanding ASCs that enroll as hospitals with Medicare, but only to the extent necessary to ensure that TRICARE beneficiaries receive adequate access to acute inpatient care during the COVID–19 pandemic. The Director of the Defense Health Agency (DHA), may establish further requirements for such facilities in the implementing instructions (as found in the TRICARE manuals).

Our intent is to adopt certain requirements related to Medicare's ''Hospitals without Walls'' waiver to allow hospital services to be provided in temporary hospital facilities for the duration of the President's national emergency for the COVID–19 outbreak.

Although there is no requirement to adopt Medicare's condition of participation requirements for hospitals, this provision does support the statutory directive in 10 U.S.C. 1079(i)(2) to pay like Medicare, when practicable. Title 10 U.S.C. 1079(i)(2) establishes that the amount paid to hospitals and other institutional providers is in accordance with the same reimbursement methodology, to the extent practicable, as apply to payments to providers of services of the same type under Medicare. Under this provision, hospitals that are already TRICARE-authorized providers and are operating in a manner consistent with their state's emergency plan in effect during the COVID–19 Presidential national emergency, will be reimbursed for covered inpatient and outpatient services using the same methodologies as if those services were provided at their permanent locations. Freestanding ASCs that enroll with Medicare as a hospital can also change their ASC status to a hospital under TRICARE. This means that, depending on the type of service provided, TRICARE's DRG System or Outpatient Prospective Payment System will be used for reimbursement. If a freestanding ASC initially enrolls as a hospital, but later changes their enrollment status back to an ASC, or if Medicare terminates the ASC's hospital status, then TRICARE will no longer recognize that ASC as being a hospital, effective the date of the enrollment status changes. If Medicare alters its requirements for coverage of temporary hospitals or freestanding ASCs acting as hospitals, the Director of DHA, or designee, will evaluate those changes and adopt, when practicable, in the implementing instructions.

These changes align with Medicare's ''Hospitals without Walls'' initiative. While we are waiving the institutional provider requirements under paragraph 199.6(b)(4)(i), we are still requiring that temporary hospital facilities and freestanding ASCs meet Medicare's conditions of participation established for this Presidential national emergency, which coincide with many of TRICARE's requirements for hospitals, such as operational, staffing, and supervisory requirements. This change will also improve the access of beneficiaries to medically necessary care provided in temporary hospital facilities and freestanding ASCs and may improve outcomes for beneficiaries by allowing them to receive treatment in facilities that are being used to prevent the spread of COVID–19 to COVID–19-negative patients and to mitigate hospitals' lack of capacity and shortages of resources. This change is temporary for the duration of Medicare's ''Hospitals without Walls'' initiative.

b. Reimbursement Modifications Consistent With Medicare Requirements

Adjustments to DRG-Based Payment Amounts

This IFR implements three changes to DRG-based payment amounts. By statute, 10 U.S.C. 1079(i)(2), TRICARE shall, to the extent practicable, reimburse institutional providers in accordance with Medicare reimbursement rules. As such, TRICARE has generally adopted the Medicare inpatient prospective payment system (DRG; *e.g.,* see 32 CFR 199.14(a)(1)). The first DRG-based payment modification is a result of Section 3710 of the CARES Act, which directed Medicare to increase the weighting factor of the assigned DRG by 20 percent for an individual diagnosed with COVID–19 discharged during the COVID–19 PHE period. The ASD(HA) has determined that it is practicable to adopt this Medicare DRG adjustment and issues this IFR to adopt Medicare's increase of the DRG by 20 percent for an individual diagnosed with COVID–19 discharged during the COVID–19 PHE period, retroactive to January 27, 2020.

The second DRG-based payment modification in this IFR permanently adopts Medicare's NTAPs. The Benefits and Improvement Protection Act of 2000 mandated CMS to establish a process of identifying and ensuring adequate payment for new medical services and technologies under Medicare. In CMS' September 7, 2001, final rule (66 FR 46902), Medicare established a methodology to provide hospitals with a new type of outlier payment for new medical services and technologies furnished to Medicare beneficiaries. CMS implemented the NTAPs in Fiscal Year (FY) 2003.

While it may have been practicable for TRICARE to adopt CMS' NTAPs when enacted, there was no means to allow coverage for these emerging technologies. Coverage of a particular new technology under Medicare does not guarantee coverage under TRICARE. The TRICARE benefit is covered by a separate set of statutes and while benefits under the two programs are similar, they are not identical. Initially, these emerging technologies would not have met the coverage criteria under TRICARE's hierarchy of reliable evidence, so the NTAP was not adopted. Over time, though, Medicare's NTAP provision has added items permitted by TRICARE (*e.g.,* orphan drugs for rare diseases). Since all current NTAPs are permitted by TRICARE, and any future NTAPs are required to be a TRICARE benefit, we find it appropriate to adopt Medicare's NTAP provision now, in order to ensure this payment methodology is available for TRICARE beneficiaries.

When TRICARE covers emerging technology as a benefit under existing statute and regulation, the DHA will adopt the new technologies DRG add-on payment. DHA further adopts CMS' NTAP methodology as specified in 42 CFR 412.87 and 412.88. DHA will follow CMS' effective date for NTAPs (*i.e.,* currently the FY begin date), and will adopt any changes to the Medicare effective date in the future. Medicare typically provides NTAPs for two to three years (depending on when the technology receives FDA marketing authorization). This provision is effective from January 1, 2020, and we will issue a final rule to permanently allow NTAPs in the future.

We invite public comment on all parts of this provision of the IFR, including permanent adoption of NTAPs. We feel that since Medicare has already published a final rule for the NTAP and collected public comment, it is appropriate for TRICARE to adopt under this IFR. The ASD(HA) has determined that it is practicable to adopt this Medicare DRG adjustment and issues this IFR to adopt Medicare's NTAP for otherwise authorized TRICARE services and supplies.

The final DRG-based payment modification in this IFR permanently adopts Medicare's HVBP program. Section 705(a) of the NDAA for FY 2017 authorizes the development and implementation of value-based incentive programs to encourage health care providers to improve the quality and delivery of services to Medicare beneficiaries. The statute further allows the Secretary to adopt value-based incentive programs conducted by CMS or any other federal government, state government, or commercial health care program in fulfillment of the statutory authority granted under this section.

Congress authorized the Medicare Inpatient HVBP in Section 3001(a) of the Patient Protection and Affordable Care Act. The program uses the hospital quality data reporting infrastructure that was developed for the Hospital Inpatient Quality Reporting Program, authorized by Section 501(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The Medicare HVBP program provides incentives to hospitals that show improvement in areas of health care delivery, process improvement, and increased patient satisfaction. The

program is budget-neutral with a two percent reduction in hospitals' base payments being redistributed by Medicare to hospitals in the form of incentive payments based on the hospital's Total Performance Score.

Per 10 U.S.C. 1079(i)(2), the amount to be paid to hospitals, SNFs, and other institutional providers under TRICARE shall, by statute, be established ''to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.'' This IFR adopts Medicare's HBVP program for TRICARE, in accordance with this statutory requirement and encouragement by Congress to adopt value-based payment mechanisms.

TRICARE will continue to use its current method of calculating hospital DRG weights and rates. Medicare hospital payment adjustments would be obtained and applied from the CMS website by the Managed Care Support Contractors. The Medicare provider identification number will then be used to match the HVBP adjustments to the correct claim and apply the adjustment factor to each TRICARE discharge. Adopting Medicare's HVBP program approach would not require any additional reporting from TRICARE hospitals, as they are currently participating in the Medicare HVBP program. DHA will adopt the HVBP adjustment. DHA further adopts CMS' HVBP program and methodology. This provision is applicable from January 1, 2020, and we will issue a final rule to permanently allow Medicare's HVBP adjustments in the future.

We invite public comment on all parts of this provision of the IFR, including permanent adoption of HVBP. We feel that since Medicare has already published a final rule for the HVBP and collected public comment, it is appropriate for TRICARE to adopt under this IFR. The ASD(HA) has determined that it is practicable to adopt this Medicare DRG adjustment and issues this IFR to adopt Medicare's HVBP Program.

Reimbursement for Inpatient Services Provided by LTCHs

Title 32 CFR 199.14(a)(9) Reimbursement for inpatient services provided by an LTCH. TRICARE shall reimburse all LTCH cases with an admission date occurring on or after January 27, 2020, and admitted during the COVID–19 PHE period, the LTCH PPS standard Federal rate for claims. This is in accordance with the statutory requirement that TRICARE inpatient care ''payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.''

D. Legal Authority for This Program

This rule is issued under 10 U.S.C. 1073(a)(2) giving authority and responsibility to the Secretary of Defense to administer the TRICARE program. The text of 10 U.S.C. chapter 55 can be found at *https://manuals.health.mil/.*

II. Regulatory History

Each of the sections being modified by this rule are revised every few years to ensure requirements continue to align with the evolving health care field. Title 32 CFR 199.4 was most recently updated on September 29, 2017, with an IFR (82 FR 45438) that implemented the Congressionally-mandated TRICARE Select benefit plan. Its revision to 32 CFR 199.4 included the addition of medically necessary foods as a benefit under the TRICARE Basic Program. Two paragraphs within § 199.4 are being modified by this IFR.

Paragraph 199.4(b)(3)(xiv) was originally created on June 13, 2002 (67 FR 40602), as part of an IFR partially implementing the TRICARE ''sub-acute and long-term care program reform'' enacted by Congress in the National Defense Authorization Act for Fiscal Year 2002, which created 10 U.S.C. 1074j, Sub-Acute Care Program. TRICARE covered SNF care prior to this change, but the NDAA required TRICARE to model its SNF program on Medicare's, with the exception of Medicare's day limits. The regulation adopted Medicare's prospective payment method and most of its benefit structure for SNF care, including Medicare's three-day prior stay rule. Prior to this change, TRICARE did not have a three-day prior stay rule. Paragraph 199.4(b)(3)(xiv) has not been revised since its enactment.

The provisions of paragraph 199.4(g)(15) were last revised on June 27, 2012 (77 FR 38177), with a clarification of the definition of off-label coverage of drugs and devices, and the removal a partial list of unproven drugs, devices, and medical treatments or procedures. The partial list of unproven treatments was eliminated due to rapid and extensive changes in medical technology that made it infeasible to maintain the list through updates to the regulation. The final rule stated unproven treatments would continue to be listed in the TRICARE manuals.

Title 32 CFR 199.6 was last revised on March 17, 2020 (85 FR 15061); the change added licensed or certified physical therapist assistants and occupational therapy assistants as TRICARE-authorized providers. Paragraph 199.6(b)(4)(i) with requirements for acute care hospitals is a long-standing component of the TRICARE program that has not been revised for over 20 years.

Title 32 CFR 199.14 was last revised on February 15, 2019 (84 FR 4333), as part of the final rule implementing the TRICARE Select benefit program. The revision to § 199.14 delayed the effective date for updates to the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) DRG-based payment system based on Medicare's Prospective Payment System to January 1 of each year, the start date for the program year under TRICARE Select. Two paragraphs within § 199.14 are modified by this IFR.

The first, paragraph 199.14(a)(1)(iii)(E), was last substantially revised with a final rule published on September 10, 1998 (63 FR 48446). Due to an error in the final rule, the changes were not formalized until a technical revision was published via a final rule correction issued on November 8, 1999 (64 FR 60671). This change updated numerous portions of § 199.14 to more closely align TRICARE reimbursement with Medicare's. This rule revised paragraph 199.14(a)(1)(iii)(E) regarding calculation of the indirect medical education adjustment factor, as well as the calculation of cost outlier payments for children's hospitals.

The second, paragraph 199.14(a)(9), was most recently modified on December 29, 2017 (82 FR 61692), as part of a final rule establishing reimbursement rates for LTCHs in accordance with the requirement that TRICARE reimburse like Medicare for services of the same type. Prior to that, TRICARE covered care in LTCHs but did not follow Medicare's DRG, instead reimbursing billed charges or network discount.

III. Regulatory Analysis

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Accordingly, the rule has been reviewed by the Office of Management and Budget under the requirements of these Executive Orders. This rule has been designated a ''significant regulatory action'' although, not determined to be economically significant, under section 3(f) of Executive Order 12866.

b. Summary

The modifications to paragraph 199.4(b)(3)(xiv) in this IFR will temporarily waive the requirement that an individual was an inpatient of a hospital for not less than 3 consecutive calendar days before his discharge from the hospital (three-day prior hospital stay), for coverage of a SNF admission for those beneficiaries who need to be transferred as a result of the effect of COVID–19.

The modification to paragraph 199.4(g)(15)(i)(A) in this IFR will temporarily allow changes to the TRICARE benefit by authorizing cost-sharing of investigational drugs for the treatment of COVID–19 and its sequelae under expanded access. This will expand existing coverage, which only permits coverage of care associated with administration of a treatment IND, but not the investigational drug itself. This coverage will be authorized for treatment use of an investigational drug under expanded access but not in clinical trials.

The modifications to paragraph 199.6(b)(4)(i) in this IFR will temporarily exempt temporary hospital facilities and freestanding ASCs that enroll as hospitals with Medicare from the institutional provider requirements for acute care hospitals described in paragraph 199.6(b)(4)(i). This will allow these facilities to provide inpatient and outpatient hospital services to improve the access of beneficiaries to medically necessary care. This change is also consistent with 10 U.S.C. 1079(i)(2) to reimburse hospitals and other institutional providers in accordance with the same reimbursement methodology as Medicare, when practicable.

The modifications to paragraph 199.14(a)(1)(iii)(E) in this IFR will temporarily adopt the Medicare Hospital Inpatient Prospective Payment Add-On Payment for COVID–19 patients during the COVID–19 PHE period, permanently adopt Medicare's NTAP payment and HVBP Program. The add-on payment for COVID–19 patients increases the weighting factor that would otherwise apply to the DRG to which the discharge is assigned, by 20 percent. The NTAP allows for an additional payment in addition to the DRG payment, for new and emerging technologies approved by Medicare. The HVBP Program provides incentives to hospitals that show improvement in areas of health care delivery, process improvement, and increased patient satisfaction.

The modifications to paragraph 199.14(a)(9)(i) in this IFR will adopt the Medicare waiver of site neutral payment provisions for LTCHs during the COVID–19 PHE period. This modification waives the site neutral payment provisions, and reimburses all LTCH cases at the LTCH PPS standard Federal rate for claims within the COVID–19 PHE period.

c. Affected Population

This change impacts all TRICARE beneficiaries who have a serious or life threatening case of COVID–19 and would benefit from treatment with an investigational drug under expanded access. TRICARE-authorized providers will be impacted by being able to treat those patients receiving an investigational drug for treatment use under expanded access. SNFs, LTCHs, and inpatient hospital care providers will be impacted by receiving reimbursement consistent with Medicare's reimbursement both for COVID–19 patients and under the NTAP and HVBP payment provisions. TRICARE's health care contractors will be impacted by being required to implement the provisions of this regulatory change. State, local, and tribal governments will not be impacted.

d. Costs

The cost estimates related to the changes discussed in this IFR include incremental health care cost increases as well as administrative costs to the government. The duration of the COVID–19 national emergency and HHS PHE are uncertain, resulting in a range of estimates for each provision in this IFR. Cost estimates are provided for an approximate nine-month (ending 12/31/2020) and eighteen-month scenario (ending 9/30/2021). The nine-month and 18-month periods would be longer for those provisions applicable beginning in January of this year, and shorter for those effective the date this IFR publishes. The terms nine-month and 18-month period are used throughout this estimate for the sake of simplicity.

The cost estimates consider whether the outbreak will have more than one active stage. The first active stage is considered to be March through August 2020, based on the Institutes for Health Metrics and Evaluation data as of May 27, 2020.[3] A two-wave scenario would have a second stage in winter/spring 2021, while a three-wave scenario would have additional waves from September 2020 to December 2020 and from January 2021 to June 2021.

Based on these factors, we estimate that the total cost estimate for this IFR will be between $43.6M and $59.4M for a nine-month period, and $66.3M to $82.1M for an 18-month period. This estimate includes just over $1M in administrative start-up costs and no ongoing administrative costs. The primary cost drivers in this analysis are the reimbursement changes being adopted under the statutory requirement that TRICARE reimburse like Medicare; that is, the 20 percent DRG increase for COVID–19 patients, the adoption of NTAPs and HVBP, and the waiver of LTCH site neutral payment reductions.

A breakdown of costs, by provision, is provided in the below table. A discussion of assumptions follows.

Provision	Nine-month scenario (M)	Eighteen-month scenario (M)
Paragraph 199.4(b)(3)(xiv)—SNF Three-Day Prior Stay Waiver	$0.3	$0.6
Paragraph 199.4(g)(15)(A)—Investigational Drugs under Expanded Access for COVID–19	0.7–2.2	2.7–4.2
Paragraph 199.6(b)(4)(i)—Temporary Hospitals and Freestanding ASCs Registering as Hospitals	0	0
Paragraph 199.14(a)(1)(iii)(E)(2)—20 Percent DRG Increase for COVID–19 Patients	27.7–42	37.1–51.4
Paragraph 199.14(a)(1)(iii)(E)(5)—NTAPs	5.7	11.6

[3] *https://covid19.healthdata.org/united-states-of-america.*

Provision	Nine-month scenario (M)	Eighteen-month scenario (M)
Paragraph 199.14(a)(1)(iii)(E)(6)—HVBP	2.5	2.5
Paragraph 199.14(a)(9)—LTCH Site Neutral Payments	5.6	10.6
Administrative Costs	1.1	1.2
Estimated Total Cost Impact	43.6–59.4	66.3–82.1

Assumptions specific to the estimates for each individual provision are explained below.

• *SNF Three Day Prior Stay.* A three-percent increase in SNF admissions directly from the community was assumed.

• *Treatment use of Investigational Drugs for COVID–19 or Associated Sequelae under Expanded Access.* The Expanded Access cost estimate assumes that investigational drugs for the treatment of COVID–19 under expanded access available during the period of the national emergency would include convalescent plasma (approximately $1,000 per patient), a new hospital-based infusion antiviral ($2,500 per patient), and two oral antivirals ($200 per 10-pack). The number of investigational drugs available to TRICARE beneficiaries, the extent to which the FDA authorizes expanded access to such investigational drugs for treatment use, and the length of time until marketing approval of the drug by FDA, or emergency use authorization, are highly uncertain.

• *Temporary Hospitals and Freestanding ASCs Registering as Hospitals.* This zero cost estimate assumes that inpatient care provided in these alternate sites is care that would have been reimbursed under TRICARE but for a lack of acute care hospital facility space (*i.e.,* we do not estimate that there would be any induced demand because of an increase in facilities). Additionally, it assumes that while reimbursement for outpatient procedures in freestanding ASCs would be higher than had those procedures been reimbursed under the traditional reimbursement rates for freestanding ASCs, the number of facilities choosing to register as hospitals is likely to be small enough to have a negligible impact on the budget.

• *DRG Increase for COVID–19 Patients.* Under a three-wave scenario, we assumed a total of 34,300 TRICARE beneficiaries under the age of 65 would be hospitalized with diagnoses related to COVID–19 during the 18-month period. Total cost for hospitalization of these patients would be $390M, with $51M as the incremental cost increase of implementing the 20 percent DRG increase. We did not include Medicare-eligible patients in our estimate, as TRICARE's cost-share would not change for these patients.

• *NTAPs.* We assumed TRICARE NTAPs would be a similar percentage of inpatient spending to Medicare's NTAP usage and that TRICARE would adopt all of Medicare's NTAPs. This amount will vary depending on the number of new NTAPs adopted by Medicare each year, the extent to which Medicare-identified emerging technologies are covered under TRICARE's statutory and regulatory requirements, and the extent to which TRICARE's population utilizes these technologies. The costs for this provision may overestimate the incremental costs of this regulatory change, because many of these claims are being approved on a case-by-case basis by the Director, DHA, under waiver authority. In those cases, adopting NTAPs is likely to reflect a cost savings, as waivers are typically paid at billed charges.

• *HVBP Program.* Due to our retroactive implementation of the HVBP Program, we anticipate that those hospitals qualifying for a positive adjustment for prior claims would do so, while those with negative adjustments or adjustments close to zero dollars would not. This would result in a cost in the first year, with claims in following years assumed to be budget neutral.

• *LTCH Site Neutral Payments.* TRICARE is in the process of phasing in Medicare's site-neutral payment rates. This cost estimate assumes that phase-in is halted and all TRICARE LTCH claims are paid at the full LTCH PPS rate.

Depending on the impact of certain provisions of this IFR, some cost savings could be achieved from a reduction in hospitalization rates (*i.e.,* use of investigational drugs for treatment use under expanded access), estimated from no savings to $40M over 18 months. The amount of cost-savings achieved will be determined by the therapies developed, how widespread their usage is, the extent to which the therapies are authorized for treatment use under expanded access, the effectiveness of the therapies in reducing hospitalizations and/or the use of mechanical ventilators, and how long the therapies remain investigational before transitioning to FDA-approval or emergency use authorization.

Any benefits achieved in reduced hospitalizations and/or mechanical ventilator use are also benefits to TRICARE beneficiaries, for whom avoidance of more serious COVID–19 illness is of paramount concern. While we cannot estimate the value of this avoidance in quantitative figures, the potential long-term consequences of a serious COVID–19 illness, including permanent cardiac or lung damage, are not insignificant. If beneficiaries are able to access emerging therapies that prevent long-term consequences (including death), this will be a benefit to the beneficiary.

The largest creators of costs under this IFR (reimbursement changes) are not anticipated or intended to create any cost savings. However, these changes will benefit TRICARE institutional providers and take stress off the entire health care system by ensuring adequate reimbursement during the PHE, at a time during which hospitals are losing revenue due to reduced elective procedures and patients who delay care due to fears of contracting COVID–19 during health care encounters. Ensuring a robust health care system is of benefit to our beneficiaries and the general public, particularly in rural or underserved areas, even though this benefit is not quantifiable.

e. Benefits

The benefit changes in this IFR will positively impact TRICARE beneficiaries diagnosed with COVID–19 by ensuring that they have access to treatment with investigational drugs authorized by the FDA under expanded access (not in clinical trial settings). This change expands the therapies available to TRICARE beneficiaries while doing so in settings that ensure informed consent of the beneficiary, and that the benefits of treatment outweigh the potential risks. Providers will be positively impacted by being able to provide their patients with a broader range of treatment options. The expansion of providers who can provide

inpatient and outpatient hospital services positively benefits beneficiaries, who will have increased access to acute care facilities, and providers, who will have increased options for providing their beneficiaries with said care. SNFs and acute care hospitals will be positively impacted by the ability to more quickly transition patients from acute care to skilled nursing care. LTCH and inpatients hospitals will be positively impacted by increased reimbursement when caring for patients with COVID–19.

f. Alternatives

The DoD considered several alternatives to this IFR. The first alternative involved taking no action. Although this alternative would be the most cost neutral for DHA, it was rejected as not addressing the urgent medical needs of the beneficiary population in response to the COVID–19 pandemic. Additionally, it would fail to fulfill the statutory mandate that TRICARE reimburse like Medicare.

The second alternative the DoD considered was implementing a more limited benefit change for COVID–19 patients by not covering investigational drugs for treatment use under expanded access. While this would have the benefit of reimbursing only care that has more established evidence in its favor, this alternative is not preferred because early access to treatments is critical for TRICARE beneficiaries given the rapid progression of the disease and the lack of available approved treatments.

B. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Secretary certifies that this IFR is not subject to the flexibility analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $8.0 million to $41.5 million in any one year). Individuals and states are not included in the definition of a small entity. The provisions of this IFR that are most likely to have an economic impact on hospitals and other health care providers are the reimbursement provisions adopted to meet the statutory requirement that we reimburse like Medicare. As its measure of significant economic impact on a substantial number of small entities, HHS uses an adverse change in revenue of more than 3 to 5 percent. While TRICARE is not required to follow this guidance in the issuance of our rules, we provide this metric for context, given that these temporary changes align with similar changes made by Medicare.

Given that the temporary reimbursement provisions of this IFR increase reimbursement for hospitals and LTCHs, we find that these provisions would not have an adverse impact on revenue for hospitals and, therefore, would not have a significant impact on these hospitals and other providers meeting the definition of small business. We also find that NTAPs, given that they increase revenue under the DRG system, would not have an adverse impact on hospitals and providers. The HVBP program would not reduce revenue for a hospital being penalized under the system beyond the HHS threshold. Lastly, coverage of investigational drugs for treatment under expanded access and allowing temporary hospitals and freestanding ASCs to register as inpatient hospitals are not expected to result in any adverse economic impact on hospitals or other health care providers.

Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

C. Congressional Review Act

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

D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. This IFR will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

E. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 199 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

F. Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates an IFR (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This IFR does not preempt State law or impose substantial direct costs on State and local governments.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental, Fraud, Health care, Health insurance, Individuals with disabilities, Mental health programs, and Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.4 by:
■ a. Adding a parenthetical sentence after the third sentence of paragraph (b)(3)(xiv) introductory text; and
■ b. Adding a sentence at the end of the second paragraph of the NOTE to paragraph (g)(15)(i)(A) and redesignating the note as ''Note to paragraph (g)(15)(i)(A)''.

The additions read as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) * * *
(3) * * *
(xiv) * * * (The three-day hospital stay requirement is waived for the duration of the President's national emergency for the coronavirus disease 2019 (COVID–19) outbreak.) * * *

* * * * *

(g) * * *
(15) * * *
(i) * * *
(A) * * *

Note to paragraph (g)(15)(i)(A): * * * * * * For the duration of the President's national emergency in response to the COVID–19 outbreak, TRICARE will cost-share investigational drugs provided for the treatment of COVID–19 under expanded access.

* * * * *

■ 3. Amend § 199.6 by adding a note following paragraph (b)(4)(i)(I) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(b) * * *
(4) * * *
(i) * * *
(I) * * *

Note to paragraph (b)(4)(i)(I):
For the duration of Medicare's ''Hospitals without Walls'' initiative for the coronavirus

disease 2019 (COVID–19) outbreak, certain temporary hospitals and freestanding ambulatory surgical centers (ASCs) that enroll with Medicare as hospitals may be temporarily exempt from certain institutional requirements for acute care hospitals in this paragraph 199.6(b)(4)(i), as determined by the Director, Defense Health Agency (DHA), or designee, to ensure access to acute inpatient care during the COVID–19 outbreak.

* * * * *

■ 4. Amend § 199.14 by:
■ a. Revising paragraph (a)(1)(iii)(E)(*2*);
■ b. Adding paragraphs (a)(1)(iii)(E)(*5*) and (*6*); and
■ c. Adding a note following paragraph (a)(9)(i).

The revision and additions read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *
(1) * * *
(iii) * * *
(E) * * *
(*2*) *Wage adjustment.* CHAMPUS will adjust the labor portion of the standardized amounts according to the hospital's area wage index. The wage adjusted DRG payment will also be multiplied by 1.2 for an individual diagnosed with COVID–19 and/or Coronavirus discharged during the Secretary of Health and Human Services' declared public health emergency (PHE).

* * * * *

(*5*) *Additional payment for new medical services and technologies.* TRICARE will, for TRICARE authorized services/supplies, adopt the Medicare New Technology Add On Payments (NTAPs) adjustment to DRGs for new medical services and technologies as implemented under 42 CFR 412.87, when determined by the Assistant Secretary of Defense for Health Affairs (ASD(HA)), as practicable. The Director, Defense Health Agency (DHA), shall provide notice of the issuance of policies and guidelines adopting such adjustments together with any variations deemed necessary to address unique issues involving the beneficiary population or program administration.

(6) *Hospital Value Based Purchasing.* TRICARE will adopt the Medicare Hospital Value Based Purchasing (HVBP) Program adjustments to DRGs to incentivize hospitals as implemented under 42 CFR 412.160, when determined by the ASD(HA), as practicable. The Director, DHA, shall provide notice of the issuance of policies and guidelines adopting such adjustments together with any variations deemed necessary to address unique issues involving the beneficiary population or program administration.

* * * * *

(9) * * *
(i) * * *

Note to paragraph (a)(9)(i):

LTCH admissions that are in response to the COVID–19 declared PHE and occur during the COVID–19 PHE period will be reimbursed the LTCH PPS standard Federal rate.

* * * * *

Dated: August 31, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–19594 Filed 9–1–20; 1:00 pm]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0048; FRL–10013–00–Region 1]

Air Plan Approval; Rhode Island; Reasonably Available Control Technology for the 2008 and 2015 Ozone Standards

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 Rhode Island. The SIP revision consists of a demonstration that Rhode Island meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQSs or standards). Additionally, we are approving specific regulations that implement the RACT requirements by limiting air emissions of NO_X and VOC pollutants from sources within the State. This action is being taken in accordance with the Clean Air Act.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2020–0048. 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. 617–918–1584, email *Mackintosh.David@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Final Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On June 18, 2020 (85 FR 36823), EPA issued a notice of proposed rulemaking (NPRM) for the State of Rhode Island. In the NPRM, EPA proposed approval of a SIP revision submitted by Rhode Island on September 20, 2019. The SIP revision contains a certification that Rhode Island has met all RACT requirements for the 2008 and 2015 8-hour ozone NAAQSs and updates the SIP with the following changes to Title 250 Rhode Island Code of Regulations (RICR), Chapter 120 Air Resources, Subchapter 05 Air Pollution Control: Part 0 General Definitions Regulation; Part 11 Petroleum Liquids Marketing and Storage; Part 15 Control of Organic Solvent Emissions; Part 19 Control of Volatile Organic Compounds from Coating Operations; Part 21 Control of Volatile Organic Compound Emissions from Printing Operations; Part 25 Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt; Part 26 Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products; Part 27 Control of Nitrogen Oxide Emissions; Part 35 Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from

Wood Product Manufacturing Operations; Part 36 Control of Emissions from Organic Solvent Cleaning; Part 44 Control of Volatile Organic Compounds from Adhesives and Sealants; and Part 51 Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing.

The NPRM provides the rationale for EPA's proposed approval, which will not be restated here. EPA received no comments on the NPRM.

II. Final Action

EPA is approving the Rhode Island SIP revision as meeting the State's RACT obligations for the 2008 and 2015 8-hour ozone NAAQSs as set forth in sections 182(b), 182(f) and 184(b)(2) of the CAA, and is adding to the SIP the State's submission entitled ''Reasonably Available Control Technology State Implementation Plan Revision 2008 and 2015 Ozone National Ambient Air Quality Standards'' dated September 20, 2019, which also includes twelve negative declarations for CTG source categories. EPA is also approving Subchapter 05 Air Pollution Control changes to the Rhode Island SIP. Specifically, revisions to Part 0 General Definitions Regulation, Part 11 Petroleum Liquids Marketing and Storage, Part 15 Control of Organic Solvent Emissions, Part 19 Control of Volatile Organic Compounds from Coating Operations, Part 21 Control of Volatile Organic Compound Emissions from Printing Operations, Part 25 Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt, Part 26 Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products, Part 27 Control of Nitrogen Oxide Emissions, Part 35 Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations, Part 36 Control of Emissions from Organic Solvent Cleaning, Part 44 Control of Volatile Organic Compounds from Adhesives and Sealants, and addition of Part 51 Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing, with paragraphs 0.2, 11.2, 15.2, 19.2, 21.2, 25.2, 26.2, 27.2, 35.2, 36.2, 44.2, and 51.2 stricken from the regulations.

III. 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 Rhode Island regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 November 2, 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).)

[1] 62 FR 27968 (May 22, 1997).

List of Subjects in 40 CFR Part 52

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

Dated: August 3, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, the EPA amends part 52 of 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 OO—Rhode Island

■ 2. In § 52.2070:

■ i. Amend the table in paragraph (c) by:

■ a. Revising existing state citations for ''Air Pollution Control General Definitions Regulation General Definitions'', ''Air Pollution Control Regulation 11 Petroleum Liquids Marketing and Storage'', ''Air Pollution Control Regulation 15 Control of Organic Solvent Emissions'' (and remove one of the two existing state citations for ''Air Pollution Control Regulation 15 Control of Organic Solvent Emissions''), ''Air Pollution Control Regulation 19 Control of Volatile Organic Compounds from Surface Coating Operations'', ''Air Pollution Control Regulation 21 Control of Volatile Organic Compounds from Printing Operations'', ''Air Pollution Control Regulation 25 Control of VOC Emissions from Cutback and Emulsified Asphalt'', ''Air Pollution Control Regulation 26 Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products'', ''Air Pollution Control Regulation 27 Control of Nitrogen Oxides Emissions'', ''Air Pollution Control Regulation 35 Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations'', ''Air Pollution Control Regulation 36 Control of Emissions from Organic Solvent Cleaning'', and ''Air Pollution Control Regulation 44 Control of Volatile Organic Compounds from Adhesives and Sealants'';

■ b. Adding new state citation for ''Air Pollution Control Regulation 51 Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing'' in numerical order; and

■ ii. Amend the table in paragraph (e) by adding a provision for ''Reasonably Available Control Technology State Implementation Plan Revision 2008 and 2015 Ozone National Ambient Air Quality Standards'' at the end of the table.

The additions and revisions read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control General Definitions Regulation.	General Definitions	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 0.2 Application section.
*	*	*	*	*
Air Pollution Control Regulation 11.	Petroleum Liquids Marketing and Storage.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 11.2 Application section.
*	*	*	*	*
Air Pollution Control Regulation 15.	Control of Organic Solvent Emissions.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 15.2 Application section.
*	*	*	*	*
Air Pollution Control Regulation 19.	Control of Volatile Organic Compounds from Surface Coating Operations.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 19.2 Application section.
*	*	*	*	*
Air Pollution Control Regulation 21.	Control of Volatile Organic Compounds from Printing Operations.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 21.2 Application section.
*	*	*	*	*
Air Pollution Control Regulation 25.	Control of VOC Emissions from Cutback and Emulsified Asphalt.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 25.2 Application section.
Air Pollution Control Regulation 26.	Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 26.2 Application section.
Air Pollution Control Regulation 27.	Control of Nitrogen Oxides Emissions.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 27.2 Application section.
*	*	*	*	*
Air Pollution Control Regulation 35.	Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 35.2 Application section.

EPA-APPROVED RHODE ISLAND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 36.	Control of Emissions from Organic Solvent Cleaning.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 36.2 Application section.
* *	*	*	*	* *
Air Pollution Control Regulation 44.	Control of Volatile Organic Compounds from Adhesives and Sealants.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 44.2 Application section.
* *	*	*	*	* *
Air Pollution Control Regulation Part 51.	Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing.	2/9/2018	9/3/2020 [Insert **Federal Register** citation].	Excluding 51.2 Application section.

* * * * * (e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanation
* * *		*	* *	*
Reasonably Available Control Technology State Implementation Plan Revision 2008 and 2015 Ozone National Ambient Air Quality Standards.	Statewide	Submitted 9/20/2019.	9/3/2020 [Insert **Federal Register** citation].	

[FR Doc. 2020–17414 Filed 9–2–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0351; FRL–10013–43]

Deoxyribonucleic Acid (DNA) Sequences; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of deoxyribonucleic acid sequences consisting solely of adenine, cytosine, guanine, and thymine, of 300 or fewer base pairs, and which do not contain start codons or regulatory sequences necessary for the initiation of transcription or translation when used as an inert ingredient (product identifier) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest at a concentration not to exceed 1.0 parts per million (ppm). InvisiDex Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of deoxyribonucleic acid that satisfy the terms of the exemption.

DATES: This regulation is effective September 3, 2020. Objections and requests for hearings must be received on or before November 2, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0351, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets*.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0351 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before November 2, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0351, by one of the following methods:

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

For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets*.

II. Petition for Exemption

In the **Federal Register** of September 15, 2017 (82 FR 43352) (FRL–9965–43), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11062) by InvisiDex Inc., 1129 Maricopa Hwy. #217, Ojai, CA 93023. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of deoxyribonucleic acid (CAS Reg. No. 9006–49–2) when used as an inert ingredient (product identifier) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest at a concentration not to exceed 1.0 parts per million (ppm). That document referenced a summary of the petition prepared by InvisiDex Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit V.B.

III. Inert Ingredient Definition

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

IV. Aggregate Risk Assessment and Determination of Safety

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

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused

by deoxyribonucleic acid sequences as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Deoxyribonucleic acid (DNA) is routinely synthesized and degraded by almost all living cells. DNA breakdown into constituent nucleic acids continuously occurs in living cells. Purine and pyrimidine nucleosides can either be degraded to waste products and excreted or can be salvaged as nucleotide components. Therefore, metabolites of DNA do not pose a toxicological risk.

DNA sequences used as product identifiers contain the same nucleic acids as DNA present in the environment, and humans routinely consume DNA as a component of food.

All humans are exposed to DNA throughout their lives as part of their diet, in which DNA is metabolized to its component nucleic acids, which are then further used by the body for essential metabolic processes. Consumption of nucleic acids in food has not been associated with any toxic effects. Thus, because the DNA sequences that are used as product identifier contain the same nucleic acids, (adenine, cytosine, guanine and thymine) as found in DNA, consumption of food containing residues of DNA sequences that are used as product identifiers are not expected to present a toxic effect.

There is a potential for extracellular or exogenous DNA to interact with microorganisms in the environment such as bacteria. This interaction could result in the formation of exogenous proteins or other materials that could potentially be harmful to humans. However, the DNA sequences proposed for use by the petitioner lack start codons or regulatory sequences necessary for the initiation of transcription or translation. They cannot encode a protein nor integrate with other genetic sequences and, as such, cannot lead to the formation of exogenous proteins or other materials. Moreover, the restriction of exempted DNA to be comprised of 300 base pairs or less will also limit the ability of DNA to replicate in the environment. Finally, the DNA sequence's ability to cause replication are further limited by lack of stability and integrity of extracellular DNA in the environment. Extracellular DNA routinely degrades in the environment when it is exposed to harsh environmental conditions such as mechanical shearing and UV degradation.

B. Toxicological Points of Departure/ Levels of Concern

As no human health toxicity endpoints have been selected, a quantitative assessment is not being conducted.

C. Exposure Assessment

All humans are exposed to DNA throughout their lives as part of diet. As an inert ingredient in pesticide products, DNA sequences may result in residues in or on food. DNA sequences may be used as an inert ingredient (product identifiers) in pesticide formulations that are used in residential setting, however because DNA sequences are unlikely to cross the skin barrier or be available via inhalation. Therefore, inhalation and dermal exposure are not of concern.

Due to the lack of toxicity, EPA does not expect these exposures to pose any risk of harm. DNA sequences used as product identifiers will also be limited to 1 ppm in pesticide formulations, with any resultant exposure to humans resulting from such use being negligible.

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Due to the lack of toxicity or any threshold effects, an FQPA SF is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on deoxyribonucleic acid sequences consisting solely of adenine, cytosine, guanine and thymine, of 300 or fewer base pairs, and which do not contain start codons or regulatory sequences necessary for the initiation of transcription or translation when used as an inert ingredient (product identifier), EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to deoxyribonucleic acid sequences under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 for residues of deoxyribonucleic acid sequences as described in the exemption when used as an inert ingredient in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest at a concentration not to exceed 1.0 ppm, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of DNA sequences in or on any food commodities. EPA is establishing limitations on the amount of DNA sequences that may be used in pesticide formulations applied pre- and post-harvest. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 1 ppm by weight of DNA sequences in the final pesticide formulation.

B. Response to Comments

One comment generally asserting that pesticides are toxic and should not be allowed on food was received in response to the notice of filing. Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that this exemption is safe. The commenter has provided no information to indicate that the exemption would not be safe.

C. Revisions to Petitioned-for Tolerances

Based on clarification as to the composition of the DNA that would be utilized as a product identifier, the petitioner provided additional descriptive criteria that have been incorporated by the Agency into the tolerance exemption expression to ensure that the DNA sequences used as product identifiers would not be taken up by organisms in the environment and

used for the production of proteins that could be harmful to human health.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for deoxyribonucleic acid sequences consisting solely of adenine, cytosine, guanine and thymine, of 300 or fewer base pairs, and which do not contain start codons or regulatory sequences necessary for the initiation of transcription or translation when used as an inert ingredient (product identifier) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest at a concentration not to exceed 1.0 ppm.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: August 27, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

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

■ 2. In § 180.910, add alphabetically the inert ingredient ''Deoxyribonucleic acid (DNA) sequences consisting solely of adenine, cytosine, guanine and thymine, of 300 or fewer base pairs, and which do not contain start codons or regulatory sequences necessary for the initiation of transcription or translation'' to Table 1 to read as follows:

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

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* * * *	* *	*
Deoxyribonucleic acid (DNA) sequences consisting solely of adenine, cytosine, guanine and thymine, of 300 or fewer base pairs, and which do not contain start codons or regulatory sequences necessary for the initiation of transcription or translation.	No more than 1 ppm in pesticide formulation.	Product identifier.
* * * *	* *	*

[FR Doc. 2020–19491 Filed 9–2–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2017–0603, EPA–HQ–OLEM–2019–0484, 0485, 0486, 0487 and 0488; FRL–10012–71–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds six sites to the General Superfund section of the NPL.

DATES: The document is effective on October 5, 2020.

ADDRESSES: Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4342.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Sandra Harrigan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mailcode 9T25, Atlanta, GA 30303; 404/562–8926.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; 214/665–3154.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.
- Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/972–3160.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Suite 155, Mailcode 12–D12–1, Seattle, WA 98101; 206/890–0591.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW, Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or

releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section'') and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: Ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions'' (40 CFR 300.5).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely

may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider 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 Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's internet site at *https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#tab-9.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through *https://www.regulations.gov* (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified in section II.D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Orange County North Basin	Orange County, CA	EPA–HQ–OLEM–2017–0603.
Blades Groundwater	Blades, DE	EPA–HQ–OLEM–2019–0484.
Caney Residential Yards	Caney, KS	EPA–HQ–OLEM–2019–0485.
Highway 100 and County Road 3 Groundwater Plume.	St. Louis Park and Edina, MN	EPA–HQ–OLEM–2019–0486.
Henryetta Iron and Metal	Henryetta, OK	EPA–HQ–OLEM–2019–0487.
Clearwater Finishing	Clearwater, SC	EPA–HQ–OLEM–2019–0488.

B. What documents are available for review at the EPA Headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score, a list of documents referenced in the documentation record for each site and any other information used to support the NPL listing of the site.

C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the regional dockets for hours. For addresses for the headquarters and regional dockets, see **ADDRESSES** section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the internet at *https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name* or by contacting the Superfund docket (see contact information in the beginning portion of this document).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following six sites to the General Superfund section of the NPL. These sites are being added to the NPL based on an HRS score of 28.50 or above.

GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	Orange County North Basin.	Orange County.
DE	Blades Groundwater	Blades.
KS	Caney Residential Yards.	Caney.
MN	Highway 100 and County Road 3 Groundwater Plume.	St. Louis Park and Edina.
OK	Henryetta Iron and Metal.	Henryetta.
SC	Clearwater Finishing	Clearwater.

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. The EPA is adding six sites to the NPL in this final rule. The Orange County North Basin site in Orange County, CA was proposed for addition to the NPL on January 18, 2018 (83 FR 2576). The remaining five sites were proposed for addition to the NPL on November 8, 2019 (84 FR 60357).

Comments on the Orange County North Basin and Hwy 100 and County Road 3 Groundwater Plume sites are being addressed in a response to comment support document available in the public docket concurrently with this rule. To view public comments on this site, as well as EPA's response, please refer to the support document available at *https://www.regulations.gov.*

The EPA received no comments on the Henryetta Iron and Metal site.

The EPA received one comment supporting the listing of the Clearwater Finishing site, and two additional comments that are not site specific but that support the implementation of the Superfund statute.

For the Blades Groundwater site, in addition to comments in support of the listing, the EPA received one comment from a member of the public raising concerns about the impact on property values and another regarding health concerns of residents. The EPA notes that there are both costs and benefits that can be associated with listing a site. Among the benefits are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for federally financed remedial actions, the addition of a site to the NPL could accelerate privately financed, voluntary cleanup efforts. Listing sites as national priority targets also may give states increased support for funding responses at particular sites. As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher quality surface water, ground water, soil, and air. Therefore, it is possible that any perceived or actual negative fluctuations in property values or development opportunities that may result from contamination may also be countered by positive fluctuations when a CERCLA investigation and any necessary cleanup are completed.

For the Caney Residential Yards site, the EPA received several comments which are unrelated to listing the site on the NPL.

IV. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

F. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

L. Congressional Review Act

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

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 24 2020.

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

For the reasons set out in the preamble, title 40, chapter I, part 300, of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by adding the entries for ''CA,'' ''Orange County North Basin'', ''DE,'' ''Blades Groundwater'', ''KS,'' ''Caney Residential Yards'', ''MN,'' ''Highway 100 and County Road 3 Groundwater Plume'', ''OK,'' ''Henryetta Iron and Metal'', and ''SC,'' ''Clearwater Finishing'' in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* *	* *	* *	* *
CA	Orange County North Basin	Orange County.	
* *	* *	* *	* *
DE	Blades Groundwater	Blades.	
* *	* *	* *	* *
KS	Caney Residential Yards	Caney.	
* *	* *	* *	* *
MN	Highway 100 and County Road 3 Groundwater Plume.	St. Louis Park and Edina.	
* *	* *	* *	* *
OK	Henryetta Iron and Metal	Henryetta.	
* *	* *	* *	* *
SC	Clearwater Finishing	Clearwater.	
* *	* *	* *	* *

[A] = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2020–19172 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1244

[EP 385 (Sub-No. 8)]

Waybill Sample Reporting

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) adopts a final rule that amends its Waybill Sample data collection regulations by increasing the sampling rates of certain non-intermodal carload shipments, specifying separate sampling strata and rates for intermodal shipments, and eliminating the manual system for reporting waybill data.

DATES: This rule is effective on January 1, 2021. Waybill reporting on or after the effective date must comply with the final rule.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: A waybill is a ''document or instrument prepared from the bill of lading contract or shipper's instructions as to the disposition of the freight, and [is] used by the railroad(s) involved as the authority to move the shipment and as the basis for determining the freight charges and interline settlements.'' 49 CFR 1244.1(c). Among other things, a waybill contains the following data: (1) The originating and terminating freight stations; (2) the railroads participating in the movement; (3) the points of all railroad interchanges; (4) the number and type of cars; (5) the car initial and number; (6) the movement weight in hundredweight; (7) the commodity; and (8) the freight revenue.

A railroad is required to file with the Board a sample of its waybill data for all line-haul revenue waybills terminated on its lines in the United States,[1] if the railroad: (a) Terminated at least 4,500 revenue carloads in any of the three preceding years, or (b) terminated at least 5% of the revenue carloads terminating in any state in any of the three preceding years. 49 CFR 1244.2(a). The number of waybills that a railroad is required to file (*i.e.,* the sampling rate) is set forth at current 49 CFR 1244.4(b) and (c), and varies based on the number of carloads on the waybill, as shown in Table 1 below.[2]

TABLE 1—CURRENT WAYBILL SAMPLING RATES

[Computerized System of Reporting]

Number of carloads on waybill\	Sample rate [3]
1 to 2	1/40
3 to 15	1/12
16 to 60	1/4
61 to 100	1/3
101 and over	1/2

The Board creates an aggregate compilation of the sampled waybills of all reporting carriers, referred to as the Waybill Sample. First collected in 1946 by the Board's predecessor,[4] the Interstate Commerce Commission (ICC), the Waybill Sample is the Board's principal source of data about freight rail shipments. It has broad application in, among other things, rate cases, the development of costing systems, productivity studies, exemption decisions, and analyses of industry trends. The Waybill Sample is also used by other Federal agencies, state and local government agencies, the transportation industry, shippers, research organizations, universities, and

[1] A railroad moving traffic on the U.S. rail system to the Canadian or Mexican border is required to ''include a representative sample of such international export traffic in the Waybill Sample.'' 49 CFR 1244.3(c).

[2] The Board's regulations set forth different sampling rates for computerized and manual systems of reporting. *See* 49 CFR 1244.4(b)–(c). Under the manual system, railroads submit Waybill Sample data through authenticated copies of a sample of audited revenue waybills instead of using a computerized system. *Id.* section 1244.4(a). The manual system of reporting is not currently used by any railroads and, as discussed further below, this final rule eliminates it.

[3] The column showing the sample rate indicates the fraction of the total number of waybills within each stratum that must be submitted (*e.g.,* for waybills of one to two carloads, the railroad must submit one out of every 40 waybills).

[4] *See* Bureau of Transp. Econ. & Stat., Interstate Com. Comm'n, Statement No. 543, *Waybill Statistics their History & Uses* 15, 19, 40 (1954); *Waybill Analysis of Transp. of Prop.—R.Rs.,* 364 I.C.C. 928, 929 (1981) (''Since 1946, the Interstate Commerce Commission has collected a continuous sample of carload waybills for railroads terminating shipments.'').

others that have a need for rail shipment data. Because some of the submitted waybill data is commercially sensitive, the Board's regulations place limitations on the release and use of confidential Waybill Sample data. *See* 49 CFR 1244.9; *see also* 49 U.S.C. 11904.[5]

Procedural Background

As described more fully in the notice of proposed rulemaking in this proceeding, the Board's Rate Reform Task Force (RRTF) issued a report on April 25, 2019 (RRTF Report)[6] recommending, among other things, that the Board change the sampling rates for its Waybill Sample. RRTF Report 14, 47–49; *Waybill Sample Reporting* (*NPRM*), EP 385 (Sub-No. 8), slip op. at 2 (STB served Nov. 29, 2019). After considering the recommendations in the RRTF Report and the overall utility of the current Waybill Sample, in the *NPRM* issued on November 29, 2019, the Board proposed a simplified waybill sampling rate for non-intermodal carload shipments and separate waybill sampling strata and rates for intermodal shipments, as shown in Table 2 below. *See NPRM,* EP 385 (Sub-No. 8), slip op. at 6–8; 84 FR 65768, 65770–71 (Nov. 29, 2019).

TABLE 2—PROPOSED WAYBILL SAMPLING RATES

[Computerized System of Reporting]

Number of non-intermodal carloads on waybill	Sample rate
1 to 2	1/5
3 to 15	1/5
16 to 60	1/5
61 to 100	1/5
101 and over	1/5
Number of intermodal trailer/container units on waybill	**Sample rate**
1 to 2	1/40
3 and over	1/5

As explained in the *NPRM,* EP 385 (Sub-No. 8), slip op. at 4, the Board reasoned that a net increase in sample size would provide more comprehensive information to the Board and other users of Waybill Sample data in a variety of contexts, such as exemption decisions, stratification reports, traffic volume and rate studies, Board-initiated investigations, certain rate cases, and any other waybill data-related analysis the Board currently performs or might seek to perform in the future. The Board also explained that the added number of observations in the Waybill Sample would likely allow it to avoid redacting, for confidentiality reasons, as many results from some of the Board's routine analysis published on its website (*e.g.,* the Standard Transportation Commodity Code 7 stratification report). *Id.* at 4–5. In addition, because it currently receives monthly and quarterly waybill data from reporting carriers, increasing the sampling rate would provide the Board with more observations in any given month or quarter from which it could draw meaningful insights throughout the year. *Id.* at 5. The Board also proposed that it should change the sampling requirements so that a greater portion of Waybill Sample data would represent regulated traffic instead of exempt traffic and stated that the proposed changes would help address the acknowledged shortcomings concerning the scarcity of data in some rate cases. *Id.* at 4–5, 8. The *NPRM* stated that the proposed waybill sampling rates would increase the percentage of movement categories containing at least 25 observations,[7] suggesting that the proposed changes would produce more movement categories that have sufficient representativeness. *Id.* at 5–6, 8–10, 8 n.18.

The Board received seven opening comments on the *NPRM* from the following organizations: American Fuel & Petrochemical Manufacturers (AFPM); Association of American Railroads (AAR); CSX Transportation, Inc. (CSXT); National Grain and Feed Association (NGFA); RSI Logistics, Inc. (RSI Logistics); U.S. Department of Agriculture (USDA); and Western Coal Traffic League (WCTL). The Board received one reply comment, from AAR.

Final Rule

After considering the comments, the Board will adopt the rule proposed in the *NPRM,* with certain modifications. Below, the Board addresses the comments and discusses the modifications being adopted in the final rule. The text of the final rule is below.

A. Sampling Rates and Strata

The comments received generally underscore the importance of the Waybill Sample as a critical source of information about the rail industry. For example, USDA notes that the Waybill Sample ''is the most detailed and comprehensive data the federal government currently has on rail freight movements, making it instrumental in identifying trends and issues in the industry.'' (USDA Comment 2.) RSI Logistics similarly states that the Waybill Sample ''provides valuable insight into the rail marketplace.'' (RSI Logistics Comment 1.) Due to the Waybill Sample's utility, most commenters support the Board's efforts to increase the quantity of waybill data collected through modified sampling rates. (AAR Comment 1; AFPM Comment 4; CSXT Comment 1; RSI Logistics Comment 1; USDA Comment 2, 4.) Although some commenters question the potential benefits of the proposed changes, suggest modifications to the proposed sampling rates, or urge the Board to be watchful for unintended effects, (*see* AAR Comment 1; NGFA Comment 4–5; WCTL Comment 4–6), no commenter opposes the Board's effort to expand the quantity of waybill data collected.

Regarding suggested modifications to the proposed rule, AAR cautions against the Board's proposal to reduce the data collected for larger, non-intermodal shipments. In particular, AAR notes that ''non-coal larger blocks of shipments are more likely to have greater variance in their characteristics, including in size, frequency, and origin-destination pairs'' and claims that much of this detail could be lost as a result of the proposed reduction in the sampling rates for these strata. (AAR Comment 3.) AAR also states that ''there is no reason to suspect that shipments in the larger carload strata would be any less relevant to the small rate case process[,]'' which would make ''the need for more observations [of larger shipments] . . . just as important as for the smaller carload strata.'' (*Id.*) Based on these concerns, AAR argues that ''[t]he Board's proposal to reduce the number of samples for the larger carload strata is at odds with the overarching goal of broadening access to relief and addressing the scarcity of data concerns expressed by the Board.'' (*Id.*) AAR therefore asks the Board to maintain the current sampling rates for non-intermodal shipments with 16 or more carloads. (AAR Comment 1; AAR Reply 1.) CSXT likewise asks the Board to maintain the sampling rates for non-

[5] Any grant of access to confidential Waybill Sample data requires the requestor to execute a confidentiality agreement before receiving the data. *See* 49 CFR 1244.9(a)–(e). In addition to the confidential Waybill Sample, the Board also generates a Public Use Waybill File that includes only non-confidential data. *See* 49 CFR 1244.9(b)(5).

[6] The RRTF Report was posted on the Board's website on April 29, 2019, and can be accessed at *https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf.*

[7] According to the Central Limit Theorem, once a sample has sufficient observations, it is considered to be normally distributed and can be used to approximate the mean and variance of the population from which it was sampled. Generally, around 25 or 30 observations is considered to be enough for those approximations. *See NPRM,* EP 385 (Sub-No. 8), slip op. at 5 n.10 (citing Robert V. Hogg et al., *Probability and Statistical Inference* 202 (9th ed. 2015)).

intermodal shipments with 16 or more carloads. (CSXT Comment 1 n.1.)

After considering the comments from AAR and CSXT, the Board concludes that the proposed decrease in the sampling rates for larger, non-intermodal shipments should not be adopted. The Board proposed reducing the sampling rates for non-intermodal shipments with 16 or more carloads per waybill to match the proposed sampling rates for non-intermodal shipments with 15 or fewer carloads as a way of simplifying the sampling rates while still achieving a net increase in the non-intermodal shipment data collected. The commenters' arguments concerning the variable characteristics of larger, non-coal shipments and the relevance of larger shipments to the small rate case process support the conclusion that the Waybill Sample would lose robustness for shipments of 16 or more carloads if the proposal were implemented. Although one of the goals of the Board's proposal was to simplify sampling rates, the Board also seeks to maintain a robust dataset that is of use to the agency and stakeholders. As noted in the *NPRM,* a greater number of observations would allow for additional or more granular factors to compare movements while maintaining representativeness. This applies to shipments of 16 or more carloads and justifies maintaining the current (more frequent) sampling rates for those carload shipments. Therefore, the Board will maintain the current sampling rates for non-intermodal shipments with 16 or more carloads, as suggested by AAR and CSXT.

USDA asks the Board to consider removing the stratification process altogether and collecting 100% of the waybill population data, ''postulat[ing]'' that if the ICC had possessed current technology at its disposal ''it would not have needed to undertake the statistical design process that led to the creation of today's [Waybill Sample].'' (USDA Comment 2.) USDA contends that collecting 100% of the waybill population should not be an additional burden for the railroads or the Board. (*Id.* at 2–3.) USDA argues alternatively that if 100% of the population data cannot be collected, the Board should ''significantly increase the sample size more than proposed.'' (*Id.* at 3.) Similarly, NGFA asks the Board to explore the feasibility of expanding to 100% data collection for non-intermodal carload traffic. (NGFA Comment 4.) In response, AAR raises various concerns about 100% data sampling, including regarding security-sensitive information and the risk of disclosure of confidential information. (AAR Reply 4–5.) AAR instead argues that the Board's proposal, as modified to maintain the non-intermodal sampling rates for larger shipments, ''strikes a balanced approach to obtaining more information, while preserving customer anonymity.'' (*Id.* at 5).

The Board will not pursue 100% waybill data collection at this time, although it does not foreclose the possibility of doing so in the future. While the arguments in favor of 100% collection may have merit, the Board expects the increase in the sample adopted in this final rule will achieve the goals of the *NPRM,* and the Board has not identified any implementation or data management issues that could delay such improvements. As a result, the advantages of increased sampling will be captured in the 2021 reporting year with sufficient time for carriers to adjust to the new requirements. In contrast, pursuing a 100% waybill collection at this stage of the rulemaking proceeding would delay implementing the important, incremental improvements to the waybill collection that will be achieved here. Further, prior to removing the sampling framework altogether, the Board, through notice and comment, would need to fully assess the utility of the collection and weigh that against any identified implementation or data management issues.

As an alternative to 100% data sampling, some commenters asked the Board to further stratify the collected waybill data based on additional shipment variables, such as the railroad involved in the movement, the distance of the movement, the commodity transported, and the geographic region of the movement. (NGFA Comment 4; USDA Comment 3–4.) Beyond shipment data, some commenters suggest collecting waybill data based on performance variables related to service quality, demurrage, and accessorial charges. (AFPM Comment 4–5; USDA Comment 4.) In response, AAR argues that ''these suggestions fail to recognize the nature and purpose of the waybill as a commercial document'' and ''[r]equiring additional, unrelated data to be included in waybills would require changes to industry practice and pose significant challenges.'' (AAR Reply 2–3.)

The Board will not pursue the further stratification by additional shipment variables or the addition of performance variables to waybill data collection at this time. The Board already collects certain performance data, albeit not on a shipment basis, pursuant to 49 CFR part 1250. *See, e.g., Pet. for Rulemaking to Amend 49 CFR part 1250,* EP 724 (Sub-No. 5), slip op. at 3–5 (STB served May 21, 2020). Similarly, the Board recognizes the importance of monitoring the application of demurrage and accessorial rules and charges, which is why it initiated several related proceedings. *See, e.g., Oversight Hearing on Demurrage & Accessorial Charges,* Docket No. EP 754; *Policy Statement on Demurrage & Accessorial Rules & Charges,* Docket No. EP 757; *Demurrage Billing Requirements,* Docket No. EP 759. Because the Board has received public input on the proposals in the *NPRM,* it can implement these changes for the 2021 reporting year with sufficient time for carriers to adjust to the new regulations, whereas pursuing further stratification beyond what is proposed in the *NPRM,* or adding performance data that was not proposed in the *NPRM,* could delay improvements to the Waybill Sample until the 2022 reporting year. Prior to considering any possible further stratification or adding performance data, the Board, through notice and comment, would need to assess, among other things, the benefits of such changes against any potential technical challenges.

Some commenters ask the Board to monitor closely the effect of implemented changes for any unintended consequences, (NGFA Comment 5), or to maintain a parallel Waybill Sample based on the current methodology for at least two years (WCTL Comment 5–6). In response, AAR states that ''[t]he Board can modify its processes to address anomalies or unintended consequences if they arise.'' (AAR Reply 6.) The Board rejects WCTL's suggestion that the Board maintain a parallel Waybill Sample because, compared to current regulations, the final rule's waybill sampling rates, which have been modified from the *NPRM,* are either greater or the same for each stratified category of non-intermodal carload shipments and will have their expansion factors adjusted accordingly; as such, there is no longer any basis for concern that the Board's Waybill Sample would become less representative for certain non-intermodal carload shipments.[8] As a

[8] Under 49 CFR 1090.2, rail and highway trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service—which generally covers intermodal shipments—is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Although the final rule reduces the sampling rates for larger intermodal shipments, the sampling rates adopted here will still produce a representative sample of intermodal shipments. *See NPRM,* EP 385 (Sub-No. 8), slip op. at 7 (explaining how sampling intermodal

result, increasing the sampling rates would not affect any analyses that are based on a representation of the entire population of waybill shipments. The Board will continue to monitor the waybill dataset for anomalies or unintended effects, as it does in the ordinary course.

RSI Logistics suggests that the Board should require reporting by ''holding companies'' consisting ''of multiple Class II or III railroads'' if their traffic volume otherwise meets the reporting threshold. (RSI Logistics Comment 1.) The Board declines to make this change. A change to the applicability provisions of 49 CFR 1244.2 is beyond the scope of this proceeding, which focuses on adjustments to the sampling rates and strata.[9]

B. Waybill Record Order

The Board's standards and format guidance for the waybill collection is currently found in Statement No. 81–1, *Procedure for Sampling Waybill Records by Computer* (2009 edition),[10] and currently provides that submitted waybills may be listed in any order. USDA comments that ''[u]nder systematic sampling, order is an important consideration to account for patterns in the frame that may correspond to the skip interval,'' and suggests that the Board ''either specify an order, use a random ordering, or even use a simple random sample rather than 'any order,' in order to avoid potential sampling bias.'' (USDA Comment 3 n.1.) The Board has no evidence suggesting that the Waybill Sample's unspecified sampling order has resulted in sampling bias. Moreover, the use of stratification is designed to reduce sampling bias. By sampling within certain strata, the sample is guaranteed to capture records of larger shipments that move less frequently. In addition, USDA's recommendation to use a random order is already addressed by using a different random start for each of the four subsamples within each stratum. Accordingly, the Board will not adopt USDA's recommendations.

C. Manual System of Reporting

In the *NPRM,* EP 385 (Sub-No. 8), slip op. at 3 n.5, the Board stated that ''parties may provide comments on whether the manual system [for reporting waybill data] should be eliminated given its current lack of use.'' In response, NGFA states that the Board ''should deem manually submitted waybills to be obsolete and rule that they no longer are a permissible way for carriers to submit such data.'' (NGFA Comment 5.) No other commenter addressed this issue, and the Board notes that no smaller carriers commented in this proceeding. Due to its current lack of use and the absence of support for its continuation, the Board sees no need to maintain the regulatory provision for manual reporting. Therefore, the Board will eliminate the manual system for reporting waybill data in the final rule and remove references to the manual system at sections 1244.4, 1244.5, 1244.6, and 1244.7.

D. Effective Date

CSXT asks the Board to provide a minimum of 90 days between the service date and the effective date of the final rule to give carriers sufficient time to make the programming changes necessary to comply with the revised reporting requirements. (CSXT Comment 3.) CSXT also requests that the Board limit, to the extent possible, revisions to Statement No. 81–1, and that if ''extensive procedural changes'' to Statement No. 81–1 are made, an additional 60 days be added to the 90 days it requested to implement the changes proposed in the *NPRM.* (*Id.* at 2–3.) The Board is sensitive to the practicalities surrounding any revision of the waybill reporting requirements. As a result, the Board will require reporting under the final rule to begin on January 1, 2021, which will give reporting carriers sufficient time to prepare for the revised requirements.[11] Prior to that time (*i.e.,* for all 2020 waybill reportings), carriers should continue to report according to the current sampling requirements.

* * *

For the reasons discussed above, after consideration of all the comments received, the Board is adopting a final rule to amend its regulations to specify separate waybill sampling strata for intermodal and non-intermodal shipments and establish revised waybill sampling rates as shown in Table 3, below.

TABLE 3—FINAL RULE WAYBILL SAMPLING RATES

Number of non-intermodal carloads on waybill	Sample rate
1 to 2	1/5
3 to 15	1/5
16 to 60	1/4
61 to 100	1/3
101 and over	1/2
Number of intermodal trailer/container units on waybill	**Sample rate**
1 to 2	1/40
3 and over	1/5

This rule is set out in full below and will be codified in the Code of Federal Regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Section 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 604(a), or certify that the final rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board certifies under 5 U.S.C. 605(b) that the final rule would not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA.[12] Under

shipments separately would be appropriate in light of intermodal billing practices and would avoid over-sampling).

[9] RSI Logistics also requests that the Waybill Sample be published ''in a timelier manner'' because delay in the release of the data ''reduces the value of some of the information.'' (RSI Logistics Comment 1.) Publishing the annual Waybill Sample requires compiling the waybill data, analyzing it for potential issues, and correcting any issues identified, and is a process that cannot begin until the end of each calendar year. The Board will continue to publish the Waybill Sample as promptly as possible while ensuring the reliability of the published data.

[10] The current edition of Statement No. 81–1 is posted on the Board's website and can be accessed by selecting the ''Economic Data'' quick link, then selecting the ''Carload Waybill Sample'' page link, and then selecting the ''Procedure for Sampling Waybill Records by Computer'' link under the ''Public Use Waybill Samples'' section.

[11] The Board's Office of Economics has revised Statement No. 81–1 to account for the changes adopted in this final rule. The revised edition is attached as Appendix B in the served decision, which is available to the public on the Board's website.

[12] For the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a

Continued

the Board's existing regulations, a railroad is required to file Waybill Sample data for all line-haul revenue waybills terminated on its lines if: (a) It terminated at least 4,500 revenue carloads in any of the three preceding years; or (b) it terminated at least 5% of the revenue carloads terminating in any state in any of the three preceding years. 49 CFR 1244.2. Under this criteria, 53 railroads are currently required to report Waybill Sample data. Of these 53 railroads, the Board estimates that 36 are Class III rail carriers, and therefore small businesses within the meaning of the RFA. Of the 53 railroads required to report Waybill Sample data, 45 railroads currently use Railinc Corporation (Railinc)—a wholly-owned information technology subsidiary of the Association of American Railroads—to sample their waybills.[13] Eight railroads currently sample their own waybills.

For the railroads that submit their waybills to Railinc for sampling, there will be no additional burden or costs as result of the changes adopted in the final rule. These entities will continue to submit all their waybills to Railinc, which will then sample the data in accordance with the Board's revised sampling rates. Because the Board contracts with Railinc to sample railroads' waybills, the entities that use Railinc to sample their waybills will incur no additional costs from Railinc as a result of the Board's proposed changes. Of the approximately 36 Class III rail carriers, the Board estimates that 34 carriers fall into this category and therefore will not incur any additional burden or cost.

For the railroads that choose to sample their own waybills, the final rule will not result in a significant economic impact. The purpose of the changes adopted in the final rule is to create a more robust Waybill Sample and result in more comprehensive information critical to the Board's decision-making and analyses. The final rule will increase the rate at which the Board samples certain railroad shipments and appropriately differentiate based on industry waybill practices for intermodal shipments. These changes will result in additional observations for certain shipments but will not significantly alter small entities' current practices for sampling their shipments. Based on the total burden hours described in the Paperwork Reduction Act analysis below, the Board estimates that, for railroads conducting their own sampling, the change in reporting procedures will result in a one-time burden of approximately 150 hours per railroad. Moreover, this impact will not apply to a substantial number of small entities, as the Board estimates that only two of the approximately 36 Class III rail carriers will incur this burden.

Accordingly, the Board certifies under 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

In this proceeding, the Board is modifying an existing collection of information that was approved by the Office of Management and Budget (OMB) under the collection of Waybill Sample data (OMB Control No. 2140–0015). In the *NPRM,* the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521 and OMB regulations at 5 CFR 1320.8(d)(3) regarding: (1) Whether the collection of information, as proposed below to the *NPRM,* is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

In the *NPRM,* the Board estimated that the proposed requirements would add a total one-time hourly burden of 640 hours (or approximately 213.3 hours per year as amortized over three years) because the railroads, in most cases, will need to edit their software programs to implement these changes. The Board anticipated that, once the burden of the one-time programming changes is incurred, the annual burden would remain the same as before this modification. The Board received one comment from CSXT, offering its estimates for the one-time hourly burden of actual time and costs of collection of Waybill Sample data.[14] The Board received five other comments that generally pertained to the Board's burden analysis under the PRA.

In its comments, CSXT provides two estimates for its one-time hourly burden based on certain assumptions. CSXT estimates a base one-time hourly burden of 200 hours, assuming (i) the introduction of two new strata, (ii) no changes to the Kth interval and random starts for the existing strata, and (iii) the use of existing Kth interval and random start tables for the two new strata. CSXT estimates an additional one-time hourly burden of 50 hours if new Kth intervals and random start tables are necessary. It also suggests that other procedural changes are likely to have a similarly additive effect. (CSXT Comment 2.)

CSXT's estimates are helpful but CSXT's first assumption—that there will be two new intermodal strata—is not accurate because the final rule creates only one new stratum. The first intermodal stratum of ''1 to 2'' trailer/container units remains unchanged from the ''1 to 2'' carloads stratum currently applied to intermodal shipments. The second intermodal stratum of ''3 and over'' trailer/container units is the only new stratum. It combines the other four carload strata currently applied to intermodal shipments into one stratum (*i.e.,* ''3 and over'' trailer/container units). Given that the number of new strata assumed by CSXT is reduced by half, its base estimate of 200 one-time burden hours may also be reduced by half, to 100 one-time burden hours.

CSXT's second assumption is for an additional one-time burden of 50 hours if the Board intends to add new tables/intervals for the new sampling rates of the new strata. The new sampling rate of ''1/5 waybills'' will require a new Kth interval and random starts table, which will use the same interval and start table, even though it will be applied to three different strata, (*i.e.,* the first two carload strata and the second intermodal stratum). This will result in an additional one-time burden of 50 hours, which the Board will add to the

''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III rail carriers have annual operating revenues of $20 million or less in 1991 dollars, or $40,384,263 or less when adjusted for inflation using 2019 data. Class II carriers have annual operating revenues of less than $250 million in 1991 dollars, or $504,803,294 when adjusted for inflation using 2019 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds in decisions and on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served June 10, 2020).

[13] Some railroads hire a third party to collect their waybills. That third party then sends these waybills to Railinc for sampling.

[14] In *NPRM,* Tables B–2, B–3 and B–4 show a total annual burden of 774.6 hours. This incorporates the annualized one-time hour burden of 213.3 hours under the proposed rule and the agency's most recent estimated annual burden of 561.3 hours for the extension request (due to a change in the number of carriers submitting their own data, there was a slight change from the annual burden of 555 hours approved in 2017).

adjusted base estimate of 100 hours, for a total of 150 one-time burden hours.

The other comments received, which generally pertain to the collection of this information, provided no data estimates or assumptions upon which to adjust the burdens under the PRA. These other comments pertain to those burdens in two ways. First, USDA and RSI Logistics propose general rule changes that would impact the burdens here. (USDA Comment 2–3; RSI Logistics Comment 1.) These comments are addressed above and are not adopted in this rulemaking. Second, AAR, AFPM, and NGFA point to the estimated total one-time hour burden (640 hours) under the PRA set forth in the *NPRM* as indicating the limited cost of the changes in the proposed rule. (AAR Comment 4 n.4; AFPM Comment 4; NGFA Comment 4–5.)

CSXT's estimates, as adjusted above, are reasonable. Therefore, the one-time burden for each of the eight railroads providing their own waybills will be increased from a total of 80 hours to 150 hours for each railroad providing its own waybills, as provided in the table below.

TABLE 4—ESTIMATED ADDITIONAL ONE-TIME HOUR BURDEN UNDER FINAL RULE FOR EACH RAILROAD PROVIDING ITS OWN WAYBILLS

Categories of respondents	Number of respondents	Estimated one-time hour burden (per respondent)	Total one-time hour burden
Railroads that conduct their own sampling and report monthly	5	150	750
Railroads that conduct their own sampling and report quarterly	3	150	450
Total One-Time Hour Burden			1,200

The Board's removal of the manual filing option does not impact the PRA analysis because the Board has not received a manual filing in 10 years.

This request to modify and extend an existing, approved collection will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11. The request will address the comments discussed above as part of the PRA approval process.

Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as non-major, as defined by 5 U.S.C. 804(2).

It is ordered:

1. The Board adopts the final rule set forth in this decision. Notice of the final rule will be published in the **Federal Register**.

2. This decision is effective on January 1, 2021.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

Decided: August 26, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

■ 1. The authority citation for part 1244 continues to read as follows:

Authority: 49 U.S.C. 1321, 10707, 11144, 11145.

■ 2. Revise § 1244.4 to read as follows:

§ 1244.4 Sampling of waybills.

(a) *Reporting samples.* Subject railroads shall submit waybill sample information as a computer file containing specified information from a sample waybill.

(1) Statement No. 81–1 contains information on the standards and format for the computer file.

(2) Effective January 1, 2021, and thereafter, unless otherwise ordered, the sampling rates are as follows:

TABLE 1 TO PARAGRAPH (a)(2)

Number of non-intermodal carloads on waybill	Sample rate
1 to 2	1/5
3 to 15	1/5
16 to 60	1/4
61 to 100	1/3
101 and over	1/2
Number of intermodal trailer/container units on waybill	**Sample rate**
1 to 2	1/40
3 and over	1/5

(b) *Controls and Annual Counts.* (1) Each subject railroad shall maintain a control procedure to ensure complete and accurate reporting for the waybill sampling. All pertinent waybill data shall be included on hard copy waybill submissions including inbound references for transit waybills. All such pertinent waybill data shall be legible.

(2) All subject railroads shall maintain a record of the number of line-haul revenue carloads that terminated on their line in a calendar year and shall furnish this number when requested by the Board.

(3) All subject railroads shall furnish the Board the control counts and file specification information as required by Statement No. 81–1.

(4) Certification by a responsible officer of the subject railroad as to the completeness and accuracy of sample shall be made once a year in accordance with the instructions on the Transmittal Form OPAD–1.

■ 3. Amend § 1244.5 by revising paragraphs (a) and (d) to read as follows:

§ 1244.5 Date of filing.

(a) The reporting period for which subject railroads submit waybill sample information shall be the audit (accounting) month except that subject railroads may submit waybill sample information quarterly as specified in Statement No. 81–1.

* * * * *

(d) Subject railroads shall complete the Transmittal Form OPAD–1 to accompany each waybill file submission.

■ 4. Revise § 1244.6 to read as follows:

§ 1244.6 Retention of files.

(a) Subject railroads shall retain the underlying hard copy waybills or facsimiles capable of producing legible copies, which shall be complete including inbound references for transit

waybills, for a minimum period of four years.

(b) This file of retained waybills shall be maintained in such a manner that railroads may readily retrieve waybill copies using the waybill identifier code as shown on the submitted waybill record.

■ 5. Amend § 1244.7 by revising paragraph (a) to read as follows:

§ 1244.7 Special studies.

(a) Although routine submission of hard copy waybills is not required, the Board may order railroads to submit hard copies of the underlying waybills for special studies.

* * * * *

[FR Doc. 2020–19195 Filed 9–2–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket Nos. 090206140–91081–03 and 120405260–4258–02; RTID 0648–XA455]

Revised Reporting Requirements Due to Catastrophic Conditions for Federal Seafood Dealers and Individual Fishing Quota Dealers in Portions of Louisiana and Texas

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

ACTION: Temporary rule; determination of catastrophic conditions.

SUMMARY: In accordance with the regulations implementing the individual fishing quota (IFQ) and Federal dealer reporting programs specific to the commercial reef fish fishery in the Gulf of Mexico (Gulf) and the coastal migratory pelagic (CMP) fisheries in the Gulf, the Regional Administrator (RA), Southeast Region, NMFS has determined that Hurricane Laura has caused catastrophic conditions in the Gulf for certain Louisiana parishes and Texas counties. This temporary rule authorizes any dealer in the affected area described in this temporary rule who does not have access to electronic reporting to delay reporting of trip tickets to NMFS and authorizes IFQ dealers within the affected area to use paper-based forms, if necessary, for basic required administrative functions, *e.g.,* landing transactions. This temporary rule is intended to facilitate continuation of IFQ and dealer reporting operations during the period of catastrophic conditions.

DATES: The RA is authorizing Federal dealers and IFQ dealers in the affected area to use revised reporting methods from August 31, 2020, through October 5, 2020.

FOR FURTHER INFORMATION CONTACT: Britni LaVine, telephone 727–551–5766. IFQ Customer Service, telephone: 866–425–7627, fax: 727–824–5308, email: *SER-IFQ.Support@noaa.gov*. For Federal dealer reporting, Fisheries Monitoring Branch, telephone: 305–361–4581.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). The CMP fishery is managed under the FMP for CMP Resources in the Gulf of Mexico and Atlantic Region, prepared by the Gulf Council and South Atlantic Fishery Management Council. Both FMPs are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Generic Dealer Amendment established Federal dealer reporting requirements for federally permitted dealers in the Gulf and South Atlantic (79 FR 19490; April 9, 2014). Amendment 26 to the FMP established an IFQ program for the commercial red snapper component of the Gulf reef fish fishery (71 FR 67447; November 22, 2006). Amendment 29 to the FMP established an IFQ program for the commercial grouper and tilefish components of the Gulf reef fish fishery (74 FR 44732; August 31, 2009). Regulations implementing these IFQ programs (50 CFR 622.21 and 622.22) and the dealer reporting requirements (50 CFR 622.5(c)) require that Federal dealers and IFQ participants have access to a computer and internet and that they conduct administrative functions associated with dealer reporting and the IFQ program, *e.g.,* landing transactions, online. However, these regulations also specify that during catastrophic conditions, as determined by the RA, the RA may waive or modify the reporting time requirements for dealers and authorize IFQ participants to use paper-based forms to complete administrative functions for the duration of the catastrophic conditions. The RA must determine that catastrophic conditions exist, specify the duration of the catastrophic conditions, and specify which participants or geographic areas are deemed affected.

Hurricane Laura made landfall in the U.S. near Cameron, Louisiana, in the Gulf as a Category 4 hurricane on August 27, 2020. Strong winds and flooding from this hurricane impacted communities throughout coastal Louisiana and Texas, resulting in power outages and damage to homes, businesses, and infrastructure. As a result, the RA has determined that catastrophic conditions exist in the Gulf for the Louisiana parishes of Saint Tammany, Orleans, Saint Bernard, Plaquemines, Jefferson, Saint Charles, Lafourche, Terrebonne, Saint Mary, Iberia, Vermilion, and Cameron; and for the Texas counties of Orange, Jefferson, Chambers, Harris, and Galveston.

Through this temporary rule, the RA is authorizing Federal dealers in these affected areas to delay reporting of trip tickets to NOAA Fisheries and IFQ dealers in this affected area to use paper-based forms, from August 31, 2020, through October 5, 2020. NMFS will provide additional notification to affected dealers via NOAA Weather Radio, Fishery Bulletins, and other appropriate means. NOAA Fisheries will continue to monitor and re-evaluate the areas and duration of the catastrophic conditions, as necessary.

Dealers may delay electronic reporting of trip tickets to NMFS during catastrophic conditions. Dealers are to report all landings to NMFS as soon as possible. Assistance for Federal dealers in effected area is available from the Fisheries Monitoring Branch at 1–305–361–4581. NMFS previously provided IFQ dealers with the necessary paper forms and instructions for submission in the event of catastrophic conditions. Paper forms are also available from the RA upon request. The electronic systems for submitting information to NMFS will continue to be available to all dealers, and dealers in the affected area are encouraged to continue using these systems, if accessible.

The administrative program functions available to IFQ dealers in the area affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via the Catch Share Support line, 1–866–425–7627 Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern Time.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is consistent with the regulations in 50 CFR 622.5(c)(iii), 622.21(a)(3)(iii), and 622.22(a)(3)(iii) which were issued pursuant to section 304(b) of the Magnuson-Stevens Act, and are exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because this temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the final rules implementing the Gulf IFQ programs and the Gulf and Atlantic Federal dealer reporting have already been subject to notice and public comment. These rules authorize the RA to determine when catastrophic conditions exist, and which participants or geographic areas are deemed affected by catastrophic conditions. The final rules also authorize the RA to provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA Weather Radio, Fishery Bulletins, and other appropriate means. All that remains is to notify the public that catastrophic conditions exist and that paper forms may be utilized by IFQ dealers in the affected area and that Federal dealers may submit delayed reports. Additionally, delaying this temporary rule to provide prior notice and opportunity for public comment would be contrary to the public interest because affected dealers continue to receive these species in the affected area and need a means of completing their landing transactions. With the power outages and damages to infrastructure that have occurred in the affected area due to Hurricane Laura, numerous businesses are unable to complete landings transactions and dealer reports electronically. In order to continue with their businesses, IFQ dealers need to be aware they can still complete landing transactions and dealer reports using the paper forms.

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: August 31, 2020.

Kelly Denit,

Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 2020–19522 Filed 8–31–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004515–3608–02; RTID 0648–XA427]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2020 Commercial Closure for South Atlantic Red Snapper

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for red snapper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial landings of red snapper have reached the commercial annual catch limit (ACL) for the 2020 fishing year. Therefore, NMFS is closing the commercial sector for red snapper in the South Atlantic EEZ on September 5, 2020. This closure is necessary to protect the red snapper resource.

DATES: This temporary rule is effective from 12:01 a.m., eastern time, on September 5, 2020, through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *frank.helies@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes red snapper 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 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.

The commercial ACL for red snapper in the South Atlantic is 124,815 lb (56,615 kg), round weight, as specified in 50 CFR 622.193(y)(1).

Under 50 CFR 622.193(y)(1), NMFS is required to close the commercial sector for red snapper when the commercial ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL for South Atlantic red snapper will be reached by September 5, 2020. Accordingly, the commercial sector for South Atlantic red snapper is closed effective at 12:01 a.m., eastern time, on September 5, 2020. For the 2021 fishing year, unless otherwise specified, the commercial season will begin on the second Monday in July (50 CFR 622.183(b)(5)(i)).

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having red snapper on board must have landed and bartered, traded, or sold such red snapper prior to 12:01 a.m., eastern time, on September 5, 2020. Because the recreational sector closed on July 18, 2020 (85 FR 36165, June 15, 2020), after the commercial sector closure that is effective on September 5, 2020, all harvest and possession of red snapper in or from the South Atlantic EEZ is prohibited for the remainder of the 2020 fishing year.

On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited. This prohibition on the harvest, possession, sale or purchase apply in the South Atlantic on a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless if such species were harvested or possessed in state or Federal waters (50 CFR 622.193(y)(1) and 622.181(c)(2)).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(y)(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 sector for red snapper 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 that established the commercial season, ACL, and accountability measure for red snapper has already 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 of the need to immediately implement this action to protect red snapper because the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. 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: August 31, 2020.

Kelly Denit,

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

[FR Doc. 2020–19517 Filed 8–31–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 172
Thursday, September 3, 2020

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1222

[Document No. AMS–SC–19–0110]

Paper and Paper-Based Packaging Promotion, Research and Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible domestic manufacturers and importers of paper and paper-based packaging to determine whether they favor continuance of the Agricultural Marketing Service's (AMS) regulations regarding a national paper and paper-based packaging research and promotion program.

DATES: This referendum will be conducted by express mail and electronic ballot from October 12, 2020, through October 23, 2020. Persons who domestically manufactured and imported 100,000 short tons or more of paper and paper-based packaging during the representative period from January 1 through December 31, 2019, are eligible to vote in the referendum. Ballots delivered to AMS via express mail or email must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on October 23, 2020.

ADDRESSES: Copies of the Paper and Paper-Based Packaging Promotion, Research, and Information Order may be obtained from: Referendum Agent, Promotion and Economics Division (PED), Specialty Crops Program (SCP), AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244, telephone: (202) 720–9915; facsimile: (202) 205–2800.

FOR FURTHER INFORMATION CONTACT: Stacy Jones King, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; Stacy Jones King at (202) 720–4140 or via electronic mail: *Stacy.JonesKing@usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425) (1996 Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Paper and Paper-Based packaging Research, Promotion, Consumer Education and Industry Information Order (7 CFR part 1222) is favored by eligible domestic manufacturers and importers of paper and paper-based packaging. The program is authorized under the 1996 Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1 through December 31, 2019. Persons who domestically manufactured and imported 100,000 short tons or more of paper and paper-based packaging during the representative period are eligible to vote in the referendum. Persons who received an exemption from assessments pursuant to § 1222.53 for the entire representative period are ineligible to vote. The Department will provide the option for electronic balloting. The referendum will be conducted by express mail and electronic ballot from October 12 through October 23, 2020. Further details will be provided in the ballot instructions.

The program took effect in 2013. Section 518 of the 1996 Act (7 U.S.C. 7417) authorizes continuance referenda. Under § 1222.81(b) of the Order, the U.S. Department of Agriculture (USDA) must conduct a referendum no later than seven years after the program became effective and every seven years thereafter or when 10 percent or more of persons eligible to vote petition the Secretary of Agriculture to hold a referendum to determine if persons subject to assessment favor continuance of the program. USDA would continue the program if continuance is favored by a majority of domestic manufacturers and importers of paper and paper-based packaging voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that approximately 40 entities will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Stacy Jones King, Agricultural Marketing Specialist, and Heather Pichelman, Director, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures at 7 CFR 1222.100 through 1222.108, which were issued pursuant to the 1996 Act, shall be used to conduct the referendum.

The referendum agents will express mail or email the ballots to be cast in the referendum and voting instructions to all known, eligible domestic manufacturers and importers prior to the first day of the voting period. Persons who domestically manufactured and imported 100,000 short tons or more of paper and paper-based packaging during the representative period are eligible to vote. Persons who received an exemption from assessments pursuant to § 1222.53 during the entire representative period are ineligible to vote. Any eligible domestic manufacturer or importer who does not receive a ballot should contact a referendum agent no later than one week before the end of the voting period. Ballots delivered via express mail or email must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on October 23, 2020.

List of Subjects in 7 CFR Part 1222

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Promotion, Reporting and recordkeeping requirements, Paper and Paper-based Packaging.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–17547 Filed 9–2–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket ID OCC–2020–0008]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. OP–1720]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–ZA16

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AD42

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

RIN 3133–AF14

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance; Extension of Comment Period

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); National Credit Union Administration (NCUA).

ACTION: Notification and request for comment; extension of comment period.

SUMMARY: On July 6, 2020, the OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) published in the **Federal Register** a notice soliciting comments on a proposal to reorganize, revise, and expand the Interagency Questions and Answers Regarding Flood Insurance (July 2020 Proposed Questions and Answers). The July 2020 Proposed Questions and Answers provided for a comment period ending on September 4, 2020. The Agencies have determined that an extension of the comment period until November 3, 2020, is appropriate. This action will allow interested parties additional time to analyze the proposal and prepare and submit comments.

DATES: The comment period for the proposed revisions to the Interagency Flood Questions and Answers, published on July 6, 2020 (85 FR 40442), is extended from September 4, 2020, to November 3, 2020.

ADDRESSES: You may submit comments by any of the methods identified in the proposal.

FOR FURTHER INFORMATION CONTACT:

OCC: Rhonda L. Daniels, Compliance Specialist, Compliance Risk Policy Division, (202) 649–5405; Heidi M. Thomas, Special Counsel, or Cyndy MacMahon, Attorney, Chief Counsel's Office, (202) 649–6350, or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst (202) 452–2705 or Vivian W. Wong, Senior Counsel (202) 452–3667, Division of Consumer and Community Affairs; Daniel Ericson, Senior Counsel (202) 452–3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Navid Choudhury, Counsel, Policy Unit, Legal Division, (202) 898–6526; or Simin Ho, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–6907.

FCA: Ira D. Marshall, Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4379, TTY (703) 883–4056 or Jennifer Cohn, Senior Counsel, Office of General Counsel, (720) 213–0440.

NCUA: Sarah Chung, Senior Staff Attorney, Office of General Counsel, (703) 518–6540, or Lou Pham, Senior Credit Specialist, Office of Examination and Insurance, (703) 518–6360.

SUPPLEMENTARY INFORMATION: On July 6, 2020, the Agencies published in the **Federal Register** [1] a notice soliciting comments on a proposal to reorganize, revise, and expand the Interagency Questions and Answers Regarding Flood Insurance (July 2020 Proposed Questions and Answers). The Agencies proposed new and revised guidance addressing the most frequently asked questions and answers about flood insurance to help lenders meet their responsibilities under Federal flood insurance law and to increase public understanding of these requirements.

The July 2020 Proposed Questions and Answers stated that the comment period would close on September 4, 2020. The Agencies received public comments requesting an extension of the comment period due to the extent of the revisions proposed by the Agencies and the COVID–19 emergency. An extension of the comment period will provide additional opportunity for the public to review and prepare comments. Therefore, the Agencies are extending the end of the comment period for the proposal from September 4, 2020, to November 3, 2020.

Blake Paulson,

Senior Deputy Comptroller and Chief Operating Officer.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on August 31, 2020.

Robert E. Feldman,

Executive Secretary.

Dated at McLean, VA, this 31st day of August 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

Gerard Poliquin,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 2020–19575 Filed 9–2–20; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 7535–01–P; 6705–01–P

[1] 85 FR 40442 (July 6, 2020).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0435]

Safety Zone; Patuxent and Patapsco Rivers, Solomons, MD, and Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule to establish two separate temporary safety zones for certain waters of the Patuxent River at Solomons, MD, on September 5, 2020, (with an alternate date of September 6, 2020) and the Patapsco River (Inner Harbor) at Baltimore, MD, on October 2, 2020, (with no alternate date), during fireworks displays. The proposed rule is being withdrawn because it is no longer necessary. The event sponsors have cancelled the events.

DATES: As of September 3, 2020, the Coast Guard withdraws the proposed

rule published August 7, 2020, (85 FR 47937).

ADDRESSES: To view the docket for this withdrawn rulemaking, go to *https://www.regulations.gov,* type USCG–2020–0435 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, call or email MST2 Shaun Landante, Waterways Management Division, U.S. Coast Guard Sector Maryland—National Capital Region; telephone 410–576–2570, email *shaun.c.landante@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2020, we published a notice of proposed rulemaking entitled ''Safety Zone; Patuxent and Patapsco Rivers, Solomons, MD and Baltimore, MD (85 FR 47937). The rulemaking concerned the Coast Guard's proposal to establish temporary safety zones for certain waters of the Patuxent River, near Solomons, MD, effective 8 p.m. to 10:30 p.m. on September 5, 2020, and Patapsco River (Inner Harbor), Baltimore, MD, effective 8 p.m. to 10 p.m. on October 2, 2020. This action was necessary to provide for the safety of life on these waters during two separate fireworks displays. This rulemaking would have prohibited persons and vessels from entering the safety zones unless authorized by the Captain of the Port Maryland—National Capital Region or the Coast Guard Patrol Commander.

Withdrawal

The proposed rule is being withdrawn due to safety zones no longer being necessary following a cancellation of both fireworks displays by the event sponsors.

Authority

We issue this notice of withdrawal under the authority of 46 U.S.C. 70034.

Dated: August 31, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland—National Capital Region.

[FR Doc. 2020–19639 Filed 9–2–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0332; FRL–10013–24–Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Air Quality Standard (NAAQS) Second Maintenance Plan for the Altoona (Blair County) Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (DEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Altoona, Blair County, Pennsylvania area (Altoona Area). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0332 at *https://www.regulations.gov,* or via email to *spielberger.susan@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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

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: On February 27, 2020, DEP submitted a revision to the Pennsylvania SIP to incorporate a plan for maintaining the 1997 ozone NAAQS in the Altoona Area through August 1, 2027, in accordance with CAA section 175A.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856),[1] EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated the Altoona Area, which comprises Blair County, Pennsylvania, as nonattainment for the 1997 ozone NAAQS.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),[2] the state can

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

[2] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all

Continued

submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well as contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On August 1, 2007 (72 FR 41906 effective August 1, 2007), EPA approved a redesignation request (and maintenance plan) from DEP for the Altoona 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.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e,* maintenance areas) for the 1997 ozone NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[3] However, in *South Coast Air Quality Management District* v. *EPA*[4] (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.,* areas like the Altoona Area) that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, 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. The 1992 Calcagni Memo[5] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See 1992 Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing the conditions for allowing the submittal of less rigorous ''limited maintenance plans'' (LMPs)[6] that the requirements of CAA section 175A could be met by demonstrating that the area's design value[7] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on February 27, 2020, DEP submitted an LMP for the Altoona Area, following EPA's LMP guidance and demonstrating that the area will maintain the 1997 ozone NAAQS through August 1, 2027, *i.e.,* through the entire 20-year maintenance period.

II. Summary of SIP Revision and EPA Analysis

DEP's February 27, 2020 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the 1992 Calcagni Memo as follows.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Altoona Area, DEP used 2004 for the attainment year inventory, because 2004 was one of the years in the 2003–2005 three-year period when the area first attained the 1997 ozone NAAQS.[8] The Altoona Area continued to monitor attainment of the 1997 ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (*i.e.,* maintenance) of the NAAQS. Thus, DEP is using 2014 as representing attainment level emissions for its second maintenance plan. Pennsylvania used 2014 summer day emissions from EPA's 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1.[9]

TABLE 1—2014 TYPICAL SUMMER DAY NO_X AND VOC EMISSIONS FOR THE ALTOONA AREA

(Tons/day)

Source category	NO_X emissions	VOC emissions
Point	2.51	0.90
Nonpoint	3.73	6.96
Onroad	4.49	2.27
Nonroad	0.77	0.77
Total	11.50	11.90

The data shown in Table 1 is based on the 2014 National Emissions Inventory (NEI) version 2.[10] The inventory addresses four anthropogenic emission

applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] See 80 FR 12315 (March 6, 2015).

[4] 882 F.3d 1138 (D.C. Cir. 2018).

[5] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (1992 Calcagni Memo).

[6] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[7] 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.

[8] For more information, see EPA's June 7, 2007 notice proposing to redesignate the Altoona Area to attainment for the 1997 ozone NAAQS (72 FR 31495).

[9] For more information, visit *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx.*

[10] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and onroad mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to DEP. Examples of point sources include kraft mills, electrical generating units (EGUs), and pharmaceutical factories. Nonpoint sources include emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The onroad emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The nonroad emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft. EPA reviewed the emissions inventory submitted by DEP and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value or ''DV'') at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 ppm or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document as well as EPA's November 20, 2018 ''Resource Document for 1997 Ozone NAAQS Areas: Supporting Information for States Developing Maintenance Plans'' (2018 Resource Document),[11] EPA believes that if the most recent DV for the area is well below the NAAQS (*e.g.* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration (PSD) requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating continued maintenance with the 1997 ozone NAAQS, DEP provided 3-year DVs for the Altoona Area from 2007 to 2018. This includes DVs for 2005–2007, 2006–2008, 2007–2009, 2008–2010, 2009–2011, 2010–2012, 2011–2013, 2012–2014, 2013–2015, 2014–2016, 2015–2017, and 2016–2018, which are shown in Table 2.[12] In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Altoona Area, as submitted by Pennsylvania and recorded in EPA's Air Quality System (AQS). The most recent DV (*i.e.* 2017–2019) is also shown in Table 2.[13] There is one ambient air quality monitor located in the Altoona Area (AQS Site ID 42–013–0801).

TABLE 2—1997 OZONE NAAQS DESIGN VALUES (ppm) FOR THE ALTOONA AREA

2005–2007	2006–2008	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019
0.073	0.072	0.070	0.070	0.070	0.075	0.073	0.068	0.064	0.063	0.064	X	0.063

As can be seen in Table 2, DVs in the Altoona Area have been well below 85% of the 1997 ozone NAAQS (*i.e.,* 0.071 ppm) since the 2012–2014 design value. The most recent DV (*i.e.* 2017–2019) in the Altoona Area is 0.063 ppm, which is well below 85% of the 1997 ozone NAAQS. EPA notes that the DV for 2016–2018 for Altoona is represented by an ''X'' in Table 2 because the 2016–2018 DV does not meet the completeness criteria of 40 CFR part 50 appendix I, which require that the three-year average data capture rate be at least 90%.[14] The three-year average data capture for the Altoona Area monitor for the 2016–2018 monitoring season was 89%. Therefore, the 2016–2018 DV, calculated as 0.063 ppm, is invalid. According to DEP's February 27, 2020 submittal, this was due to UV lamp instability issues at the Blair County Monitor (AQS Site ID 42–013–0801). The issue was resolved and the monitor continues to record concentrations that are well below the 1997 ozone NAAQS.[15] As Table 2 shows, DVs have remained below 85% of the 1997 ozone NAAQS since 2012–2014. Additionally, the previous DV (2015–2017) and the subsequent DV (2017–2019) were 0.064 ppm and 0.063 ppm, respectively. Furthermore, in 2017, 2018, and 2019, there were zero instances in which the Blair County monitor recorded a highest daily ambient ozone concentration in excess of 0.084 ppm.[16] Therefore, EPA has a high level of confidence that there is very little likelihood of future violations of the 1997 ozone NAAQS in the Altoona area, and that Pennsylvania's February 27, 2020 submittal is adequate.

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. According to EPA's 2018 Resource Document, several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take

[11] This resource document is included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0332 and is also available at *https://www.epa.gov/sites/production/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf.*

[12] See also Table II–2 of DEP's February 27, 2020 submittal, included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0332.

[13] This data is also included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0332 and is also available at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[14] 40 CFR part 50 appendix I, section 2.3(b) states that comparison to the 1997 ozone NAAQS is based on three consecutive, complete calendar years of air quality monitoring data. ''This requirement is met for the three-year period at a monitoring site if daily maximum 8-hour average concentrations are available for at least 90%, on average, of the days during the designated ozone monitoring season, with a minimum data completeness in any one year of at least 75% of the designated sampling days.''

[15] See FN1 on Page 2 of DEP's LMP.

[16] This data is also included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0332 and is also available at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

the most recent DV for the area and add the maximum design value increase (over one or more consecutive years) that has been observed in the area over the past several years. A sum that does not exceed the level of the 1997 ozone NAAQS may be a good indicator of expected continued attainment. As shown in Table 2 in this document, the largest increases in DVs from 2007 to 2019 was 0.005 ppm, which occurred between the 2009–2011 (0.070 ppm) and 2010–2012 (0.075 ppm) DVs. Adding 0.005 ppm to the most recent DV of 0.063 ppm results in 0.068 ppm, a sum that is still below the 1997 ozone NAAQS.

The Altoona Area has maintained air quality levels well below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2005.[17] Additional supporting information that the area is expected to continue to maintain the standard can be found in projections of future year DVs that EPA recently completed to assist states with the development of interstate transport SIPs for the 2015 8-hour ozone NAAQS. Those projections, made for the year 2023, show that the DV for the Altoona Area is expected to be 0.063 ppm.[18] Therefore, EPA proposes to determine that future violations of the 1997 ozone NAAQS in the Altoona Area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the February 27, 2020 submittal, DEP commits to continue to operate their air monitoring network in accordance with 40 CFR part 58. DEP also commits to track the attainment status of the Altoona Area for the 1997 ozone NAAQS through the review of air quality and emissions data during the second maintenance period. This includes an annual evaluation of vehicles miles traveled (VMT) and stationary source emissions data compared to the assumptions included in the LMP. DEP also states that it will evaluate the periodic (*i.e.* every three years) emission inventories prepared under EPA's Air Emission Reporting Requirements (40 CFR part 51, subpart A). Based on these evaluations, DEP will consider whether any further emission control measures should be implemented for the Altoona Area. EPA has analyzed the commitments in DEP's submittal and is proposing to determine that they meet the requirements for continued air quality monitoring and verification of continued attainment.

D. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must require that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175(A)(d) of the CAA.

DEP's February 27, 2020 submittal includes a contingency plan for the Altoona Area. In the event that the fourth highest 8-hour ozone concentration at the Blair County monitor exceeds 84 ppb for two consecutive years, but prior to an actual violation of the NAAQS, DEP will evaluate whether additional local emission control measures should be implemented that may prevent a violation of the NAAQS.[19] After analyzing the conditions causing the excessive ozone levels, evaluating the effectiveness of potential corrective measures, and considering the potential effects of federal, state, and local measures that have been adopted but not yet implemented, DEP will begin the process of implementing selected measures so that they can be implemented as expeditiously as practicable following a violation of the NAAQS. In the event of a violation, DEP commits to adopting additional emission reduction measures as expeditiously as practicable in accordance with the schedule included in the contingency plan as well as the CAA and applicable Pennsylvania statutory requirements.

DEP will use the following criteria when considering additional emission reduction measures to adopt to address a violation of the 1997 ozone NAAQS in the Altoona County Area: (1) Air quality analysis indicating the nature of the violation, including the cause, location, and source; (2) emission reduction potential, including extent to which emission generating sources occur in the nonattainment area; (3) timeliness of implementation in terms of the potential to return the area to attainment as expeditiously as practicable; and (4) costs, equity, and cost-effectiveness. The measures DEP would consider pursuing for adoption in the Altoona Area include, but are not limited to, those summarized in Table 3. If additional emission reductions are necessary, DEP commits to adopt additional emission reduction measures to attain and maintain the 1997 ozone NAAQS.

TABLE 3—ALTOONA AREA SECOND MAINTENANCE PLAN CONTINGENCY MEASURES

Non-Regulatory Measures:
Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines).
Diesel retrofit (including replacement, repowering or alternative fuel use) for public or private local onroad or offroad fleets.
Idling reduction technology for Class 2 yard locomotives.
Idling reduction technologies or strategies for truck stops, warehouses, and other freight-handling facilities.
Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
Additional promotion of alternative fuel (*e.g.* biodiesel) for home heating and agricultural use.
Regulatory Measures:[20]

[17] As explained in EPA's June 7, 2007 notice proposing to redesignate the Altoona Area as attainment for the 1997 ozone NAAQS (72 FR 31495), the 2003–2005 DV for the Altoona County Area was 0.077 ppm.

[18] See U.S. EPA, ''Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values'', Office of Air Quality Planning and Standards, dated June 2018, available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-updated-2023-projected-ozone-design.*

[19] A violation of the NAAQS occurs when an area's 3-year DV exceeds the NAAQS.

TABLE 3—ALTOONA AREA SECOND MAINTENANCE PLAN CONTINGENCY MEASURES—Continued

Additional control on consumer products.[21]
Additional controls on portable fuel containers.[22]

The contingency plan includes schedules for the adoption and implementation of both non-regulatory and regulatory contingency measures, including schedules for adopting potential land use planning strategies not listed in Table 3, which are summarized in Tables 4 and 5, respectively.

TABLE 4—IMPLEMENTATION SCHEDULE FOR ALTOONA AREA NON-REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 2 months	DEP will identify stakeholders for potential non-regulatory measures for further development.
Within 3 months	If funding is necessary, DEP will identify potential sources of funding and the timeframe for when funds would be available.
Within 6 months	Work with the relevant planning commission(s) to identify potential land use planning strategies and projects with quantifiable and timely emission benefits. Work with the Pennsylvania Department of Community and Economic Development and other state agencies to assist these measures.
Within 9 months	If state loans or grants are required, DEP will enter into agreements with implementing organizations. DEP will also quantify projected emission benefits.
Within 12 months	DEP will submit revised SIP to EPA.
Within 12–24 months	DEP will implement strategies and projects.

TABLE 5—IMPLEMENTATION SCHEDULE FOR ALTOONA AREA REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 1 month	DEP will submit request to begin regulatory development process.
Within 3 months	Request will be reviewed by the Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council, and other advisory committees as appropriate.
Within 6 months	Environmental Quality Board (EQB) meeting/action.
Within 8 months	DEP will publish regulatory measure in the Pennsylvania Bulletin for comment as proposed rulemaking.
Within 10 months	DEP will hold a public hearing and comment period on proposed rulemaking.
Within 11 months	House and Senate Standing Committee and Independent Regulatory Review Commission (IRCC) comment on proposed rule.
Within 13 months	AQTAC, Citizens Advisory Council, and other committees will review responses to comment(s), if applicable, and the draft final rulemaking.
Within 16 months	EQB meeting/action.
Within 17 months	The IRCC will take action on final rulemaking.
Within 18 months	Attorney General's review/action.
Within 19 months	DEP will publish the regulatory measure as a final rulemaking in the Pennsylvania Bulletin and submit to EPA as a SIP revision. The regulation will become effective upon publication in the Pennsylvania Bulletin.

EPA proposes to find that the contingency plan included in DEP's February 27, 2020 submittal satisfies the pertinent requirements of CAA section 175A(d). EPA notes that while six of the potential contingency measures included in the Commonwealth's second maintenance plan are non-regulatory, their inclusion among other measures is overall SIP-strengthening, and their inclusion does not alter EPA's proposal to find the LMP is fully approvable. EPA also finds that the submittal acknowledges Pennsylvania's continuing requirement to implement all pollution control measures that were contained in the SIP before redesignation of the Altoona Area to attainment.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB)

[20] These regulatory measures were considered potential cost-effective and timely control strategies by the Ozone Transport Commission (OTC) as well as the Mid-Atlantic Regional Air Management Association and the Mid-Atlantic/Northeast Visibility Union. The OTC is a multi-state organization responsible for developing regional solutions to ground-level ozone pollution in the Northeast and Mid-Atlantic, including the development of model rules that member states may adopt. OTC member states include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. For more information on the OTC, visit *https://otcair.org/index.asp*. To view the model rules developed by the OTC, including those for consumer products and portable fuel containers, visit *https://otcair.org/document.asp?fview=modelrules.*

[21] Pennsylvania's existing controls on consumer products are under 25 Pa. Code Chapter 130, Subchapters B and C (38 Pa.B. 5598). This contingency measure includes the adoption of additional controls on consumer products such as VOC limits for adhesive removers.

[22] Existing controls on portable fuel containers can be found under 40 CFR 59 subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers.

contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).''

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determination, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and transportation control measure implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Altoona Area remains under the obligation to meet the applicable conformity requirements for the 1997 ozone NAAQS.

III. Proposed Action

EPA's review of DEP's February 27, 2020 submittal indicates that it meets all applicable CAA requirements, specifically the requirements of CAA section 175A. EPA is proposing to approve the second maintenance plan for the Altoona Area as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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, 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 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).

In addition, this proposed rulemaking, proposing approval of Pennsylvania's second maintenance plan for the Altoona Area, 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.

List of Subjects in 40 CFR Part 52

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

Dated: August 4, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–17422 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0121; FRL–10013–57–Region 9]

Air Plan Approval; California; South Coast Air Quality Management District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) and the Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from the use and application of industrial adhesives. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0121 at *https://www.regulations.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*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to

make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3024 or by email at *lazarus.arnold@epa.gov*.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1168	Adhesive and Sealant Applications	October 6, 2017	May 23, 2018.
VCAPCD	74.20	Adhesives and Sealants	October 9, 2018	January 31, 2019.

On July 31, 2019, the submittal for VCAPCD Rule 74.20 was deemed complete by operation of law pursuant to the criteria in 40 CFR part 51 Appendix V and on November 23, 2018, the submittal for SCAQMD Rule 1168 was deemed complete by operation of law pursuant to the criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review under 40 CFR 51.103.

B. Are there other versions of these rules?

We approved an earlier version of SCAQMD Rule 1168 into the SIP on December 21, 2009 (74 FR 67821).

We approved an earlier version of VCAPCD Rule 74.20 into the SIP on August 30, 2013 (78 FR 53680).

C. What is the purpose of the submitted rule revisions?

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions by limiting VOC content in adhesives and sealants. The EPA's technical support documents (TSDs), which are in the docket for today's rulemaking, have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SCAQMD regulates an ozone nonattainment area classified as ''Extreme'' for the for the 1997, 2008, and 2015 8-hour ozone national ambient air quality standards (NAAQS) (40 CFR 81.305), and the VCAPCD regulates an ozone nonattainment area classified as ''Serious'' for the 1997, 2008, and 2015 8-hour ozone NAAQS (40 CFR 81.305). Therefore SCAQMD Rule 1168 and VCAPCD Rule 74.20 must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision, relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control Techniques Guidelines for Miscellaneous Industrial Adhesives,'' EPA–453/R–08–005, September 2008.

B. Do the rules meet the evaluation criteria?

These rules meet CAA requirements and are consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The VCAPCD TSD includes recommendations for the next time the agency modifies their rules. Regarding SCAQMD Rule 1168, we have not identified any further recommendations at this time.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve these submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until October 5, 2020. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP and replace the previously approved versions of these rules.

III. Incorporation by Reference

In these rules, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by

reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the VCAPCD and SCAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://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).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: August 13, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–18112 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0288; FRL–10013–05–Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone NAAQS Second Maintenance Plan for the Harrisburg-Lebanon-Carlisle Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Commonwealth's plan submitted by the Pennsylvania Department of Environmental Protection (DEP), for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Harrisburg-Lebanon-Carlisle area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0288 at *https://www.regulations.gov,* or via email to *spielberger.susan@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 *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Ramesh Mahadevan, 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) 814–2237. Mr. Mahadevan can also be reached via electronic mail at *mahadevan.ramesh@epa.gov*.

SUPPLEMENTARY INFORMATION: On February 27, 2020, DEP submitted a revision to the Pennsylvania SIP to incorporate a plan for maintaining the 1997 ozone NAAQS through July 25, 2027 in accordance with CAA section 175A. The submittal is titled, ''State Implementation Plan Revision: Second Maintenance Plan for the Harrisburg-Lebanon-Carlisle 1997 8-Hour Ozone Nonattainment Area,'' which will be referred to as the ''Harrisburg-Lebanon-Carlisle Area second maintenance plan'' throughout this document.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over

a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856).[1] EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On June 15, 2004 (69 FR 23858), EPA designated the Harrisburg-Lebanon-Carlisle Area as a nonattainment area for the 1997 ozone NAAQS. The area, consisting of Cumberland, Dauphin, Lebanon and Perry Counties, was redesignated to attainment on July 25, 2007 (72 FR 40749), and effective the same day.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),[2] the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan, under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well as contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On July 25, 2007 (72 FR 40749 effective July 25, 2007), EPA approved a redesignation request (and maintenance plan) from DEP for the Harrisburg-Lebanon-Carlisle 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.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 ozone NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[3] However, in *South Coast Air Quality Management District* v. *EPA*[4] (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.* the Harrisburg-Lebanon-Carlisle area) that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, 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. The 1992 Calcagni Memo[5] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See 1992 Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing ''limited maintenance plans'' (LMPs)[6] that the requirements of CAA section 175A could be met by demonstrating that the area's design value[7] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on February 27, 2020, DEP submitted the Harrisburg-Lebanon-Carlisle Area second maintenance plan, following the LMP guidance, and demonstrating that the area will maintain the 1997 ozone NAAQS through July 25, 2027, *i.e.,* through the entire 20-year maintenance period.

II. Summary of SIP Revision and EPA Analysis

DEP's February 27, 2020 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the 1992 Calcagni Memo as follows.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of oxides of nitrogen (NO_X) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Harrisburg-Lebanon-Carlisle Area, DEP used 2004 for the attainment year inventory, because 2004 was one of the years in the 2003–2005 three-year period when the area first attained the

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

[2] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] See 80 FR 12315 (March 6, 2015).

[4] 882 F.3d 1138 (D.C. Cir. 2018).

[5] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (1992 Calcagni Memo).

[6] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for ModeratePM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[7] 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.

1997 ozone NAAQS.[8] The Harrisburg-Lebanon-Carlisle Area continued to monitor attainment of the 1997 ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (*i.e.,* maintenance) of the NAAQS. Thus, DEP is using 2014 as representing attainment level emissions for its second maintenance plan. Pennsylvania used 2014 summer day emissions from EPA's 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1.[9]

TABLE 1—2014 TYPICAL SUMMER DAY VOC AND NO_X EMISSIONS FOR HARRISBURG-LEBANON-CARLISLE AREA

[Tons/day]

County	Source category	VOC	NO_X
Cumberland	Point	0.87	7.43
	Nonpoint	11.95	2.96
	Onroad	5.73	17.44
	Nonroad	2.44	2.03
Dauphin	Point	0.96	3.12
	Nonpoint	8.91	3.70
	Onroad	5.88	15.02
	Nonroad	6.03	3.02
Lebanon	Point	0.60	1.58
	Nonpoint	5.71	2.47
	Onroad	2.73	6.99
	Nonroad	1.98	1.55
Perry	Point	0.03	0.47
	Nonpoint	1.65	1.94
	Onroad	1.24	2.84
	Nonroad	1.33	0.57
Total		58.04	81.03

The data shown in Table 1 is based on the 2014 National Emissions Inventory (NEI) version 2.[10] The inventory addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and onroad mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to DEP. Examples of point sources include kraft mills, electrical generating units (EGUs), and pharmaceutical factories. Nonpoint sources include emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The onroad emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The nonroad emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft.

EPA reviewed the emissions inventory submitted by DEP and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value, or ''DV'') at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 ppm or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document as well as EPA's November 20, 2018 ''Resource Document for 1997 Ozone NAAQS Areas: Supporting Information for States Developing Maintenance Plans'' (2018 Resource Document),[11] EPA believes that if the most recent DV for the area is well below the NAAQS (*e.g.* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration (PSD) requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating continued maintenance with the 1997 ozone NAAQS, DEP provided 3-year DVs at monitors located in the Harrisburg-Lebanon-Carlisle Area from 2009 to 2019. This includes DVs at monitors for 2009–2011, 2010–2012, 2011–2013, 2012–2014, 2013–2015, 2014–2016, 2015–2017, and 2016–2018, which are shown in Table 2.[12] In

[8] For more information, see EPA's July 25, 2007 notice proposing to redesignate the Harrisburg-Lebanon-Carlisle Area to attainment for the 1997 ozone NAAQS (72 FR 40749).

[9] For more information, visit *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx.*

[10] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

[11] This resource document is included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0288 and is also available at *https://www.epa.gov/sites/production/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf.*

[12] See also Table II–2 of DEP's March 10, 2020 submittal, included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0288.

addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Harrisburg-Lebanon-Carlisle Area, as submitted by Pennsylvania and recorded in EPA's Air Quality System (AQS). The most recent DV (*i.e.* 2017–2019) at monitors located in the Harrisburg-Lebanon-Carlisle Area are also shown in Table 2.[13] There are three monitoring sites in the Harrisburg-Lebanon-Carlisle area, two in Dauphin County and one in Lebanon County. Please note that there was a monitor in Perry County (monitor 42–099–0301), but it was discontinued on October 31, 2014. As can be seen in Table 2, DVs at all monitors located in the Harrisburg-Lebanon-Carlisle Area have been well below 85% of the 1997 ozone NAAQS (*i.e.* 0.071 ppm) since the 2014–2016 period. The highest DV for the 2017–2019 period at a monitor in the Harrisburg-Lebanon-Carlisle Area is 0.066 ppm, which is well below 85% of the 1997 NAAQS.

TABLE 2—RECENT 1997 OZONE NAAQS DESIGN VALUES (ppm) AT MONITORING SITES IN THE HARRISBURG-LEBANON-CARLISLE AREA

County	AQS Site ID	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019
Dauphin	42–043–0401	0.069	*	*	*	0.065	0.066	0.065	0.065	0.063
Dauphin	42–043–1100	0.073	0.077	0.074	0.069	0.066	0.067	0.066	0.065	0.062
Lebanon	42–075–0100	.....	.....	0.076	0.071	0.071	0.070	0.069	0.068	0.066

* Monitor 42–043–0401 was shut down in January 2012 and moved to a new site.

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. According to EPA's 2018 Resource Document, several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take the highest, most recent DV at a monitor located in the area and add the maximum design value increase (over one or more consecutive years) that has been observed in the area over the past several years. A sum that does not exceed the level of the 1997 ozone NAAQS may be a good indicator of expected continued attainment. As shown in Table 2, the largest increase in DVs at a monitor located in the Harrisburg-Lebanon-Carlisle Area was 0.004 ppm, which occurred between the 2009–2011 (0.073 ppm) and the 2010–2012 (0.077 ppm) DVs at the monitor located in Dauphin County (AQS ID 42–043–1100). Adding 4 ppb to the highest DV for the 2017–2019 period (0.066 ppm) results in 0.070 ppm, a sum that is still below the 1997 ozone NAAQS.

The Harrisburg-Lebanon-Carlisle Area has maintained air quality levels well below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2005.[14] Additional supporting information that the area is expected to continue to maintain the standard can be found in projections of future year DVs that EPA recently completed to assist states with development of interstate transport SIPs for the 2015 8-hour ozone NAAQS. Those projections, made for the year 2023, show that the highest DV at a monitor located in the Harrisburg-Lebanon-Carlisle Area is expected to be 0.0586 ppm.[15] Therefore, EPA proposes to determine that future violations of the 1997 ozone NAAQS in the Harrisburg-Lebanon-Carlisle Area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the February 27, 2020 submittal, DEP commits to continue to operate their air monitoring network in accordance with 40 CFR part 58. DEP also commits to track the attainment status of the Harrisburg-Lebanon-Carlisle Area for the 1997 ozone NAAQS through the review of air quality and emissions data during the second maintenance period. This includes an annual evaluation of vehicles miles traveled (VMT) and stationary source emissions data compared to the assumptions included in the LMP. DEP also states that it will also evaluate the periodic (*i.e.,* every three years) emission inventories prepared under EPA's Air Emission Reporting Requirements (40 CFR part 51, subpart A). Based on these evaluations, DEP will consider whether any further emission control measures should be implemented for the Harrisburg-Lebanon-Carlisle County Area. EPA has analyzed the commitments in DEP's submittal and is proposing to determine that they meet the requirements for continued air quality monitoring and verification of continued attainment.

D. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must require that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175(A)(d) of the CAA.

DEP's February 27, 2020 submittal includes a contingency plan for the Harrisburg-Lebanon-Carlisle Area. In the event that the fourth highest eight-hour ozone concentrations at a monitor in the Harrisburg-Lebanon-Carlisle Area exceeds 84 ppb (equivalent to 0.084 ppm) for two consecutive years, but prior to an actual violation of the NAAQS, DEP will evaluate whether

[13] This data is also included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0288 and is also available at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[14] As explained in EPA's July 25, 2007 notice proposing to redesignate the Harrisburg-Lebanon-Carlisle County Area as attainment for the 1997 ozone NAAQS (72 FR 40749), the 2003–2005 DV for the Harrisburg-Lebanon-Carlisle Area was 0.075 ppm.

[15] See U.S. EPA, ''Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values'', Office of Air Quality Planning and Standards, dated June 2018, available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-updated-2023-projected-ozone-design.*

additional local emission control measures should be implemented that may prevent a violation of the NAAQS.[16] After analyzing the conditions causing the excessive ozone levels, evaluating the effectiveness of potential corrective measures, and considering the potential effects of federal, state, and local measures that have been adopted but not yet implemented, DEP will begin the process of implementing selected measures so that they can be implemented as expeditiously as practicable following a violation of the NAAQS. In the event of a violation, DEP commits to adopting additional emission reduction measures as expeditiously as practicable in accordance with the schedule included in the contingency plan as well as the CAA and applicable Pennsylvania statutory requirements.

DEP will use the following criteria when considering additional emission reduction measures to adopt to address a violation of the 1997 ozone NAAQS in the Harrisburg-Lebanon-Carlisle Area: (1) Air quality analysis indicating the nature of the violation, including the cause, location, and source; (2) emission reduction potential, including extent to which emission generating sources occur in the nonattainment area; (3) timeliness of implementation in terms of the potential to return the area to attainment as expeditiously as practicable; and (4) costs, equity, and cost-effectiveness. The measures DEP would consider pursuing for adoption in the Harrisburg-Lebanon-Carlisle Area include, but are not limited to, those summarized in Table 3. If additional emission reductions are necessary, DEP commits to adopt additional emission reduction measures to attain and maintain the 1997 ozone NAAQS.

TABLE 3—HARRISBURG-LEBANON-CARLISLE AREA SECOND MAINTENANCE PLAN CONTINGENCY MEASURES

Non-Regulatory Measures:
Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines)
Diesel retrofit (including replacement, repowering or alternative fuel use) for public or private local onroad or offroad fleets
Idling reduction technology for Class 2 yard locomotives
Idling reduction technologies or strategies for truck stops, warehouses, and other freight-handling facilities
Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment
Additional promotion of alternative fuel (e.g. biodiesel) for home heating and agricultural use
Regulatory Measures: [17]
Additional control on consumer products [18]
Additional controls on portable fuel containers [19]

The contingency plan includes schedules for the adoption and implementation of both non-regulatory and regulatory contingency measures, including schedules for adopting potential land use planning strategies not listed in Table 3, which are summarized in Tables 4 and 5, respectively.

TABLE 4—IMPLEMENTATION SCHEDULE FOR HARRISBURG-LEBANON-CARLISLE AREA NON-REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 2 months	DEP will identify stakeholders for potential non-regulatory measures for further development.
Within 3 months	If funding is necessary, DEP will identify potential sources of funding and the timeframe for when funds would be available.
Within 6 months	DEP will work with the relevant planning commission(s) to identify potential land use planning strategies and projects with quantifiable and timely emission benefits. DEP will also work with the Pennsylvania Department of Community and Economic Development and other state agencies to assist with these measures.
Within 9 months	If state loans or grants are required, DEP will enter into agreements with implementing organizations. DEP will also quantify projected emission benefits.
Within 12 months	DEP will submit revised SIP to EPA.
Within 12–24 months	DEP will implement strategies and projects.

[16] A violation of the NAAQS occurs when an area's 3-year design value exceeds the NAAQS.

[17] These regulatory measures were considered potential cost-effective and timely control strategies by the Ozone Transport Commission (OTC) as well as the Mid-Atlantic Regional Air Management Association and the Mid-Atlantic/Northeast Visibility Union. The OTC is a multi-state organization responsible for developing regional solutions to ground-level ozone pollution in the Northeast and Mid-Atlantic, including the development of model rules that member states may adopt. OTC member states include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. For more information on the OTC, visit *https://otcair.org/index.asp.* To view the model rules developed by the OTC, including those for consumer products and portable fuel containers, visit *https://otcair.org/document.asp?fview=modelrules.*

[18] Pennsylvania's existing controls on consumer products are under 25 Pa. Code Chapter 130, Subchapters B and C (38 Pa.B. 5598). This contingency measure includes the adoption of additional controls on consumer products such as VOC limits for adhesive removers.

[19] Existing controls on portable fuel containers can be found under 40 CFR part 59 subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers.

TABLE 5—IMPLEMENTATION SCHEDULE FOR HARRISBURG-LEBANON-CARLISLE COUNTY AREA REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 1 month	DEP will submit request to begin regulatory development process.
Within 3 months	Request will be reviewed by the Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council, and other advisory committees as appropriate.
Within 6 months	Environmental Quality Board (EQB) meeting/action.
Within 8 months	DEP will publish regulatory measure in the Pennsylvania Bulletin for comment as proposed rulemaking.
Within 10 months	DEP will hold a public hearing and comment period on proposed rulemaking.
Within 11 months	House and Senate Standing Committee and Independent Regulatory Review Commission (IRCC) comment on proposed rulemaking.
Within 13 months	AQTAC, Citizens Advisory Council, and other committees will review responses to comment(s), if applicable, and the draft final rulemaking.
Within 16 months	EQB meeting/action.
Within 17 months	The IRCC will take action on final rulemaking.
Within 18 months	Attorney General's review/action.
Within 19 months	DEP will publish the regulatory measure as a final rulemaking in the Pennsylvania Bulletin and submit to EPA as a SIP revision. The regulation will become effective upon publication in the Pennsylvania Bulletin.

EPA proposes to find that the contingency plan included in DEP's February 27, 2020 submittal satisfies the pertinent requirements of CAA section 175A(d). EPA notes that while six of the potential contingency measures included in the Commonwealth's second maintenance plan are non-regulatory, their inclusion among other measures is overall SIP-strengthening, and their inclusion does not alter EPA's proposal to find the LMP is fully approvable. EPA also finds that the submittal acknowledges Pennsylvania's continuing requirement to implement all pollution control measures that were contained in the SIP before redesignation of the Harrisburg-Lebanon-Carlisle Area to attainment.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determination, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and transportation control measure implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of transportation plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Harrisburg-Lebanon-Carlisle Area remains under the obligation to meet the applicable conformity requirements for the 1997 ozone NAAQS.

III. Proposed Action

EPA's review of DEP's February 27, 2020 submittal indicates that Harrisburg-Lebanon-Carlisle Area second maintenance plan meets the CAA section 175A and all applicable CAA requirements. EPA is proposing to approve the second maintenance plan for the Harrisburg-Lebanon-Carlisle area as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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, 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 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

In addition, this proposed rulemaking, proposing approval of pertaining Pennsylvania's second limited maintenance plan for Harrisburg-Lebanon-Carlisle area, 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.

List of Subjects in 40 CFR Part 52

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

Dated: August 4, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–17421 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0573, FRL–10011–61–Region 10]

Air Plan Approval; WA; Infrastructure Requirements for the 2010 Sulfur Dioxide and 2015 Ozone Standards; Availability of Supplemental Information and Reopening of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; availability of supplemental information and reopening of the comment period.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA) requires states to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. On May 26, 2020, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking to approve the Washington State Implementation Plan as meeting specific infrastructure requirements for the 2010 sulfur dioxide (SO_2) and 2015 ozone NAAQS. Due to an administrative error, the technical support document was left out of the docket during the initial comment period from May 26, 2020 to June 25, 2020. Thus, the EPA is providing an additional 30 days for public comment on the proposed action. We are also supplementing the docket with additional supporting materials in response to a comment on our proposed approval.

DATES: Comments must be received on or before October 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0573 at *https://www.regulations.gov*. Follow the 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 whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–0256, or *hunt.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

I. What action is the EPA taking?

On May 26, 2020, at 85 FR 31421, the EPA proposed to approve the Washington State Implementation Plan (SIP) as meeting certain infrastructure requirements for the 2010 SO_2 and 2015 ozone NAAQS, specifically CAA section 110(a)(2)(A), (B), (C) (except for those provisions covered by the PSD FIP), (D)(i)(II) (except for those provisions covered by the PSD and regional haze FIPs), (D)(ii) (except for those provisions covered by the PSD FIP), (E), (F), (G), (H), (J) (except for those provisions covered by the PSD FIP), (K), (L), and (M). We received three comments on the original proposal. Two of the comments noted that the EPA neglected to include the technical support document (TSD) in the docket explaining the EPA's rationale for the proposed approval. Due to this administrative error, the EPA is providing an additional 30 days for public comment on the proposed action.

A third comment suggested that insufficient information was provided in the docket to allow the reviewer to fully evaluate the EPA's rationale in proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(E) regarding assurances of adequate resources. Section 110(a)(2)(E) requires states to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, that the state comply with the requirements of CAA section 128 respecting state boards and conflict of interest, and necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

While most of the state's SIP submittal narrative and the EPA's analysis focused on the statutory and regulatory authorities necessary to meet CAA section 110(a)(2)(E), the EPA's TSD noted that ''Washington receives CAA sections 103 and 105 grant funds from the EPA and provides state matching funds necessary to carry out SIP requirements'' as part of our basis to propose approval of this element. We are supplementing the docket with the source materials that support the analysis in the TSD. Specifically, we are including the ''Federal Fiscal Year 2020–2021 Performance Partnership Grant'' (PPG) award and associated documents. The PPG details Federal and state funding for the air program by budget category under the CAA section 105 grant program, reporting requirements, and, critically, the level of state matching funds. We are also including the ''State Fiscal Years 2020–2021 Environmental Performance Partnership Agreement'' (PPA) that serves as a joint workplan the PPG and provides specific outcome measures and outputs in determining progress. Lastly, we are including our most recent annual evaluation of the state air program under the PPG/PPA which concluded that, ''Ecology is meeting all air-related PPA objectives and no issues were identified that would impact the Performance Partnership Grant (PPG).'' We note that most of these materials are already publicly available at *https://sgita.epa.gov/apex/sgitapub/f?p=SGITAPUB:Home*.

Aside from supplementing the docket with the inadvertently omitted TSD and other supporting materials described previously, we are making no changes to the proposed action in our original May 26, 2020 document. The EPA is providing an additional 30 days for public review and comment on the proposed action. We will address all comments received on the original proposal and on this supplemental action in our final action.

II. Statutory and Executive Orders Review

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 proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply 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 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. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 15, 2019.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 12, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–17980 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0316; FRL–10013–55–Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standards Second Maintenance Plan for the Scranton-Wilkes-Barre Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (DEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Scranton-Wilkes-Barre, Pennsylvania area (Scranton-Wilkes-Barre Area). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0316 at *https://www.regulations.gov,* or via email to *spielberger.susan@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 *https://www.epa.gov/dockets/commenting-epa-dockets*.

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SUPPLEMENTARY INFORMATION: On March 10, 2020, DEP submitted a revision to the Pennsylvania SIP to incorporate a plan for maintaining the 1997 ozone NAAQS in the Scranton-Wilkes-Barre Area through December 19, 2027, in accordance with CAA section 175A.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856),[1] EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated the Scranton-Wilkes-Barre Area as nonattainment for the 1997 ozone NAAQS. The Scranton-Wilkes-Barre Area consists of Lackawanna, Luzerne, Monroe, and Wyoming counties in Pennsylvania.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),[2] the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well as contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On November 19, 2007 (72 FR 64948 effective December 19, 2007), EPA approved a redesignation request (and maintenance plan) from DEP for the Scranton-Wilkes-Barre 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.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 ozone NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[3] However, in *South Coast Air Quality Management District* v. *EPA*[4] (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.,* areas like the Scranton-Wilkes-Barre Area) that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, 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. The 1992 Calcagni Memo[5] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See 1992 Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing ''limited maintenance plans'' (LMPs)[6] that the requirements of CAA section 175A could be met by demonstrating that the area's design value[7] was well below the NAAQS and

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

[2] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] See 80 FR 12315 (March 6, 2015).

[4] 882 F.3d 1138 (D.C. Cir. 2018).

[5] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (1992 Calcagni Memo).

[6] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[7] 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.

that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on March 10, 2020, DEP submitted an LMP for the Scranton-Wilkes-Barre Area, following EPA's LMP guidance and demonstrating that the area will maintain the 1997 ozone NAAQS through December 19, 2027, *i.e.,* through the entire 20-year maintenance period.

II. Summary of SIP Revision and EPA Analysis

DEP's March 10, 2020 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the 1992 Calcagni Memo as follows.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of oxides of nitrogen (NO_X) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Scranton-Wilkes-Barre Area, DEP used 2004 for the attainment year inventory, because 2004 was one of the years in the 2004–2006 three-year period when the area first attained the 1997 ozone NAAQS.[8] The Scranton-Wilkes-Barre Area continued to monitor attainment of the 1997 ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (*i.e.,* maintenance) of the NAAQS. Thus, DEP is using 2014 as representing attainment level emissions for its second maintenance plan. Pennsylvania used 2014 summer day emissions from EPA's 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1.[9]

TABLE 1—2014 TYPICAL SUMMER DAY NO_X AND VOC EMISSIONS FOR THE SCRANTON-WILKES-BARRE AREA

[Tons/day]

County	Source category	NO_X emissions	VOC emissions
Lackawanna	Point	0.71	0.46
	Nonpoint	2.89	9.33
	Onroad	8.96	3.72
	Nonroad	1.14	1.51
Luzerne	Point	1.12	0.95
	Nonpoint	3.93	15.10
	Onroad	15.62	6.15
	Nonroad	2.32	4.24
Monroe	Point	0.13	0.13
	Nonpoint	1.18	5.84
	Onroad	9.63	4.06
	Nonroad	1.78	5.08
Wyoming	Point	1.56	0.49
	Nonpoint	2.64	7.21
	Onroad	1.73	0.75
	Nonroad	0.52	1.96

The data shown in Table 1 is based on the 2014 National Emissions Inventory (NEI) version 2.[10] The inventory addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and onroad mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to DEP. Examples of point sources include kraft mills, electrical generating units (EGUs), and pharmaceutical factories. Nonpoint sources include emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The onroad emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The nonroad emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft.

EPA reviewed the emissions inventory submitted by DEP and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value, or ''DV'') at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is

[8] For more information, see EPA's September 25, 2007 notice proposing to redesignate the Scranton-Wilkes-Barre Area to attainment for the 1997 ozone NAAQS (72 FR 54390).

[9] For more information, visit *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx.*

[10] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

attained if the DV is 0.084 or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document as well as EPA's November 20, 2018 ''Resource Document for 1997 Ozone NAAQS Areas: Supporting Information for States Developing Maintenance Plans'' (2018 Resource Document),[11] EPA believes that if the most recent DV for the area is well below the NAAQS (*e.g.,* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration (PSD) requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating continued maintenance with the 1997 ozone NAAQS, DEP provided 3-year DVs at monitors located in the Scranton-Wilkes-Barre Area from 2007 to 2018. This includes DVs at monitors for 2005–2007, 2006–2008, 2007–2009, 2008–2010, 2009–2011, 2010–2012, 2011–2013, 2012–2014, 2013–2015, 2014–2016, 2015–2017, and 2016–2018, which are shown in Table 2.[12] In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Scranton-Wilkes-Barre Area, as submitted by Pennsylvania and recorded in EPA's Air Quality System (AQS). The most recent DVs (*i.e.,* 2017–2019) at monitors located in the Scranton-Wilkes-Barre Area are also shown in Table 2.[13]

TABLE 2—1997 OZONE NAAQS DESIGN VALUES FOR THE SCRANTON-WILKES-BARRE AREA

[Parts per million [ppm]]

County	AQS site ID	2005–2007	2006–2008	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019
Lackawanna	42–069–0101	.074	.072	.071	.072	.071	.072	.070	.066	.065	.067	.067	.064	.059
Lackawanna [a]	42–069–2006	.075	.074	.071	.069	.066	.071	.069	.....	.....	.....	.064	.061	.060
Luzerne [b]	42–079–1100	.067	.067	.066	.069	.065	.066	.064	.....	.....	.....	.....	.....	.....
Luzerne	42–079–1101	.076	.075	.069	.065	.062	.066	.065	.063	.063	.064	.064	.064	.062
Monroe [c]	42–089–0002	([a])	.076	.069	.070	.066	.070	.064	.063	.063	.065	.067	.068	.065

[a] This monitor (AQS Site ID 42–069–2006) was relocated and shut down from March 2014 to July 2014. The relocation and resulting shutdown of the monitor caused incomplete data for 2014, which is why there are no design values listed for 2012–2014, 2013–2015, and 2014–2016.

[b] This monitor (AQS Site ID 42–079–1100) was discontinued on July 1, 2014. Therefore, there are no design values after 2011–2013.

[c] The monitor located in Monroe County (AQS Site ID 42–089–002) began operation in April 2006, therefore, the first valid design value is for 2006–2008.

As can be seen in Table 2, DVs at all monitors located in the Scranton-Wilkes-Barre Area have been well below 85% of the 1997 ozone NAAQS (*i.e.,* 0.071 ppm) since the 2011–2013 period. The highest DV for the 2017–2019 period at a monitor in the Scranton-Wilkes-Barre Area is 0.065 ppm, which is well below 85% of the 1997 ozone NAAQS.

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. According to EPA's 2018 Resource Document, several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take the most recent DV at a monitor located in the area and add the maximum design value increase (over one or more consecutive years) that has been observed in the area over the past several years. For an area with multiple monitors, the highest of the most recent DVs should be used. A sum that does not exceed the level of the 1997 ozone NAAQS may be a good indicator of expected continued attainment. As shown in Table 2, the largest increase in DVs at a monitor located in the Scranton-Wilkes-Barre Area was 0.005 ppm, which occurred between the 2009–2011 (0.066 ppm) and 2010–2012 (0.071 ppm) DVs at the monitor located in Lackawanna County (AQS ID 42–069–2006). Adding 0.005 ppm to the highest DV for the 2017–2019 period (0.065 ppm) results in 0.070 ppm, a sum that is still below the 1997 ozone NAAQS.

The Scranton-Wilkes-Barre Area has maintained air quality levels well below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2006.[14] Additional supporting information that the area is expected to continue to maintain the standard can be found in projections of future year DVs that EPA recently completed to assist states with the development of interstate transport SIPs for the 2015 8-hour ozone NAAQS. Those projections, made for the year 2023, show that the highest DV at a monitor located in the Scranton-Wilkes-Barre Area is expected to be 0.0558 ppm.[15] Therefore, EPA proposes to determine that future violations of the 1997 ozone NAAQS in the Scranton-Wilkes-Barre Area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the March 10, 2020 submittal, DEP commits to continue to operate their air monitoring network in accordance with 40 CFR part 58. DEP also commits to track the attainment status of the Scranton-Wilkes-Barre Area for the 1997 ozone NAAQS through the review of air quality and emissions data during the second maintenance period. This includes an annual evaluation of vehicles miles traveled (VMT) and stationary source emissions data compared to the assumptions included in the LMP. DEP also states that it will evaluate the periodic (*i.e.,* every three

[11] This resource document is included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0316 and is also available at *https://www.epa.gov/sites/production/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf.*

[12] See also Table II–2 of DEP's March 10, 2020 submittal, included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0316.

[13] This data is also included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0316 and is also available at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[14] As explained in EPA's September 25, 2007 notice proposing to redesignate the Scranton-Wilkes-Barre Area as attainment for the 1997 ozone NAAQS (72 FR 54390), the 2004–2006 DV for the Scranton-Wilkes-Barre Area was 0.075 ppm.

[15] See U.S. EPA, ''Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values'', Office of Air Quality Planning and Standards, dated June 2018, available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-updated-2023-projected-ozone-design.*

years) emission inventories prepared under EPA's Air Emission Reporting Requirements (40 CFR part 51, subpart A). Based on these evaluations, DEP will consider whether any further emission control measures should be implemented for the Scranton-Wilkes-Barre Area. EPA has analyzed the commitments in DEP's submittal and is proposing to determine that they meet the requirements for continued air quality monitoring and verification of continued attainment.

D. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must require that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175(A)(d) of the CAA.

DEP's March 10, 2020 submittal includes a contingency plan for the Scranton-Wilkes-Barre Area. In the event that the fourth highest eight-hour ozone concentrations at a monitor in the Scranton-Wilkes-Barre Area exceeds 84 ppb (equivalent to 0.084 ppm) for two consecutive years, but prior to an actual violation of the NAAQS, DEP will evaluate whether additional local emission control measures should be implemented that may prevent a violation of the NAAQS.[16] After analyzing the conditions causing the excessive ozone levels, evaluating the effectiveness of potential corrective measures, and considering the potential effects of federal, state, and local measures that have been adopted but not yet implemented, DEP will begin the process of implementing selected measures so that they can be implemented as expeditiously as practicable following a violation of the NAAQS. In the event of a violation, DEP commits to adopting additional emission reduction measures as expeditiously as practicable in accordance with the schedule included in the contingency plan as well as the CAA and applicable Pennsylvania statutory requirements.

DEP will use the following criteria when considering additional emission reduction measures to adopt to address a violation of the 1997 ozone NAAQS in the Scranton-Wilkes-Barre Area: (1) Air quality analysis indicating the nature of the violation, including the cause, location, and source; (2) emission reduction potential, including extent to which emission generating sources occur in the nonattainment area; (3) timeliness of implementation in terms of the potential to return the area to attainment as expeditiously as practicable; and (4) costs, equity, and cost-effectiveness. The measures DEP would consider pursuing for adoption in the Scranton-Wilkes-Barre Area include, but are not limited to, those summarized in Table 3. If additional emission reductions are necessary, DEP commits to adopt additional emission reduction measures to attain and maintain the 1997 ozone NAAQS.

TABLE 3—SCRANTON-WILKES-BARRE AREA SECOND MAINTENANCE PLAN CONTINGENCY MEASURES

Non-Regulatory Measures:
Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines).
Diesel retrofit (including replacement, repowering or alternative fuel use) for public or private local onroad or offroad fleets.
Idling reduction technology for Class 2 yard locomotives.
Idling reduction technologies or strategies for truck stops, warehouses, and other freight-handling facilities.
Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.
Regulatory Measures: [17]
Additional control on consumer products.[18]
Additional controls on portable fuel containers.[19]

The contingency plan includes schedules for the adoption and implementation of both non-regulatory and regulatory contingency measures, including schedules for adopting potential land use planning strategies not listed in Table 3, which are summarized in Tables 4 and 5, respectively.

TABLE 4—IMPLEMENTATION SCHEDULE FOR SCRANTON-WILKES-BARRE AREA NON-REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 2 months	DEP will identify stakeholders for potential non-regulatory measures for further development.
Within 3 months	If funding is necessary, DEP will identify potential sources of funding and the timeframe for when funds would be available.

[16] A violation of the NAAQS occurs when an area's 3-year design value exceeds the NAAQS.

[17] These regulatory measures were considered potential cost-effective and timely control strategies by the Ozone Transport Commission (OTC) as well as the Mid-Atlantic Regional Air Management Association and the Mid-Atlantic/Northeast Visibility Union. The OTC is a multi-state organization responsible for developing regional solutions to ground-level ozone pollution in the Northeast and Mid-Atlantic, including the development of model rules that member states may adopt. OTC member states include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. For more information on the OTC, visit *https://otcair.org/index.asp*. To view the model rules developed by the OTC, including those for consumer products and portable fuel containers, visit *https://otcair.org/document.asp?fview=modelrules*.

[18] Pennsylvania's existing controls on consumer products are under 25 Pa. Code Chapter 130, Subchapters B and C (38 Pa.B. 5598). This contingency measure includes the adoption of additional controls on consumer products such as VOC limits for adhesive removers.

[19] Existing controls on portable fuel containers can be found under 40 CFR part 59, subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers.

TABLE 4—IMPLEMENTATION SCHEDULE FOR SCRANTON-WILKES-BARRE AREA NON-REGULATORY CONTINGENCY MEASURES—Continued

Time after triggering event	Action
Within 6 months	DEP will work with the relevant planning commission(s) to identify potential land use planning strategies and projects with quantifiable and timely emission benefits. DEP will also work with the Pennsylvania Department of Community and Economic Development and other state agencies to assist with these measures.
Within 9 months	If state loans or grants are required, DEP will enter into agreements with implementing organizations. DEP will also quantify projected emission benefits.
Within 12 months	DEP will submit revised SIP to EPA.
Within 12–24 months	DEP will implement strategies and projects.

TABLE 5—IMPLEMENTATION SCHEDULE FOR SCRANTON-WILKES-BARRE AREA REGULATORY CONTINGENCY MEASURES

Time after triggering event	Action
Within 1 month	DEP will submit request to begin regulatory development process.
Within 3 months	Request will be reviewed by the Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council, and other advisory committees as appropriate.
Within 6 months	Environmental Quality Board (EQB) meeting/action.
Within 8 months	DEP will publish regulatory measure in the Pennsylvania Bulletin for comment as proposed rulemaking.
Within 10 months	DEP will hold a public hearing and comment period on proposed rulemaking.
Within 11 months	House and Senate Standing Committee and Independent Regulatory Review Commission (IRCC) comment on proposed rule.
Within 13 months	AQTAC, Citizens Advisory Council, and other committees will review responses to comment(s), if applicable, and the draft final rulemaking.
Within 16 months	EQB meeting/action.
Within 17 months	The IRCC will take action on final rulemaking.
Within 18 months	Attorney General's review/action.
Within 19 months	DEP will publish the regulatory measure as a final rulemaking in the Pennsylvania Bulletin and submit to EPA as a SIP revision. The regulation will become effective upon publication in the Pennsylvania Bulletin.

EPA proposes to find that the contingency plan included in DEP's March 10, 2020 submittal satisfies the pertinent requirements of CAA section 175A(d). EPA notes that while six of the potential contingency measures included in the Commonwealth's second maintenance plan are non-regulatory, their inclusion among other measures is overall SIP-strengthening, and their inclusion does not alter EPA's proposal to find the LMP is fully approvable. EPA also finds that the submittal acknowledges Pennsylvania's continuing requirement to implement all pollution control measures that were contained in the SIP before redesignation of the Scranton-Wilkes-Barre Area to attainment.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).''

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determination, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and transportation control measure implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Scranton-Wilkes-Barre Area remains under the obligation to meet the applicable conformity requirements for the 1997 ozone NAAQS.

III. Proposed Action

EPA's review of DEP's March 10, 2020 submittal indicates that it meets all applicable CAA requirements, specifically the requirements of CAA section 175A. EPA is proposing to approve the second maintenance plan for the Scranton-Wilkes-Barre Area as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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, 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 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).

In addition, this proposed rule, proposing approval of Pennsylvania's second maintenance plan for the Scranton-Wilkes-Barre Area, 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.

List of Subjects in 40 CFR Part 52

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

Dated: August 17, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–18394 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2015–0804; FRL–10013–01–OW]

RIN 2040–AG00

Withdrawal of Certain Federal Water Quality Criteria Applicable to Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) proposes to amend the federal regulations to withdraw human health criteria (HHC) for toxic pollutants applicable to waters in the State of Maine. EPA proposes to take this action because Maine adopted, and EPA approved, HHC that the Agency determined are protective of the designated uses for these waters. EPA is providing an opportunity for public comment on this proposed withdrawal of federally promulgated HHC. The withdrawal would enable Maine to implement its EPA-approved HHC, submitted on April 24, 2020, and approved on June 23, 2020, as applicable criteria for Clean Water Act (CWA or the Act) purposes.

DATES: Comments must be received on or before October 19, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2015–0804, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments at *https://www.regulations.gov.*
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov,* as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

EPA is offering two virtual public hearings so that interested parties may also provide oral comments on this proposed rulemaking. For more details on the public hearings and to register to attend the hearings, please visit *https://www.epa.gov/wqs-tech/water-quality-standards-regulations-maine.* Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: Jennifer Brundage, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–1265; email address: *brundage.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is organized as follows:

I. Public Participation
A. Written Comments

B. Virtual Public Hearing
II. General Information
Does this action apply to me?
III. Background
A. What are the applicable federal statutory and regulatory requirements?
B. What are the applicable federal water quality criteria that EPA is proposing to withdraw?
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
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F. Executive Order 13132: Federalism
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H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0804, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

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.

B. Virtual Public Hearing

To register to speak at the virtual hearing, please visit *https://www.epa.gov/wqs-tech/water-quality-standards-regulations-maine* or contact Jennifer Brundage via telephone at (202) 566–1265 or via email at *brundage.jennifer@epa.gov.*

Each commenter will have three minutes to provide oral testimony. EPA recommends submitting the text of your oral comments as written comments to the rulemaking docket. EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.regulations.gov.* While EPA expects the hearing to go forward as set forth above, please monitor our website or contact Jennifer Brundage via telephone at (202) 566–1265 or via email at *brundage.jennifer@epa.gov* to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

II. General Information

Does this action apply to me?

This proposed action would serve to withdraw federal HHC that are no longer needed due to EPA's June 23, 2020, approval of corresponding State HHC. Entities discharging in Maine waters may be indirectly affected by this rulemaking. Citizens concerned with water quality in Maine, including members of the federally recognized Indian tribes in Maine, may also be interested in this rulemaking. The State of Maine may be interested in this rulemaking, as after the completion of this rulemaking, Maine's EPA-approved HHC, rather than the federal HHC, will be the applicable water quality standards (WQS) in Maine waters for CWA purposes. If you have questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Background

A. What are the applicable federal statutory and regulatory requirements?

Consistent with the CWA, EPA's WQS program assigns to states and authorized tribes the primary authority for adopting WQS.[1] After states adopt WQS, they must be submitted to EPA for review and action in accordance with the CWA. The Act authorizes EPA to promulgate federal WQS following EPA's disapproval of state WQS or an Administrator's determination that new or revised WQS are ''necessary to meet the requirements of the Act.'' [2]

B. What are the applicable federal water quality criteria that EPA is proposing to withdraw?

On December 19, 2016, EPA promulgated federal HHC for 96 toxic pollutants for waters in Indian lands in Maine based on the Agency's 2015 disapproval of corresponding state-established HHC and an Administrator's determination that new or revised WQS were necessary to meet the requirements of the Act. 81 FR 92466 (December 19, 2016). EPA also promulgated a phenol criterion to protect human health from consumption of water plus organisms for waters outside of Indian lands in Maine after disapproving the State's phenol criterion in 2015 because it contained a mathematical error.

EPA's 2015 disapproval of the State's HHC for waters in Indian lands was based on its decision that they were inadequate to protect the sustenance fishing designated uses that EPA interpreted and approved for waters in Indian lands in the same 2015 action. On May 27, 2020, after a thorough review of the applicable provisions of the CWA, implementing regulations and longstanding EPA guidance, EPA withdrew its 2015 interpretation and improper approvals of the alleged sustenance fishing designated uses and

[1] 33 U.S.C. 1313(a), (c).
[2] 33 U.S.C. 1313(c)(4).

corresponding disapprovals of Maine's HHC that flowed from the flawed designated use determinations.[3] Also on that date, EPA approved Maine's general fishing designated use for waters in Indian lands without the interpretation that it means ''sustenance fishing.''[4]

On April 24, 2020, the Maine Department of Environmental Protection (DEP) submitted new and revised WQS in accordance with section 303(c) of the CWA. The new and revised provisions included HHC. On June 23, 2020, EPA approved the State's new and revised HHC as consistent with the requirements of the CWA and applicable federal regulations.[5] There are two sets of HHC in the State's newly approved criteria. One set protects the statewide general ''fishing'' designated use, and the other set protects the State's new ''sustenance fishing'' designated use subcategory that applies to specifically identified waters where sustenance fishing is or may be occurring. Between these two sets of HHC, all of the waters covered by EPA's promulgated federal HHC for toxic pollutants in 2016 are addressed. The new and revised HHC also address all the toxic pollutants for which EPA promulgated federal HHC in 2016. All of EPA's prior decisions and action letters related to these Agency actions are available in docket ID EPA–HQ–OW–2015–0804 at *https://www.regulations.gov.*

As provided in 40 CFR 131.21(c), federally promulgated WQS that are more stringent than EPA-approved state WQS remain applicable for purposes of the CWA until EPA withdraws the federal standards. EPA's 2016 federally promulgated HHC are as stringent as or more stringent than the State's newly approved HHC. Accordingly, EPA is proposing to amend the federal regulations to withdraw those federally promulgated HHC for which the Agency has approved Maine's corresponding HHC and is providing an opportunity for public comment on this proposed action.

EPA additionally hereby withdraws its 2016 CWA section 303(c)(4)(B) determination (''Administrator's Determination'') that new or revised WQS are necessary to meet the requirements of the Act. 81 FR 23239, 23243 (April 20, 2016) (''Accordingly, for the waters in Maine where there is a sustenance fishing designated use and Maine's existing HHC are in effect, EPA hereby determines under CWA section 303(c)(4)(B) that new or revised WQS for the protection of human health are necessary to meet the requirements of the CWA for such waters.''). As EPA stated in its Response to Comments document supporting its withdrawal and revision of its 2015 decisions, the Administrator's Determination was rendered inoperative when EPA withdrew the 2015 sustenance fishing designated use approvals, as the determination was specifically linked to waters covered by and relied entirely on those now-withdrawn designated use approvals.[6] Because the Administrator's Determination is now a nullity, EPA withdraws it as a matter of administrative clarity.

EPA's proposal to withdraw federally promulgated HHC following approval of state corresponding HHC is consistent with the federal and state roles contemplated by the CWA. Consistent with the cooperative federalism structure of the CWA, once EPA approves state WQS addressing the same pollutants for which EPA has promulgated federal WQS, it is incumbent on EPA to withdraw the federal WQS to enable EPA-approved state WQS to become the applicable WQS for CWA purposes. That is what EPA is proposing to do in this proposed rulemaking. This proposal is consistent with EPA's withdrawal of other federally promulgated WQS following the Agency's approval of state-adopted WQS.[7]

This action proposes to amend federal regulations to withdraw all federal HHC for waters in Indian lands and the phenol criterion for waters outside of Indian lands promulgated for Maine in December 2016 at 40 CFR 131.43. All other federally promulgated criteria at 40 CFR 131.43 will remain in effect.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not expected to be a regulatory action under Executive Order 13771 because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information-collection burden under the PRA because it is proposing to administratively withdraw federal requirements that are no longer needed in Maine. It does not include any information collection, reporting, or recordkeeping requirements. The OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 and has assigned OMB control number 2040–0049.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Small entities, such as small businesses or small governmental jurisdictions, are not directly regulated by this rule.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in unfunded federal mandates under the provisions of Title II of the UMRA of 1995, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As this action proposes to withdraw certain federally promulgated criteria, the action imposes no enforceable duty on any state, local, or tribal governments, or the private sector.

[3] Letter from Dennis Deziel, Regional Administrator, EPA Region 1, to Gerald D. Reid, Commissioner, Maine Department of Environmental Protection, ''Re: Withdrawal of Certain of EPA's February 2, 2015 Decisions Concerning Water Quality Standards for Waters in Indian Lands'' (May 27, 2020).

[4] In 2019, Maine adopted, and EPA approved, a sustenance fishing designated use (SFDU) subcategory of its general fishing designated use for certain identified waters where sustenance fishing or increased fish consumption is or may be occurring.

[5] Letter from Ken Moraff, Water Division Director, EPA Region 1, to Gerald D. Reid, Commissioner, Maine Department of Environmental Protection, ''Re: Review and Action on Maine Water Quality Standards, 06–096 Chapter 584'' (June 23, 2020).

[6] Attachment B, Letter from Dennis Deziel, Regional Administrator, EPA Region 1, to Gerald D. Reid, Commissioner, Maine Department of Environmental Protection, ''Re: Withdrawal of Certain of EPA's February 2, 2015 Decisions Concerning Water Quality Standards for Waters in Indian Lands'' (May 27, 2020).

[7] See *e.g., Withdrawal of Certain Federal Water Quality Criteria Applicable to California: Lead, Chlorodibromomethane, and Dichlorobromomethane,* 83 FR 52163 (October 16, 2018); *Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Withdrawal,* 79 FR 57447 (September 25, 2014); *Withdrawal of Certain Federal Water Quality Criteria Applicable to California, New Jersey and Puerto Rico,* 78 FR 20252 (April 4, 2013).

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule imposes no regulatory requirements or costs on any state or local governments. Thus, Executive Order 13132 does not apply to this action.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. In the State of Maine, there are four federally recognized Indian tribes represented by five tribal governments. As a result of the unique jurisdictional provisions of the Maine Indian Claims Settlement Act, the state has jurisdiction for setting WQS for all waters in Indian lands in Maine. This rule will have no effect on that jurisdictional arrangement. This rule would affect federally recognized Indian tribes in Maine because it changes the water quality standards applicable to all waters in Indian lands.

EPA initiated consultation with federally recognized tribal officials under EPA's Policy on Consultation and Coordination with Indian tribes early in the process of developing this proposed rule to allow meaningful and timely input into its development. A summary of that consultation is provided in ''Summary of Tribal Consultations Regarding Water Quality Standards Decisions on Remand Applicable to Waters in Indian Lands within Maine,'' which is available in the docket for this rulemaking.

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

This rule is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

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

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

J. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

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

EPA concludes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). EPA has previously determined that Maine's state-adopted and EPA-approved criteria are protective of human health.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

§ 131.43 [Amended]

■ 2. Amend § 131.43 by removing paragraphs (a) and (j) and re-designating paragraphs (b) through (i) as paragraphs (a) through (h).

[FR Doc. 2020–18081 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0007, EPA–HQ–OLEM–2020–0394, 0395, 0396 and 0397; FRL–10012–70–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add four sites to the General Superfund section of the NPL and withdraws a previous proposal for NPL addition.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 2, 2020.

ADDRESSES: Identify the appropriate docket number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Cherokee Zinc—Weir Smelter	Weir, KS	EPA–HQ–OLEM–2020–0394
Billings PCE	Billings, MT	EPA–HQ–OLEM–2020–0395
Pioneer Metal Finishing Inc	Franklinville, NJ	EPA–HQ–OLEM–2020–0396
Northwest Odessa Groundwater	Odessa, TX	EPA–HQ–OLEM–2020–0397

You may send comments, identified by the appropriate docket number, by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

• *Agency Website: https://www.epa.gov/superfund/current-npl-updates-new-proposed-npl-sites-and-new-npl-sites.*

Scroll down to the site for which you would like to submit comments and click the ''Comment Now'' link.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Superfund Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the appropriate Docket ID No. for site(s) for which you are submitting comments. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Review/Public Comment'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation, Mail Code 5204P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public dockets located both at the EPA Headquarters in Washington, DC, and in the regional offices. These documents are also available by electronic access at *https://www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How do I access the documents?

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on 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 following is the contact information for the EPA Dockets: Mail comments to the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the regional dockets is as follows:

• Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.

• James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4342.

• Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.

• Sandra Harrigan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mailcode 9T25, Atlanta, GA 30303; 404/562–8926.

• Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal

Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.

- Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; 214/665–3154.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.
- Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/972–3160.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Suite 155, Mailcode 12–D12–1, Seattle, WA 98101; 206/890–0591.

You may also request copies from the EPA Headquarters or the regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person; since the EPA dockets are not equipped to both copy and mail out such maps or scan them and send them out electronically.

You may use the docket at *https://www.regulations.gov* to access documents in the Headquarters docket. Please note that there are differences between the Headquarters docket and the regional dockets and those differences are outlined in this preamble below.

C. What documents are available for public review at the EPA Headquarters docket?

The Headquarters docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; documentation records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the documentation record.

D. What documents are available for public review at the EPA regional dockets?

The regional dockets for this proposed rule contain all of the information in the Headquarters docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the regional dockets.

E. How do I submit my comments?

Follow the online instructions detailed above in the **ADDRESSES** section for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

F. What happens to my comments?

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public docket at *https://www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI) or other information whose disclosure is restricted by statute. Once in the public dockets system, select ''search,'' then key in the appropriate docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

II. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: Ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site

consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. Plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

The EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider 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 Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's internet site at *https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number*.

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#tab-9*.

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing*.

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing*.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In this proposed rule, the EPA is proposing to add four sites to the NPL,

all to the General Superfund section. All of the sites in this rule are being proposed for NPL addition based on an HRS score of 28.50 or above.

The sites are presented in the table below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
KS	Cherokee Zinc—Weir Smelter.	Weir.
MT	Billings PCE	Billings.
NJ	Pioneer Metal Finishing Inc.	Franklinville.
TX	Northwest Odessa Groundwater.	Odessa.

B. Withdrawal of Previous Proposal for NPL Addition

The EPA is withdrawing its previous proposal to add the Capitol City Plume (also sometimes spelled Capital City Plume) site in Montgomery, Alabama to the NPL because the cleanup is proceeding under an agreement with the State. The City of Montgomery, Montgomery County, Montgomery Water Works and Sanitary Sewer Board, the State of Alabama and the Montgomery Advertiser formed the Downtown Environmental Alliance to complete the investigation, risk assessment and develop a remedial action plan (Institutional Controls Plan) to address the Capitol City Plume under an agreement with the Alabama Department of Environmental Management (ADEM). The EPA has also entered into a Memorandum of Agreement with the ADEM formally deferring the oversight lead to the State. The selected remedy at the site includes groundwater monitoring and land use controls that restrict the use of groundwater in the downtown area under a city ordinance, and land use for certain specific areas in the downtown area by environmental covenants and city ordinance.

The rule proposing to add this site to the NPL can be found at 65 FR 30489 (May 11, 2000). Refer to the Docket ID number EPA–HQ–SFUND–2000–0007 for supporting documentation regarding this action. Additional information regarding this site can be found on the Montgomery, Alabama website at *https://www.montgomeryal.gov/live/capital-city-plume-information.*

IV. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL

F. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in

determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 24, 2020.

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 300 as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by adding the entries for ''KS,'' ''Cherokee Zinc—Weir Smelter'', ''MT,'' ''Billings PCE'', ''NJ,'' ''Pioneer Metal Finishing Inc'' and ''TX'', ''Northwest Odessa Groundwater'' in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* *	* *	*	* *
KS	Cherokee Zinc—Weir Smelter	Weir.	
* *	* *	*	* *
MT	Billings PCE	Billings.	
* *	* *	*	* *
NJ	Pioneer Metal Finishing Inc	Franklinville.	
* *	* *	*	* *
TX	Northwest Odessa Groundwater	Odessa.	
* *	* *	*	* *

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2020–19171 Filed 9–2–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 172

Thursday, September 3, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0073]

Notice of Request for Reinstatement of an Information Collection; Export Health Certificate for Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection associated with the export of animal products from the United States.

DATES: We will consider all comments that we receive on or before November 2, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0073.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0073* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the export of animal products from the United States, contact Dr. Lisa Dixon, Acting Director, Animal Product Import and Export, Strategy and Policy, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 851–3373; *lisa.m.dixon@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS Information Collection Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Health Certificate for Animal Products.

OMB Control Number: 0579–0256.

Type of Request: Reinstatement of an information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and animal products, U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States. The regulations for export certification of animals and animal products are contained in 9 CFR parts 91 and 156.

Many countries that import animal products from the United States require a certification from APHIS that the United States is free of certain diseases. These countries may also require that our certification statement contain additional declarations regarding the U.S. animal products being exported. This certification must carry the USDA seal and be endorsed by an APHIS representative (*e.g.,* a Veterinary Medical Officer). The certification process involves the use of information collection activities including an animal products export certificate and request for a hearing. An exporter can request a hearing to appeal a decision if a request for a certificate is not granted due to an exporter not meeting certain requirements in part 156 or if a certificate is denied or withdrawn by Veterinary Services if it is determined that an issued certificate has been altered or parts imitated.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.32 hours per response.

Respondents: Exporters of U.S. animal products.

Estimated annual number of respondents: 400.

Estimated annual number of responses per respondent: 402.

Estimated annual number of responses: 160,776.

Estimated total annual burden on respondents: 51,246 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of August 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–19483 Filed 9–2–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for a Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Foreign Agricultural Service to revise the currently approved information collection for the USDA's Quality Samples Program.

DATES: Comments on this notice must be received by November 2, 2020 to be assured of consideration.

ADDRESSES: You may send comments, identified by the OMB Control number 0551–0047, by any of the following methods:

- *Federal eRulemaking Portal: http://www/regulations.gov.* This portal enables respondents to enter short comments or attach a file containing lengthier comments.
- *Email: PODadmin@usda.gov.* Include OMB Control Number 0551–0047 in the subject line of the message.
- *Mail, Courier, or Hand Delivery:* Curt Alt, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 6512, Washington, DC 20250.

Instructions: All items submitted by mail or electronic mail must include the agency name. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Curt Alt, Program Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, Washington, DC 20250–1034, telephone: (202) 690–4784, email: *PODAdmin@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: USDA Quality Samples Program.

OMB Number: 0551–0047.

Expiration Date of Approval: November 30, 2020.

Type of Request: Revision of a currently approved information collection.

Abstract: Under the USDA Quality Samples Program, information will be gathered from applicants desiring to receive grants under the program to determine the viability of requests for resources to implement activities in foreign countries. Recipients of grants under the program must submit written evaluation reports as set forth in the annual Notices of Funding Availability for the Quality Samples Program. Submitted information is used to develop effective grant agreements and assure that statutory requirements and program objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collection under the USDA Quality Samples Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the USDA Quality Samples Program is 4.4 hours per response.

Type of Respondents: Government agencies, private organizations, agricultural cooperatives, and export trade associations.

Estimated Number of Respondents: 10 per annum.

Estimated Number of Responses per Respondent: 25 per annum.

Estimated Total Annual Burden of Respondents: 1,100 hours.

Copies of this information collection can be obtained from Ronald Croushorn, the Agency Information Collection Coordinator, at (202) 720–3038 or email at *Ron.Croushorn@usda.gov.*

Request for Comments: Send comments regarding (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 including validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Comments will be available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. Persons with disabilities who require an alternative means for communication of information (*e.g.,* Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Ken Isley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2020–19497 Filed 9–2–20; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mineral County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mineral County Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act; and to make recommendations on recreation fee proposals for sites consistent with the Federal Lands Recreation Enhancement Act. RAC information can be found at the following website: *https://www.fs.usda.gov/detail/lolo/workingtogether/advisorycommittees/?cid=fsm9_021467.*

DATES: The meeting will be held on September 17, 2020, at 6:00 p.m. (Mountain Time).

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtually via telephone and/or video conference. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Superior Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carole Johnson, Designated Federal Officer (DFO), by phone at 406–822–4233 or email at *carole.johnson@usda.gov;* or Racheal Koke, RAC Coordintaor, at 406–822–3930 or email at *racheal.koke@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve meeting minutes, and
2. Discuss and make recommendations on recreation fee proposals for sites located within Mineral County on the Lolo National Forest.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 9, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Racheal Koke, Superior Ranger District, Post Office Box 460, Superior, Montana 59872; or by email to *racheal.koke@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 31, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–19493 Filed 9–2–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that three meetings of the New Jersey Advisory Committee to the Commission will each convene by conference call. The first will be the committee's monthly meeting to be held on Friday, September 18, 2020 at 1:00 p.m. (ET) for planning purposes. Second, the committee will convene a briefing on Monday, September 21, 2020 at 3:00 p.m. (ET) to hear from national experts on the collateral consequences that a criminal record has criminal asset forfeiture. Third, the committee will convene a briefing on Thursday, September 24 at 1:00 p.m. (ET) to hear from national experts on the collateral consequences that a criminal record has on access to occupational licensing and other related matters. Each briefing will run for approximately 90 minutes and immediately following each briefing the phone line will be opened, so that interested members of the public can make brief statements about each briefing topic.

DATES: Friday, September 18, 2020 at 1:00 p.m. (ET); Monday, September 21, 2020 at 3:00 p.m. (ET); and Thursday, September 24, 2020 at 1:00 p.m. (ET).

Public Call-In Information For Each Date Is As Follows: Conference call number: 1–800–667–5617 and conference call ID number: 7386659.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–667–5617 and conference call ID number: 7386659. Please be advised that before placing them into the conference calls, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–800–667–5617 and conference call ID number: 7386659.

Members of the public are invited to make brief statements during the Public Comment section of each meeting or to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting via email to Ivy Davis at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing, as they become available at this FACA link, click the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agendas

I. Roll Call
II. Welcome
III. Friday, September 18, 2020. Planning meeting that starts at 1:00 p.m. (ET). Committee members will finalize plans for the September 21 and 24 briefings.
IV. Monday, September 21, 2020. Briefing on Criminal Asset Forfeiture that starts at 3:00 p.m. (ET). National experts will make openings statements and respond to questions from Committee members.
V. Thursday, September 24, 2020. Briefing on Occupational Licensing that starts at 1:00 p.m. (ET). National experts will make openings statements and respond to questions from Committee members.
VI. Public Comments. Immediately following the conclusion of each meeting.

VII. Adjourn

Dated: August 28, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–19462 Filed 9–2–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (ET) on Tuesday, September 15, 2020. The purpose of the planning meeting is to discuss the draft report titled, School Discipline and the School-to-Prison Pipeline in PA, that the Committee voted to submit to the legal sufficiency review at its August 18, 2020 planning meeting.

Public Call-In Information: Conference call-in number: 800–353–6461 and conference call ID number: 6813288.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288.

Members of the public are invited to make brief statements during the Public Comment section of the meeting or submit written comments. The written comments must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be emailed to atten: Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may phone the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicView CommitteeDetails?id=a10t000000 1gzjZAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Tuesday, September 15, 2020

I. Rollcall
II. Welcome
III. Project Planning
—Discuss draft report Committee voted to submit to the legal sufficiency review.
IV. Other Business
V. Next Meetings
VI. Public Comments
VII. Adjourn

Dated: August 28, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–19463 Filed 9–2–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Survey of Housing Starts, Sales, and Completions

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Survey of Housing Starts, Sales, and Completions, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 2, 2020.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Survey of Housing Starts, Sales, and Completions in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0021, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed William Abriatis, U.S. Census Bureau, Economic Indicators Division, (301) 763–3686, or *william.m.abriatis@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a three-year extension of the current Office of Management and Budget (OMB) clearance of the Survey of Housing Starts, Sales and Completions, also known as the Survey of Construction (SOC). The SOC collects monthly data on new residential construction from a sample of owners or builders. The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaires SOC–QI/SF.1 and SOC–QI/MF.1 to collect data on start and completion dates of construction, physical characteristics of the structure (floor area, number of bathrooms, type of heating system, etc), and if

applicable, date of sale, sales price, and type of financing. The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts and Housing Completions, which are from the New Residential Construction series, and New Residential Sales. The current clearance for this survey is scheduled to expire on April 30, 2021.

We sample about 1,800 new buildings each month (21,600 per year). We inquire about the progress of each building multiple times until it is completed (and a sales contract is signed, if it is a single-family house that is built for sale). For single-family buildings, we conduct an average of 8 interviews and for multifamily buildings, we conduct an average of 6 interviews. The total number of interviews conducted in 2019 for single-family buildings is about 109,900 and for multifamily buildings is about 48,300. Each interview takes 5 minutes on average. Therefore, the total annual burden is 13,183 hours.

II. Method of Collection

The Census Bureau uses its field representatives to collect the data. The field representatives conduct interviews to obtain data.

III. Data

OMB Control Number: 0607–0110.

Form Number(s): SOC–QI.SF.1 and SOC–QI/MF.1.

Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 21,600.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 13,183.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 131 and 182.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–19477 Filed 9–2–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Manufacturers' Shipments, Inventories, and Orders (M3) Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the Manufacturers' Shipments, Inventories, and Orders (M3) Survey prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 2, 2020.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Manufacturers' Shipments, Inventories, and Orders (M3) Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0023, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Carol Aristone, U.S. Census Bureau, Economic Indicators Division, (301) 763–7062, *carol.ann.aristone@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a revision of the current Office of Management and Budget (OMB) clearance of the Manufacturers' Shipments, Inventories and Orders (M3) survey. The M3 survey requests data monthly from domestic manufacturers on form M–3 (SD). Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods.

The M3 survey is designed to measure current industrial activity and to provide an indication of future production commitments. The value of shipments measures the value of goods delivered during the month by domestic manufacturers. Estimates of new orders serve as an indicator of future production commitments and represent the current sales value of new orders received during the month, net of cancellations. Substantial accumulation or depletion of unfilled orders measures

excess or deficient demand for manufactured products. The level of inventories, especially in relation to shipments, is frequently used to monitor the business cycle, by calculating the inventories to sales ratio. In general, a low ratio indicates strong shipments. A high ratio indicates weaker shipments or accumulation of inventories in stock.

Starting in 2021, we may ask for additional data on the electronic instrument on a temporary quarterly basis to address a new module of business expectations. The new question will not be added to the paper M–3 (SD) form. Respondents will be divided into three subsamples; once a quarter, each subsample will be asked for a one year ahead estimate with five points and corresponding probabilities. For the April 2021 reporting period, selected M3 respondents would see a question similar, but possibly not identical, to the following drafted question:

- Looking ahead to April 2022, what is the approximate dollar value of net shipments, manufactured in the U.S. you would anticipate during that month for this reporting unit, and what likelihood do you assign to that value?

Leading indicators and forward-looking measures such as forecasts and projections are highly valued for their ability to help decision-makers, businesses, and individuals plan and adjust policies if necessary. To reduce respondent burden, companies will receive the supplemental question once per quarter asking for the expectation of net shipments looking twelve months ahead; expectations will be reported at the same level as they report for the rest of the instrument. Responses to this question will provide a better understanding of business uncertainty and insight on future business activity. Initially, this pilot collection will request data for twelve months with the possibility of continuing collection for an additional twelve months. Additionally, in 2021, we plan to accelerate the nondurable manufacturing estimates to the same time as the Advance Report on Durable Goods Manufacturers' Shipments, Inventories and Orders to create an advance high-level report of total manufacturing. Currently, the Advance report on Durable goods is available approximately 18 working days after each month, with the Full report available approximately 23 working days after each month. Accelerating the nondurable release would provide data users with early access to total manufacturing estimates ahead of the Full report, giving them an early snapshot of the direction of this critical indicator. Prior to releasing this advance total manufacturing data, we will submit a memo of exception to the Office of Management and Budget.

II. Method of Collection

Respondents may submit data on form via mail, fax, or via the internet. We send emails and make telephone calls to respondents to remind them to report on time.

III. Data

OMB Control Number: 0607–0008.

Form Number(s): M–3 (SD).

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000 respondents filing a total of 60,000 reports a year.

Estimated Time per Response: 22 minutes.

Estimated Total Annual Burden Hours: 22,000.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 131, 182, and 193.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–19476 Filed 9–2–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 200827–0226]

RIN 0694–XC064

Effectiveness of Licensing Procedures for Agricultural Commodities to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is requesting public comments on the effectiveness of its licensing procedures as defined in the Export Administration Regulations for the export of agricultural commodities to Cuba. BIS will include a description of these comments in its biennial report to the Congress, as required by the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (TSRA).

DATES: Comments must be received by October 5, 2020.

ADDRESSES: *Federal rulemaking portal: http://www.regulations.gov*—you can find this notice by searching on its *regulations.gov* docket number, which is BIS–2020–0028. All comments (including any personally identifying information) will be made available for public inspection and copying.

By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–XC064.

FOR FURTHER INFORMATION CONTACT: Mark Salinas, Office of Nonproliferation and Treaty Compliance, Telephone: (202) 482–4252. Additional information on BIS procedures and previous biennial reports under TSRA is available at *http://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations/13-policy-guidance/country-guidance/426-reports-to-congress.* Copies of these

materials may also be requested by contacting the Office of Nonproliferation and Treaty Compliance.

SUPPLEMENTARY INFORMATION: Pursuant to section 906(a) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (22 U.S.C. 7205(a)), the Bureau of Industry and Security (BIS) authorizes exports of agricultural commodities, as defined in part 772 of the Export Administration Regulations (EAR), to Cuba. Requirements and procedures associated with such authorizations are set forth in § 740.18 (Agricultural commodities) of the EAR (15 CFR part 740). These are the only licensing procedures in the EAR currently in effect pursuant to the requirements of section 906(a) of TSRA.

Under the provisions of section 906(c) of TSRA (22 U.S.C. 7205(c)), BIS must submit a biennial report to the Congress on the operation of the licensing system implemented pursuant to section 906(a) for the preceding two-year period. This report must include the number and types of licenses applied for, the number and types of licenses approved, the average amount of time elapsed from the date of filing of a license application until the date of its approval, the extent to which the licensing procedures were effectively implemented, and a description of comments received from interested parties during a 30-day public comment period about the effectiveness of the licensing procedures. BIS is currently preparing a biennial report on the operation of the licensing system for the two-year period from October 1, 2018–September 30, 2020.

Request for Comments

By this notice, BIS requests public comments on the effectiveness of the licensing procedures for the export of agricultural commodities to Cuba set forth under § 740.18 of the EAR. Parties submitting comments are asked to be as specific as possible. All comments received by the close of the comment period will be considered by BIS in developing the report to Congress.

All comments must be in writing and will be available for public inspection and copying. Any information that the commenter does not wish to be made available to the public should not be submitted to BIS.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–19471 Filed 9–2–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with July anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with July anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than July 31, 2021.

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
AD Proceedings	
BELGIUM: Citric Acid and Certain Citrate Salts, A–423–813	7/1/19–6/30/20
S.A. Citrique Belge N.V.	
COLOMBIA: Citric Acid and Certain Citrate Salts, A–301–803	7/1/19–6/30/20
Sucroal S.A.	
INDIA: Fine Denier Polyester Staple Fiber, A–533–875	7/1/19–6/30/20
Reliance Industries Limited	
INDIA: Polyethylene Terephthalate (PET) Film, A–533–824	7/1/19–6/30/20
Ester Industries Limited	
Garware Polyester Ltd.	
Jindal Poly Films Limited	
Polyplex Corporation Ltd.	
SRF Ltd.	
SRF Limited of India	
Vacmet India Limited	
MTZ Polyesters Ltd.	
Uflex Ltd.	
ITALY: Certain Pasta, A–475–818	7/1/19–6/30/20
Agritalia S.r.L.	
Armonie D'Italia srl	
F. Divella S.p.A.	
La Molisana S.p.A.	
Liguori Pastificio dal 1820 S.p.A.	
Pasta Castiglioni	
Pasta Zara, S.p.A	
Pastificio Della Forma S.r.l.	
Pastificio C.A.M.S. Srl	
Pastificio Fratelli De Luca S.r.l.	
Rummo S.p.A.	
JAPAN: Cold-Rolled Steel Flat Products, A–588–873	7/1/19–6/30/20
Asada Corporation	
Hanwa Co., Ltd.	
Hitachi Metals Trading, Ltd.	
Hitachi Metals, Ltd.	
JFE Shoji Trade Corporation	
JSR Corporation	
Kanematsu Corporation	
Katayama Kogyo Co., Ltd.	
Mitsui and Co., Ltd.	
Nachi-Fujikoshi Corporation	
Shinsho Corporation	
Sumisho Metalex Corporation	
Sumitomo Corporation Global Metals	
Tajima Steel Co., Ltd.	
Topy Fasteners Ltd.	
Toyo Kihan Co., Ltd.	
Toyo Kohan Co., Ltd.	
Toyota Tsusho Corporation	
Young Steel Co., Ltd.	
Yusen Logistics Co., Ltd.	
MALAYSIA: Certain Steel Nails, A–557–816	7/1/19–6/30/20
Atlantic Manufacture Inc.	
Chia Pao Metal Co., Ltd.	
Delmar International (Vietnam) Ltd.	
Dicha Sombrilla Co., Ltd.	
Expeditors Vietnam Company Limited	
Gia Linh Logistics Services Co., Ltd.	
Global Logistics Solution Co., Ltd.	
Inmax Industries Sdn. Bhd.	
Inmax Sdn. Bhd.	
Jinhai Hardware Co., Ltd.	
K-Apex Logistics (HK) Co., Limited	
KPF Vietnam Co., Ltd.	
KPF Vina Co., Ltd.	
Orient Star Transport Int'l Ltd.	
Oriental Multiple Enterprise Ltd.	
Pudong Prime Int'l Logistics Inc.	
Region International Co., Ltd.	
Region System Sdn. Bhd.	
Tag Fasteners Sdn. Bhd.	
Rich State, Inc.	
Top Shipping Company Limited	
Topy Fasteners Vietnam Co., Ltd.	
Truong Vinh Ltd.	

	Period to be reviewed
United Nail Products Co., Ltd.	
Vina Hardwares Joint Stock Company	
OMAN: Certain Steel Nails, A–523–808	7/1/19–6/30/20
Astrotech Steels Private Ltd.	
Geekay Wires Limited	
Oman Fasteners LLC	
Overseas International Steel Industry LLC & Overseas Distribution Services Inc.	
Trinity Steel Private Limited	
Universal Freight Services LLC	
WWL India Private Ltd.	
REPUBLIC OF KOREA: Certain Steel Nails, A–580–874	7/1/19–6/30/20
Astrotech Steels Private Ltd.	
Beijing Catic Industry Ltd.	
Beijing Jinheung Co. Ltd. Inmax Industries Sdn. Bhd.	
Bonuts Hardware Logistics	
Bowon Fastener Co., Ltd.	
Cheng Ch International Co., Ltd.	
China International Freight	
China Staple Enterprise Co., Ltd.	
Crane Worldwide Logistics	
Daejin Steel Company	
De Well Group Korea Co., Ltd.	
Dezhou Hualude Hardware Products Co., Ltd.	
Dongwon Industries Co., Ltd.	
Duo-Fast Co., Ltd.	
Duo-Fast Korea Co., Ltd.	
Euro Line Global Co. Ltd.	
Fastgrow International Co.	
Geekay Wires Limited	
Hanbit Logistics Co., Ltd.	
Hanmi Staple Co., Ltd.	
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	
Hebei Jinsidun Trade Co. Ltd.	
Hebei Minghao Import Export Co Li	
Hebei Minmetals Co., Ltd.	
Hengtuo Metal Products Co Ltd.	
Hongyi Hardware Products Co., Ltd.	
Inmax Sdn. Bhd.	
Jas Forwarding (Korea) Co. Ltd.	
JCD Group Co., Limited	
Jeil Tacker Co. Ltd.	
Je-il Wire Production Co., Ltd.	
Jinhai Hardware Co., Ltd.	
Jinheung Steel Corporation	
Jinsco International Corp.	
Joo Sung Sea & Air Co., Ltd.	
Joosung B&P	
Jung Fastener	
Kabool Fasteners Co., Ltd.	
Kintetsu World Express (Korea) Inc.	
Koram Inc.	
Korea Wire Co., Ltd.	
Kousa Int. Logistics Co. Ltd.	
KPF Co., Ltd.	
Kuehne + Nagel Ltd.	
Liang Chyuan Industrial Co., Ltd.	
Maxpeed International Transport	
Mingguang Ruifeng Hardware Products Co., Ltd.	
MPROVE Co., Limited	
Nailtech Co., Ltd.	
OEC Freight (Korea) Co., Ltd.	
OEC Worldwide Korea Co., Ltd.	
Orient Express Container Co., Ltd.	
Paslode Fasteners (Shanghai) Co., Ltd.	
Peace Industries, Ltd.	
Promising Way (HongKong) Limited	
Pro-Team Coil Nail Enterprise Inc.	
Qingdao Cheshire Trading Co. Ltd.	
Qingdao D&L Group Ltd.	
Qingdao Hongyuan Nail Industry Co. Ltd.	
Qingdao JCD Machinery Co., Ltd.	
Qingdao Jisco Co., Ltd.	
Qingdao Mst Industry and Commerce Co., Ltd.	
Ramses Logistics Co., Ltd.	

	Period to be reviewed
Schenker Korea Ltd.	
Sejung Shipping Co., Ltd.	
Shandong Oriental Cherry Hardware Group Co. Ltd.	
Shandong Oriental Cherry Hardware Import & Export Co., Ltd.	
Shandong Qingyun Hongyi Hardware Products Co., Ltd.	
Shanghai Zoonlion Industrial Co., Ltd.	
Shanxi Pioneer Hardware Industry Co., Ltd.	
Shanxi Tianli Industries Co., Ltd.	
Shipco Transport (Korea) Co., Ltd.	
ST Fasteners	
Suntec Industries Co., Ltd.	
The Inno Steel	
Tianjin Coways Metal Products Co.	
Tianjin Hongli Qiangsheng Imp. & Exp	
Tianjin Jinchi Metal Products Co., Ltd.	
Tianjin Jinghai County Hongli	
Tianjin Lituo Imp & Exp Co., Ltd.	
Tianjin Liweitian Metal Technology	
Tianjin Xinhe International Trade Co. Ltd.	
Tianjin Zhonglian Metals Ware Co. Ltd.	
Tianjin Zhonglian Times Technology	
Unicorn (Tianjin) Fasteners Co., Ltd.	
Woosung Shipping Co. Ltd.	
Wulian Zhanpeng Metals Co., Ltd.	
Xi'an Metals and Minerals Imp. Exp. Co., Ltd.	
Xinjiayuan International Trade Co.	
Young-Ko Trans Co., Ltd.	
Youngwoo Fasteners Co., Ltd.	
Zhaoqing Harvest Nails Co., Ltd.	
Zon Mon Co Ltd.	
REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, A–580–878	7/1/19–6/30/20
Dongbu Incheon Steel Co., Ltd.	
Dongbu Steel Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Hyundai Steel Company	
KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.)	
POSCO	
POSCO Coated & Color Steel Co., Ltd.	
POSCO Daewoo Corporation	
POSCO International Corporation (formerly POSCO Daewoo Corporation)	
SOCIALIST OF REPUBLIC OF VIETNAM: Certain Steel Nails, A–552–818	7/1/19–6/30/20
Atlantic Manufacture Inc.	
Chia Pao Metal Co., Ltd.	
Delmar International (Vietnam) Ltd.	
Dicha Sombrilla Co., Ltd.	
Easylink Industrial Co., Ltd.	
Expeditors Vietnam Company Limited	
Gia Linh Logistics Services Co., Ltd.	
Global Logistics Solution Co., Ltd.	
Inmax Industries SDN. BHD	
Jinhai Hardware Co., Ltd.	
K-Apex Logistics (HK) Co., Limited	
KPF Vietnam Co., Ltd.	
KPF Vina Co., Ltd.	
Orient Star Transport Int'l Ltd.	
Oriental Multiple Enterprise Ltd.	
Pudong Prime Int'l Logistics Inc.	
Region Industries Co., Ltd.	
Rich State, Inc.	
Top Shipping Company Limited	
Topy Fasteners Vietnam Co., Ltd.	
Truong Vinh Ltd.	
United Nail Products Co., Ltd.	
Vina Hardwares Joint Stock Company	
TAIWAN: Certain Steel Nails, A–583–854	7/1/19–6/30/20
A Jax Enterprises Ltd.	
A Jax International Company Ltd.	
AA Freight Inc.	
ABS Metal Industry Corp.	
Advanced Global Sourcing Ltd.	
Alishan International Group Co., Ltd.	
Apex Fastener International, Co., Ltd.	
Aplus Pneumatic Corp.	
A-Stainless International Co., Ltd.	

	Period to be reviewed
Astrotech Steels Private Ltd.	
Autolink International Co., Ltd.	
Bestwell International Corp.	
Bon Voyage Logistics Inc.	
Bonuts Hardware Logistics Co., Ltd.	
Bulls Technology Co., Ltd.	
C.H. Robinson Freight Services	
Canatex Industrial Co., Ltd.	
Cata Co. Ltd.	
Chaen Wei Corporation	
Channg Chin Industry Corp.	
Charng Yu Industrial Company Ltd.	
Cheng CH International Co., Ltd.	
Chia Da Fastener Co. Ltd.	
China International Freight Co., Ltd.	
China Mast Forwarders Co., Ltd.[5]	
China Sea Forwarders Co., Ltd.	
China Staple Enterprise Corporation	
Chite Enterprises Co., Ltd.	
Clinch Nutsandstuds Co., Ltd.	
Cornwall Enterprise Co., Ltd.	
Co-Wealth Enterprise Co., Ltd.	
Crane Worldwide Logistics LLC	
Create Trading Co., Ltd.	
Crown Run Industrial Corp.	
De Fasteners Inc.	
De Hui Screw Industry Co. Ltd.	
Dolphin Logistics Co. Ltd.	
Easylink Industrial Co., Ltd.	
Encore Green Co. Ltd.	
Everise Global Logistics Co., Ltd.	
Faithful Engineering Products Co., Ltd.	
General Merchandise Consolidators, Inc.	
Ginfa World Co. Ltd.	
Home Value Co., Ltd.	
Honour Lane Logistics Co.	
Hor Liang Industrial Corp.	
Hoyi Plus Co., Ltd.	
International Freight Services	
J C Grand Corporation	
Jau Yeou Industry Co., Ltd.	
Jinhai Hardware Co., Ltd.	
Jinsco International Corp.	
Jockey Ben Metal Enterprise Co. Ltd.	
K.E. & Kingstone Co., Ltd.	
King Compass Logistics Ltd.	
Korea Wire Co., Ltd.	
Kuehne + Nagel Ltd.	
Liang Chyuan Industrial Co., Ltd.	
Liang's Industrial Corp.	
Linkwell Industry Co., Ltd.	
Maytrans International Cor.	
MCL Multi Container Line Ltd.	
OEC Freight Worldwide Co., Ltd.	
Orient Express Container Co., Ltd.	
Orient Star Transport Int'l Ltd.	
Oriental Logistics Group Ltd.	
OTS Forwarding (TWN) Ltd.	
Pacific Concord International Ltd.	
Pacific Star Express Corp.	
Panther T & H Industry Co., Ltd.	
PAR Excellence Industrial Co. Ltd.	
Patek Tool Co., Limited	
Pelican Logistics Co., Ltd.	
PT Enterprise, Inc./Pro Team Coil Nail Enterprise Incor.[6]	
Pro-in Co., Ltd.	
Quick Advance Inc.[7]	
Region Industries Co., Ltd.	
Rodex Fasteners Corp.	
Rohlig Taiwan Co., Ltd.	
Romp Coil Nail Industries Inc.	
Roseter Info Trade Co., Ltd.	
RTG Logistics Ltd.[8]	
San Shing Fastech Corp.	

	Period to be reviewed
Scanwell Container Line Ltd.	
Scanwell Logistics (Taiwan) Ltd.	
Schenker (H.K.) Ltd. (Taiwan Branch)	
Se Fa Enterprise Co., Ltd.	
Seamaster Logistics Inc. Co.	
Shen Fong Industries Co., Ltd.	
Shenyang Parts Industry Co., Ltd.	
Shinn Rung Co., Ltd.	
Shipco Transport Taiwan Co., Ltd.	
Shun Den Iron Works Co., Ltd.	
Sino Connections Logistics Inc.	
Sino Global Logistics Co., Ltd.	
Sirius Global Logistics Co. Ltd.	
Six-2 Fastener Imports Inc.	
Special Fastener Engineering Co., Ltd.	
Speedier Logistics Co., Ltd.	
Speedmark Consolidated Service, Ltd.	
Sun Chen Fasteners Inc.	
Sysmetal Enterprise, Co., Ltd.	
SZU I Industries Co., Ltd.	
T.H.I. Logistics Co. Ltd.	
T.V.L. Container Line Ltd.	
Tai Mao Nuts Co., Ltd.	
Taifas Corporation	
Taiwan Shan Yin International Co., Ltd.	
Tang An Enterprise Co., Ltd.	
Team Builder Enterprise Ltd.	
Techart Mechanical Corporation	
Test-Rite Int'l Co., Ltd.	
The Ultimate Freight Management Ltd.	
TJN International Ltd.	
Toll Global Forwarding Ltd.	
Tong HWEI Enterprise Co., Ltd.	
Trans Wagon Int'l Co., Ltd.	
Trans-Top Enterprise Co., Ltd.	
Transwell Logistics Co. Ltd.	
Trim International Inc.	
TSI Translink Taiwan Co. Ltd.	
UC Freight Forwarding Co., Ltd.	
UJL Industries Co. Ltd.	
Uni-Protech Industrial Co., Ltd.	
Unicatch Industrial Co., Ltd.	
Unistrong Industrial Co., Ltd.	
Universal Power Shipping Ltd.	
UPS Supply Chain Solutions Co., Ltd.	
Wa Tai Industrial Co., Ltd.	
Wanda International Logistics Co., Ltd.	
Well-Source Connection Co., Ltd.	
Whale Logistics Co., Ltd.	
Wier I Industry Co., Ltd.	
Win Fastener Corp.	
Wyser International Corp.	
Yeong Ming Steel Iron Co., Ltd.	
Yeou Cherng Industrial Co., Ltd.	
Yu Chi Hardware Co. Ltd.	
Yu Chi Hardware Co., Ltd.	
Yu Chi Taiwan Enterprise Co., Ltd.	
Zon Mon Co., Ltd.	
TAIWAN: Corrosion-Resistant Steel Products, A–583–856	7/1/19–6/30/20
Great Fortune Steel Co., Ltd.	
Great Grandeul Steel Co., Ltd.	
Great Grandeul Steel Company Limited (a.k.a. Great Grandeul Steel Company Limited Somoa and Great Grandeul Steel Company Limited (Somoa))	
Prosperity Tieh Enterprise Co., Ltd.	
Sheng Yu Steel Co., Ltd.	
Synn Industrial Co., Ltd.	
Yieh Phui Enterprise Co., Ltd.	
TAIWAN: Polyethylene Terephthalate (PET) Film, A–583–837	7/1/19–6/30/20
Nan Ya Plastics Corporation	
Shinkong Materials Technology Corporation	
Shinkong Synthetic Fibers Corporation	
THAILAND: Citric Acid and Certain Citrate Salts, A–549–833	7/1/19–6/30/20
COFCO Biochemical (Thailand) Co., Ltd.	
Niran (Thailand) Co., Ltd.	

	Period to be reviewed
Sunshine Biotech International Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearing and Parts Thereof, Finished or Unfinished[9].	
A–570–601	6/1/19–5/31/20
Changshan Peer Bearing Co., Ltd.	
Hebei Xintai Bearing Forging Co., Ltd.	
Xinchang Newsun Xintianlong Precision Bearing Manufacturing Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Quartz Surface Products, A–570–084	11/20/18–6/30/20
Dava Industry Co., Ltd.	
Deyuan Panmin International Limited	
Deyuan Stone	
Farfield Trade Co., Ltd.	
Foshan Adamant Science & Technology Co., Ltd.	
Foshan Modern Stone Co., Ltd.	
Guangzhou Hercules Quartz Stone Co., Ltd.	
Heshan City Nande Stone Co., Ltd.	
Lanling Jinzhao New Material Co., Ltd.	
QJ Quartz Stone Ltd.	
Sinostone (Guangdong) Co., Ltd.	
Wisdom Stone Co., Ltd.	
Xiamen Deyuan Panmin Trading Co., Ltd.	
Yunfu Honghai Co., Ltd., aka Yunfu Honghai Stone Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Xanthan Gum, A–570–985	7/1/19–6/30/20
A.H.A. International Co., Ltd.	
CP Kelco (Shandong) Biological Company Limited	
Deosen Biochemical (Ordos) Ltd.	
Deosen Biochemical Ltd.	
Greenhealth International Co., Ltd. (Hong Kong)	
Hebei Xinhe Biochemical Co., Ltd.	
Inner Mongolia Jianlong Biochemical Co., Ltd.	
Jianglong Biotechnology Co., Ltd.	
Langfang Meihua Biotechnology Co., Ltd.	
Meihua Group International Trading (Hong Kong) Limited	
Nanotech Solutions SDN BHD	
Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)	
Shandong Fufeng Fermentation Co., Ltd.	
Shanghai Smart Chemicals Co. Ltd.	
Xinjiang Fufeng Biotechnologies Co., Ltd.	
Xinjiang Meihua Amino Acid Co., Ltd.	
TURKEY: Steel Concrete Reinforcing Bar, A–489–829	7/1/19–6/30/20
Colakoglu Dis Ticaret A.S.	
Colakoglu Metalurji A.S.	
Diler Dis Ticaret A.S.	
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	
Kaptan Demir Celik Endustrisi ve Ticaret A.S.	
Kaptan Metal Dis Ticaret Ve Nakliyat A.S.	
Kroman Celik Sanayi A.S.	
Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş.	
UKRAINE: Oil Country Tubular Goods, A–823–815	7/1/19–6/30/20
Interpipe Europe S.A.	
Interpipe Ukraine LLC	
PJSC Interpipe Niznedneprovskv Tube Rolling Plant	
LLC Interpipe Niko Tube	
CVD Proceedings	
INDIA: Polyethylene Terephthalate (PET) Film, C–533–825	1/1/19–12/31/19
Ester Industries Limited	
Garware Polyester Ltd	
Jindal Poly Films Ltd.[10]	
MTZ Polyester Ltd.	
Polyplex Corporation Ltd	
SRF Limited[11]	
Uflex Ltd.	
Vacmet India Limited	
ITALY: Certain Pasta, C–475–819	1/1/19–12/31/19
Armonie D'Italia srl	
Industria Alimentare Colavita, S.p.A	
Pastificio C.A.M.S. Srl	
Pastificio Fratelli De Luca S.r.l.	
REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, C–580–879	1/1/19–12/31/19
Ajin H & S Co., Ltd.	
AJU Steel Co. Ltd.	
B&N International	
CDS Global Logistics	
Dong A Hwa Sung Co., Ltd.	

	Period to be reviewed
Dongbu Incheon Steel Co., Ltd.	
KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.)	
Dongkuk International, Inc.	
Dongkuk Steel Mill Co., Ltd.	
Hyundai Steel Company	
Korea Clad Tech. Co., Ltd.	
Pantos Logistics Co., Ltd.	
PL Special Steel Co., Ltd.	
POSCO	
POSCO C&C	
POSCO Coated & Color Steel Co., Ltd.	
POSCO Daewoo Corp.	
Samsung C&T Corporation	
Samsung Electronics Co., Ltd.	
Sanglim Steel Co., Ltd.	
SeAH Coated Metal	
SeAH Steel Corporation	
Seajin St. Industry, Ltd.	
Sejung Shipping Co., Ltd.	
Seun Steel Co., Ltd.	
Segye Chemical Industry Co., Ltd.	
Shandongsheng Cao Xian Yalu Mftd.	
Shengzhou Hanshine Import and Export Trade	
Soon Hong Trading Co., Ltd.	
Southern Steel Sheet Co., Ltd.	
SSangyong Manufacturing	
Sung A Steel Co., Ltd.	
SW Co., Ltd.	
SY Co., Ltd.	
Syon	
TCC Steel. Co., Ltd.	
Young Steel Korea Co., Ltd.	
Young Sun Steel Co.	
Young Steel Co.	
SOCIALIST OF REPUBLIC OF VIETNAM: Certain Steel Nails, C–552–819	1/1/19–12/31/19
Atlantic Manufacture Inc.	
Chia Pao Metal Co., Ltd.	
Delmar International (Vietnam) Ltd.	
Dicha Sombrilla Co., Ltd.	
Easylink Industrial Co., Ltd.	
Expeditors Vietnam Company Limited	
Gia Linh Logistics Services Co., Ltd.	
Global Logistics Solution Co., Ltd.	
Inmax Industries SDN. BHD	
Jinhai Hardware Co., Ltd.	
K-Apex Logistics (HK) Co., Limited	
KPF Vietnam Co., Ltd.	
KPF Vina Co., Ltd.	
Orient Star Transport Int'l Ltd.	
Oriental Multiple Enterprise Ltd.	
Pudong Prime Int'l Logistics Inc.	
Region Industries Co., Ltd.	
Rich State, Inc.	
Top Shipping Company Limited	
Topy Fasteners Vietnam Co., Ltd.	
Truong Vinh Ltd.	
United Nail Products Co., Ltd.	
Vina Hardwares Joint Stock Company	
THE PEOPLE'S REPUBLIC OF CHINA: Quartz Surface Products, C–570–085	9/21/18–12/31/19
Dava Industry Co., Ltd.	
Deyuan Stone	
Farfield Trade Co., Ltd.	
Foshan Adamant Science & Technology Co., Ltd.	
Foshan Modern Stone Co., Ltd.	
Guangzhou Hercules Quartz Stone Co., Ltd.	
Heshan City Nande Stone Co., Ltd.	
Lanling Jinzhao New Material Co., Ltd.	
QJ Quartz Stone Ltd.	
Sinostone (Guangdong) Co., Ltd.	
Wisdom Stone Co., Ltd.	
Xiamen Deyuan Panmin Trading Co., Ltd.	
Yunfu Honghai Co., Ltd., aka Yunfu Honghai Stone Co., Ltd.	
TURKEY: Certain Pasta, C–489–806	1/1/19–12/31/19
Bessan Makarna Gida SA. Ve Tic. A.S.	

	Period to be reviewed
TURKEY: Steel Concrete Reinforcing Bar, C–489–830 ..... Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	1/1/19–12/31/19

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[12] available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[14] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[15] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by

[5] The petitioner identified this company twice; thus, Commerce is only listed this company one time.

[6] Commerce determined that Pro-Team and PT Enterprise comprise a single entity in *Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015–2016,* 82 FR 36744 (August 7, 2017), unchanged in *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015–2016,* 83 FR 6163 (February 13, 2018).

[7] Certain steel nails produced by Ko's Nail Inc. and exported by Quick Advance Inc. were excluded from the antidumping duty order on certain steel nails from Taiwan. See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994, 39996 (July 13, 2015).

[8] The petitioner identified this company twice; thus, Commerce is only listed this company one time.

[9] Commerce inadvertently did not include these companies in the initiation notice that published on August 6, 2020 (85 FR 47731). Accordingly, Commerce is initiating this administrative review with respect to the companies listed above, and we are not initiating an administrative review for Precision Components Inc.

[10] This company is also known as Jindal Poly Films Ltd. (India).

[11] This company is also known as SRF Limited of India.

[12] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[14] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[15] *See* 19 CFR 351.302.

which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 31, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–19504 Filed 9–2–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042]

Stainless Steel Sheet and Strip from the People's Republic of China: Rescission of Antidumping Duty Administrative Review: 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on stainless steel sheet and strip (SS sheet and strip) from the People's Republic of China (China) for the period of review (POR) April 1, 2019 through March 31, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Leo Ayala, 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) 482–3945.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2020, Commerce published a notice of opportunity to request an administrative review of the AD order on SS sheet and strip from China for the POR.[1] On April 30, 2020, Commerce received a timely-filed request from AK Steel Corporation; Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products; North American Stainless; and Outokumpu Stainless USA, LLC (collectively, the petitioners) for an administrative review of 152 Chinese producers and/or exporters, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2]

On May 6, 2020, pursuant to this request, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), Commerce published a notice initiating an administrative review of the antidumping duty order on SS sheet and strip from China for 152 Chinese producers and/or exporters.[3] On June 10, 2020, the petitioners timely withdrew their request for an administrative review for all 152 producers and/or exporters.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners withdrew their request for review within the 90-day deadline. Because Commerce received no other requests for review, we are rescinding the administrative review of the order on SS sheet and strip from China covering the April 1, 2019 through March 31, 2020 POR, in its entirety, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of SS sheet and strip from China. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of AD duties occurred and the subsequent assessment of doubled AD duties.

Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 28, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–19500 Filed 9–2–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010, C–570–011]

Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Results of Changed Circumstances Reviews, and Intent To Revoke Antidumping and Countervailing Duty Orders in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a request from Maodi Solar Technology (Dongguan) Co., Ltd. (Maodi Solar), the Department of Commerce (Commerce) preliminarily determines that the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic products (solar products) from the People's Republic of China

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 85 FR 18191 (April 1, 2020).

[2] *See* Petitioners' Letter, ''Antidumping Duty Order on Stainless Steel Sheet and Strip from the People's Republic of China—Petitioners' Request for Initiation of Third Administrative Review,'' dated April 30, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 26931 (May 6, 2020).

[4] *See* Petitioners' Letter, ''Antidumping Duty Order on Stainless Steel Sheet and Strip from the People's Republic of China—Petitioners' Withdrawal of Requests for Third Administrative Review,'' dated June 10, 2020.

(China) shall be revoked, in part, with respect to certain off-grid portable small panels. Commerce invites interested parties to comment on these preliminary results.

DATES: Applicable September 3, 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) 482–3875.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2015, Commerce published AD and CVD orders on solar products from China.[1] On June 17, 2020, Maodi Solar, an exporter of subject merchandise, requested that Commerce conduct changed circumstances reviews to revoke the *Orders* with respect to certain off-grid portable small panels, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b).[2] On July 13, 2020, SunPower Manufacturing Oregon, LLC (SunPower), a domestic producer of the domestic like product, submitted a letter stating that it took no position regarding the partial revocation proposed by Maodi Solar.[3] We received no other comments regarding Maodi Solar's request.

On July 28, 2020, Commerce published the *Initiation Notice* of the requested changed circumstances reviews.[4] As we explained in the *Initiation Notice,* we interpreted SunPower's statement of ''no position'' to mean that it does not oppose the partial revocation request.[5] However, because SunPower did not indicate whether it accounts for substantially all of the domestic production of solar products, in the *Initiation Notice* we invited interested parties to submit comments regarding industry support for the potential revocation, in part, as well as comments and/or factual information regarding the changed circumstances reviews.[6] On August 7, 2020, Maodi Solar submitted comments stating that if Commerce receives no comments regarding industry support or no comments from the domestic industry opposing the changed circumstances reviews, revocation of the *Orders,* in part, is warranted.[7] We received no other comments regarding these changed circumstances reviews.

Scope of the Orders

The merchandise covered by these orders is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of these orders, subject merchandise includes modules, laminates and/or panels assembled in China consisting of crystalline silicon photovoltaic cells produced in a customs territory other than China.

Subject merchandise includes modules, laminates and/or panels assembled in China consisting of crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of these orders are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of these orders are modules, laminates and/or panels assembled in China, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good.

Further, also excluded from the scope of these orders are any products covered by the existing AD and CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from China.[8]

Additionally, excluded from the scope of these orders are solar panels that are: (1) Less than 300,000 mm2 in surface area; (2) less than 27.1 watts in power; (3) coated across their entire surface with a polyurethane doming resin; and (4) joined to a battery charging and maintaining unit (which is an acrylonitrile butadiene styrene (ABS) box that incorporates a light emitting diode (LED)) by coated wires that include a connector to permit the incorporation of an extension cable. The battery charging and maintaining unit utilizes high-frequency triangular pulse waveforms designed to maintain and extend the life of batteries through the reduction of lead sulfate crystals. The above-described battery charging and maintaining unit is currently available under the registered trademark ''SolarPulse.''

Merchandise covered by these orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6015, 8541.40.6020, 8541.40.6030, 8541.40.6035 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of these orders is dispositive.[9]

Scope of Changed Circumstances Reviews

Maodi Solar proposes that the *Orders* be revoked, in part, with respect to certain off-grid portable small panels. Specifically, Maodi Solar proposes revoking the *Orders* with respect to the solar panels described below:[10]

[1] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 8592 (February 18, 2015) (*Orders*).

[2] *See* Maodi Solar's Letter, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (A–570–010; C–570–011): Maodi Solar's Request for Changed Circumstances Review,'' dated June 17, 2020 (Maodi Solar CCR Request).

[3] *See* SunPower's Letter, ''Crystalline Silicon Photovoltaic Products from the People's Republic of China: Comments on Maodi Solar's Request for Changed Circumstances Review,'' dated July 13, 2020.

[4] *See Crystalline Silicon Photovoltaic Products from the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part,* 85 FR 45373 (July 28, 2020) (*Initiation Notice*).

[5] *Id.,* 85 FR at 45375.

[6] *Id.* (inviting interested parties to submit comments within ten days after publication and submit rebuttal comments within seven days thereafter).

[7] *See* Maodi Solar's Letter, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (A–570–010; C–570–011): Maodi Solar's Comments on Initiation of Changed Circumstances Review,'' dated August 7, 2020 (Maodi Solar Comments).

[8] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

[9] *See* the *Orders.*

[10] *See* Maodi Solar CCR Request.

(1) Off-grid CSPV panels in rigid form with a glass cover, with the following characteristics:

(A) A total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm2 per panel;

(C) do not include a built-in inverter;

(D) must include a permanently connected wire that terminates in a male barrel connector, or, a two-port rectangular connector with two pins in square housings of different colors, or, an Anderson connector;

(E) must be in individual retail packaging (for purposes of this provisions, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport)

(2) Off-grid CSPV panels in rigid form without a glass cover, with the following characteristics:

(A) A total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm2 per panel;

(C) do not include a built-in inverter;

(D) each panel is

1. permanently integrated into a consumer good;

2. encased in a laminated material without stitching, or

3. has all of the following characteristics: (i) The panel is encased in sewn fabric with visible stitching; (ii) includes a storage pocket; and, (iii) includes (a) a wire that terminates in a female USB–A connector; or, (b) a junction box which includes a female USB–A connector.

Preliminary Results of Changed Circumstances Review, and Intent To Revoke the Orders in Part

Pursuant to section 751(d)(1) of the Act, and 19 CFR 351.222(g), Commerce may revoke an order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives Commerce authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order. Section 351.222(g) Commerce's regulations provides that Commerce will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order, in whole or in part, if it concludes that (1) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part; or (2) if other changed circumstances sufficient to warrant revocation exist. Both the Act and Commerce's regulations require that in order for Commerce to revoke an order, in whole or in part, ''substantially all'' domestic producers must express a lack of interest in the order.[11] In its administrative practice, Commerce has interpreted ''substantially all'' to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.[12]

Commerce's regulations do not specify a deadline for the issuance of the preliminary results of a changed circumstances review, but provide that Commerce will issue the final results of review within 270 days after the date on which the changed circumstances review is initiated.[13] Commerce did not issue a combined notice of initiation and preliminary results because, as discussed above, no party had indicated whether SunPower accounts for substantially all domestic production of solar product.[14] Thus, Commerce did not determine in the *Initiation Notice* that producers accounting for substantially all of the production of the domestic like product lacked interest in the continued application of the *Orders* as to the solar products under consideration here. Further, Commerce requested that interested parties comment on the issue of domestic industry support for a potential partial revocation of the *Orders.*[15] As discussed above, although Maodi Solar submitted comments in response to the *Initiation Notice,* it did not comment on whether it or SunPower account for substantially all domestic production of solar products.[16] Commerce therefore received no comments on industry support. As a result, we find that the domestic industry has expressed no opposition with respect to the proposed revocation, in part, of the order.

As noted in the *Initiation Notice,* Maodi Solar requested revocation of the *Orders,* in part, and supported its request. In light of Maodi Solar's request, SunPower's lack of comments regarding the scope exclusion language proposed by Maodi Solar, and the absence of any comments from the domestic industry otherwise opposing these changed circumstances reviews, we preliminarily conclude that changed circumstances warrant revocation of the *Orders,* in part, because the producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to the particular solar products described above. We will consider comments from interested parties on these preliminary results before issuing the final results of these reviews.

Accordingly, we are notifying the public of our intent to revoke the *Orders,* in part. We intend to carry out this revocation by including the following exclusion language in the scope of each of the *Orders:*[17]

Excluded from the scope of these orders are:

(1) Off-grid CSPV panels in rigid form with a glass cover, with the following characteristics:

(A) A total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm2 per panel;

(C) do not include a built-in inverter;

(D) must include a permanently connected wire that terminates in a male barrel connector, or, a two-port rectangular connector with two pins in square housings of different colors, or, an Anderson connector;

(E) must be in individual retail packaging (for purposes of this provisions, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport).

(2) Off-grid CSPV panels in rigid form without a glass cover, with the following characteristics:

(A) A total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm2 per panel;

(C) do not include a built-in inverter;

(D) each panel is

1. permanently integrated into a consumer good;

2. encased in a laminated material without stitching, or

3. has all of the following characteristics: (i) The panel is encased in sewn fabric with visible stitching; (ii) includes a storage pocket; and, (iii) includes (a) a wire that terminates in a female USB–A connector; or, (b) a

[11] *See* 782(h) of the Act and 19 CFR 351.222(g).

[12] *See, e.g., Certain Cased Pencils from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke Order in Part,* 77 FR 42276 (July 18, 2012), unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order, in Part,* 77 FR 53176 (August 31, 2012).

[13] *See* 19 CFR 351.216(e).

[14] *See Initiation Notice.*

[15] *Id.*

[16] *See* Maodi Solar Comments.

[17] *See* Maodi Solar CCR Request.

junction box which includes a female USB–A connector.

If we make a final determination to revoke the *Orders* in part, then Commerce will apply this determination to each order as follows. Because we have completed administrative reviews of the *Orders,* the partial revocation will be retroactively applied to unliquidated entries of merchandise subject to the changed circumstances reviews that were entered or withdrawn from warehouse, for consumption, on or after the day following the last day of the period covered by the most recently completed administrative review of the *Orders,* and which are not covered by automatic liquidation. The most recently completed administrative review of the AD order (A–570–010) was completed on June 14, 2019, and covered February 1, 2017 through January 31, 2018.[18] Therefore, under this scenario, the partial revocation for merchandise subject to the AD order would be applied retroactively to unliquidated entries of merchandise entered or withdrawn from warehouse, for consumption, on or after February 1, 2018. The most recently completed administrative review of the CVD order (C–570–011) was completed on October 23, 2019, and covered January 1, 2017 through December 31, 2017.[19] Therefore, the partial revocation for merchandise subject to the CVD order would be applied retroactively to unliquidated entries of merchandise entered or withdrawn from warehouse, for consumption, on or after January 1, 2018, as applicable.

Public Comment

Interested parties are invited to comment on these preliminary results in accordance with 19 CFR 351.309(c)(1)(ii). Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than seven days after the due date for comments. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[20] All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS).[21] An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time on the due dates set forth in this notice.

Final Results of the Changed Circumstances Reviews

Commerce intends to issue the final results of these changed circumstances reviews no later than 270 days after the date on which these reviews were initiated. If, in the final results of these reviews, Commerce continues to determine that changed circumstances warrant the revocation of the *Orders* in part, we will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to AD or CVD duties, and to refund any estimated AD or CVD duties, on all unliquidated entries of the merchandise covered by the revocation that are not covered by the final results of completed administrative reviews or automatic liquidation. The current requirement for cash deposits of estimated AD and CVD duties on all entries of subject merchandise will continue unless they are modified pursuant to the final results of these changed circumstances reviews.

Notification to Interested Parties

This initiation notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: August 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–19480 Filed 9–2–20; 8:45 am]

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[18] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 27764 (June 14, 2019).

[19] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017,* 84 FR 56765 (October 23, 2019).

[20] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[21] *See generally* 19 CFR 351.303.

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of reestablishment of the Environmental Technologies Trade Advisory Committee (ETTAC) and solicitation of nominations for membership.

SUMMARY: Pursuant to provisions under Title IV of the Jobs Through Trade Expansion Act, and under the Federal Advisory Committee Act, the Department of Commerce announces the reestablishment of the Environmental Technologies Trade Advisory Committee (ETTAC), as of August 16, 2020. The ETTAC was first chartered on May 31, 1994. The ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee (TPCC), reporting directly to the Secretary of Commerce in his/her capacity as Chairman of the TPCC. The ETTAC advises on the development and administration of policies and programs to expand U.S. exports of environmental technologies, goods, and services.

DATES: Nominations for membership must be received on or before 4:00 p.m. Eastern Daylight Time (EDT) on September 30, 2020.

ADDRESSES: Please email nominations to Amy Kreps, ETTAC Designated Federal Officer, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, at *amy.kreps@trade.gov.* Nominations must be submitted in either Microsoft Word or PDF format.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Kreps, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–603–4765; email: *amy.kreps@trade.gov*).

SUPPLEMENTARY INFORMATION:

Nominations: The Secretary of Commerce invites nominations to the ETTAC of U.S. citizens who will represent U.S. environmental goods and services companies that trade internationally, or trade associations and non-profit organizations whose members include U.S. companies that trade internationally. Companies must be at least 51 percent owned by U.S. persons. No member may represent a company that is majority-owned or controlled by a foreign government entity or foreign government entities.

Membership in a committee operating under the Federal Advisory Committee Act must be balanced in terms of economic subsector, geographic location, and company size. Committee members serve in a representative capacity and must be able to generally represent the views and interests of a certain subsector of the U.S. environmental industry. Candidates should be senior executive-level representatives from environmental technology companies, trade associations, and non-profit organizations. Members of the ETTAC must have experience in the exportation of environmental goods and/or services, including:

(1) Air pollution control and monitoring technologies;

(2) Analytic devices and services;

(3) Environmental engineering and consulting services;
(4) Financial services relevant to the environmental sector;
(5) Process and pollution prevention technologies;
(6) Solid and hazardous waste management technologies; and/or
(7) Water and wastewater treatment technologies.

Nominees will be evaluated based upon their ability to carry out the goals of the ETTAC's enabling legislation. A copy of the ETTAC's current Charter is available at *www.trade.gov/environmental-technologies-trade-advisory-committee.* Appointments will be made to create a balanced Committee in terms of subsector representation, product lines, firm size, geographic area, and other criteria. Nominees must be U.S. citizens. All appointments are made without regard to political affiliation. Members shall serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates (normally two years).

If you are interested in becoming a member of the ETTAC, please provide the following information (2 pages maximum):

(1) Name
(2) Title
(3) Work phone; fax; and email address
(4) Organization name and address, including website address
(5) Short biography of nominee, including written certification of U.S. citizenship (this may take form of the statement ''I am a citizen of the United States'') and a list of citizenships of foreign countries
(6) Brief description of the organization and its business activities, including
(7) Company size (number of employees and annual sales)
(8) Exporting experience
(9) An affirmative statement that the nominee will be able to meet the expected time commitments of Committee work, which includes:
(i) Attending in-person committee meetings approximately four times per year,
(ii) undertaking additional work outside of full committee meetings including subcommittee conference calls or meetings as needed, and
(iii) drafting or commenting on proposed recommendations to be evaluated at Committee meetings.

Please do not send company or trade association brochures or any other information not requested above. Nominees selected for appointment to the Committee will be notified by email.

Edward O'Malley,
Director, Office of Energy and Environmental Industries.

[FR Doc. 2020–19464 Filed 9–2–20; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA309]

Nominations to the Marine Mammal Scientific Review Groups

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

ACTION: Notice; request for nominations.

SUMMARY: As required by of the Marine Mammal Protection Act (MMPA), the Secretary of Commerce established three independent regional scientific review groups (SRGs) to provide advice on a range of marine mammal science and management issues. NMFS conducted a membership review of the Alaska, Atlantic, and Pacific SRGs, and is soliciting nominations for new members to fill vacancies and gaps in expertise.

DATES: Nominations must be received by October 5, 2020.

ADDRESSES: Nominations can be emailed to *Zachary.Schakner@noaa.gov,* Protected Species Science Branch, Office of Science and Technology, National Marine Fisheries Service, Attn: SRGs.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Schakner, Office of Science and Technology, 301–427–8106, *Zachary.Schakner@noaa.gov.* Information about the SRGs, including the SRG Terms of Reference, is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/scientific-review-groups.*

SUPPLEMENTARY INFORMATION: Section 117(d) of the MMPA (16 U.S.C. 1386(d)) directs the Secretary of Commerce to establish three independent regional SRGs to advise the Secretary (authority delegated to NMFS). The Alaska SRG advises on marine mammals that occur in waters off Alaska that are under the jurisdiction of the United States. The Pacific SRG advises on marine mammals that occur in waters off the U.S. West Coast, Hawaiian Islands, and the U.S. Territories in the Central and Western Pacific that are under the jurisdiction of the United States. The Atlantic SRG advises on marine mammals that occur in waters off the Atlantic coast, Gulf of Mexico, and U.S. Territories in the Caribbean that are under the jurisdiction of the United States.

SRGs members are highly qualified individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b) of the MMPA. The SRGs provide expert reviews of draft marine mammal stock assessment reports and other information related to the matters identified in section 117(d)(1) of the MMPA, including:

A. Population estimates and the population status and trends of marine mammal stocks;
B. Uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;
C. Uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;
D. Research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;
E. The actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and
F. Any other issue which the Secretary or the groups consider appropriate.

SRG members collectively serve as independent advisors to NMFS and the U.S. Fish and Wildlife Service and provide their expert review and recommendations through participation in the SRG. Members attend annual meetings and undertake activities as independent persons providing expertise in their subject areas. Members are not appointed as representatives of professional organizations or particular stakeholder groups, including government entities, and are not permitted to represent or advocate for those organizations, groups, or entities during SRG meetings, discussions, and deliberations.

SRG membership is voluntary; and, except for reimbursable travel and related expenses, service is without pay. The term of service for SRG members is three years, and members may serve up

to three consecutive terms if reappointed.

NMFS annually reviews the expertise available on the SRG and identifies gaps in the expertise that is needed to provide advice pursuant to section 117(d) of the MMPA. In conducting the reviews, NMFS attempts to achieve, to the maximum extent practicable, a balanced representation of viewpoints among the individuals on each SRG.

Expertise Solicited

For the Alaska SRG, NMFS seeks individuals with expertise in one or more of the following areas (not in order of priority): Toxicology, pollutants, and marine mammal health; abundance estimation, especially distance sampling and mark-recapture methods and survey design; anthropogenic impacts, particularly fisheries interactions, marine mammal bycatch estimation, depredation, ship strikes, entanglements, and the effects of anthropogenic sound; fishing gear and fishing practices; Alaska Native harvest and use of marine mammals for subsistence and handicraft purposes, especially in the Gulf of Alaska, Kodiak, and the Arctic; oceanographic changes impacting marine mammals; genetics as a method of identifying population structure; quantitative ecology, population dynamics, modeling, and statistics, especially as related to abundance and bycatch estimation; and pinnipeds.

For the Pacific SRG (including waters off the Pacific coast, Hawaiian Islands and the U.S. Territories in the Central and Western Pacific), NMFS seeks individuals with expertise in one or more of the following areas (not in order of priority): Incorporation of new methodological or technological advancements for data collection (*e.g.* genomics, eDNA, unmanned aerial or in-water autonomous vehicles) or data analysis, particularly for large complex datasets (*e.g.* machine learning, artificial intelligence, automation) into quantitative assessments of marine mammal abundance, life history, or population structure; marine mammal stock definition and assessment under the MMPA and Endangered Species Act, science-management interface; Marine Mammal Health and Stranding Response Program; West Coast and Pacific Islands fishing gear/techniques, including fishery/marine mammal interactions for State, Tribal, and/or regional/local fisheries; Pacific Northwest cetaceans, especially ecology and assessment of gray whales, humpback whales, harbor porpoise, Dall's porpoise, killer whales; West Coast pinnipeds, including assessment, life history, ecology, and human-pinniped interactions; large whales, particularly with regard to assessment, photo-identification, mark-recapture, life history, feeding ecology, movements, behavioral ecology as it relates to entanglement and ship strikes; oceanography and marine ecology, particularly decadal and long-term understanding; quantitative ecology, population dynamics, modeling, and statistics; interdisciplinary, integrative ecology with applications toward applied conservation and management problems, including evaluating bycatch and fisheries impacts across a range of marine mammal taxa; and marine mammal acoustics, including the integration of passive acoustic datasets into marine mammal assessments and examining the impacts of sound on marine mammal populations.

For the Atlantic SRG (including waters off the Atlantic coast, Gulf of Mexico, and U.S. Territories in the Caribbean), NMFS seeks individuals with expertise in one or more of the following priority areas (not in order of priority): Protected species conservation, wildlife management, and policy/science interface especially in the non-governmental sector; line-transect methodology, mark-recapture methods, survey design, and quantitative ecology; life history and ecology, particularly large cetaceans and delphinid species; Gulf of Mexico cetacean population dynamics; Southeast U.S. cetaceans; Northeast U.S. Large Marine Ecosystem (LME); marine mammal health, physiology, energetics, and toxicology; genetics; fishing gear and practices, particularly fisheries with marine mammal bycatch, fishery bycatch estimation, and bycatch reduction; ecosystem climate impacts; and manatees.

Submitting a Nomination

Nominations for new members should be sent to Dr. Zachary Schakner in the NMFS Office of Science & Technology (see **ADDRESSES**) and must be received by October 5, 2020. Nominations should be accompanied by the individual's curriculum vitae and detailed information regarding how the recommended person meets the minimum selection criteria for SRG members (see below). Nominations should also include the nominee's name, address, telephone number, and email address. Self-nominations are acceptable.

Selection Criteria

Although the MMPA does not explicitly prohibit Federal employees from serving as SRG members, NMFS interprets MMPA section 117(d)'s reference to the SRGs as ''independent'' bodies that are exempt from Federal Advisory Committee Act requirements to mean that SRGs are intended to augment existing Federal expertise and are not composed of Federal employees or contractors.

When reviewing nominations, NMFS, in consultation with the U.S. Fish and Wildlife Service, will consider the following six criteria:

(1) Ability to make time available for the purposes of the SRG;

(2) Knowledge of the species (or closely related species) of marine mammals in the SRG's region;

(3) Scientific or technical achievement in a relevant discipline, particularly the areas of expertise identified above, to be considered an expert peer reviewer for the topic;

(4) Demonstrated experience working effectively on teams;

(5) Expertise relevant to current and expected needs of the SRG, in particular, expertise required to provide adequate review and knowledgeable feedback on current or developing stock assessment issues, techniques, etc. In practice, this means that each member should have expertise in more than one topic as the species and scientific issues discussed in SRG meetings are diverse; and

(6) No conflict of interest with respect to their duties as a member of the SRG.

Next Steps

Following review, nominees who are identified by NMFS as potential new members must be vetted and cleared in accordance with Department of Commerce policy. NMFS will contact these individuals and ask them to provide written confirmation that they are not registered Federal lobbyists or registered foreign agents, and to complete a confidential financial disclosure form, which will be reviewed by the Ethics Law and Programs Division within the U.S. Department of Commerce's Office of General Counsel. All nominees will be notified of a selection decision in advance of the 2020 SRG meetings.

Dated: August 28, 2020.

Karl I. Moline,

Acting Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 2020–19526 Filed 9–2–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska License Limitation Program for Groundfish, Crab, and Scallops

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 2, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0334 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, 907–586–7356 or *gabrielle.aberle@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of the currently approved information collection for the Alaska License Limitation Program (LLP) for Groundfish, Crab, and Scallops.

The License Limitation Program (LLP) restricts access to the commercial groundfish, crab, and scallop fisheries in the exclusive economic zone off Alaska, except for certain areas where alternative programs exist. The intended effect of the LLP is to limit the number of participants and reduce fishing capacity in fisheries off Alaska. More information on the LLP can be found on the NMFS Alaska Region website and at 50 CFR 692, 679.4(g) and (k), and 679.7(i).

An LLP license is required for vessels participating in directed fishing for LLP groundfish species in the Bering Sea and Aleutian Islands (BSAI) or Gulf of Alaska (GOA), or fishing in any BSAI LLP crab fisheries. An LLP license is also required for any vessel deployed in scallop fisheries in Federal waters off Alaska (except for some diving operations).

Vessels participating in directed fishing for LLP groundfish species in the GOA or BSAI, or fishing in any BSAI LLP crab fisheries, must be named on a valid copy of the LLP license that is on board the vessel, with some exceptions. An LLP groundfish or crab license authorizes the license holder to deploy the vessel in fisheries in accordance with the specific area and species endorsements, the vessel and gear designations, the maximum length overall (MLOA) specified on the license, and any exemption from the MLOA specified on the license.

An LLP scallop license authorizes the person named on the license to catch and retain scallops in compliance with State of Alaska regulations using a vessel that does not exceed the MLOA specified on the license and the gear designation specified on the license. Unlike the LLP groundfish license, the scallop license is not vessel specific. A valid copy of the LLP scallop license must be on board the vessel.

The LLP originally collected basic information so that NMFS could determine which owners of vessels were issued LLP licenses. To receive an LLP license, an eligible applicant needed to apply during the application periods established when the program was implemented. As the application periods and selection process for the LLP licenses have ended, an LLP license may now only be obtained through transfer.

This information collection collects information necessary for transfer of LLP licenses for groundfish, crabs, and scallops. This collection contains the transfer appeals process and the applications used to transfer an LLP license.

An LLP license holder uses a transfer application to transfer an LLP license to a person who meets the eligibility requirements. The transfer applications collect information on the transferor, the transferee, and the LLP license to be transferred. The groundfish and crab transfer application also collects information on the rockfish quota share to be transferred, the vessel currently named on the LLP license, the vessel to be named on the LLP license, and ownership interest and transaction data.

II. Method of Collection

Information is collected via mail, delivery, or fax. The transfer applications are available as fillable pdfs on the NMFS Alaska Region website and may be downloaded, completed, and printed out prior to submission.

III. Data

OMB Control Number: 0648–0334.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 49.

Estimated Time per Response: 1 hour each for Application for Transfer License Limitation Program Groundfish/Crab License and Application for Transfer of Scallop LLP License; 4 hours for transfer appeals.

Estimated Total Annual Burden Hours: 52.

Estimated Total Annual Cost to Public: $1,004 in recordkeeping/reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–19478 Filed 9–2–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA461]

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be September 23, 2020, 9 a.m.–5 p.m., Pacific Time (PT).

ADDRESSES: Meeting is by conference call and webinar.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: *Katherine.Cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter is located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-.* The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task Force web page: *https://www.fisheries.noaa.gov/west-coast/partners/columbia-basin-partnership-task-force.*

Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics include final deliberations on the content of the Phase 2 report including biological and physical scenarios; social, cultural, economic, and ecosystem considerations; key messages; and options for future collaboration for achieving Columbia Basin salmon and steelhead goals. The approved final Phase 2 report will be delivered to MAFAC for its consideration after the conclusion of this meeting.

Time and Date

The meeting is scheduled for September 23, 2020, 9 a.m.–5 p.m., PT by conference call and webinar. Access information for the public will be posted by September 16, 2020 at *https://www.fisheries.noaa.gov/event/columbia-basin-partnership-task-force-meeting-8.*

Dated: August 31, 2020.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2020–19479 Filed 9–2–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Multistakeholder Process on Promoting Software Component Transparency

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene a virtual meeting of a multistakeholder process on promoting software component transparency on October 22, 2020.

DATES: The meeting will be held on October 22, 2020, from 12:00 p.m. to 4:00 p.m., Eastern Time.

ADDRESSES: The meeting will be held virtually, with online slide share and dial-in information to be posted at *https://www.ntia.doc.gov/SoftwareTransparency.*

FOR FURTHER INFORMATION CONTACT: Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482–4281; email: *afriedman@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background: This NTIA cybersecurity multistakeholder process focuses on promoting software component transparency.[1] Most modern software is not written completely from scratch, but includes existing components, modules, and libraries from the open source and commercial software world. Modern development practices such as code reuse, and a dynamic IT marketplace with acquisitions and mergers, make it challenging to track the use of software components. The Internet of Things compounds this phenomenon, as new organizations, enterprises, and innovators take on the role of software developer to add ''smart'' features or connectivity to their products. While the majority of libraries and components do not have known vulnerabilities, many do, and the sheer quantity of software means that some software products ship with vulnerable or out-of-date components.

The first meeting of this multistakeholder process was held on July 19, 2018, in Washington, DC.[2] Stakeholders presented multiple perspectives, and identified several inter-related work streams: Understanding the Problem, Use Cases and State of Practice, Standards and Formats, and Healthcare Proof of Concept. Since then, stakeholders have been discussing key issues and developing products such as guidance documents. NTIA acts as the convener, but stakeholders drive the outcomes. Success of the process will be evaluated by the extent to which broader findings on software component transparency are implemented across the ecosystem.

The first set of stakeholder-drafted documents on Software Bills of Materials was published by NTIA in November 2019. Those documents, and subsequent consensus-approved drafts from the community, are available at:

[1] NTIA serves as the President's principal adviser on telecommunications and information policies. *See* 47 U.S.C. 902(b)(2)(D).

[2] Notes, presentations, and a video recording of the July 19, 2018 kickoff meeting are available at: *https://www.ntia.doc.gov/SoftwareTransparency.*

https://www.ntia.doc.gov/SBOM. The main objectives of the October 22, 2020 meeting are to share progress from the working groups; to give feedback on the ongoing work around technical challenges, tooling, demonstrations, and awareness and adoption; and to continue discussions around potential guidance or playbook documents. More information about stakeholders' work is available at: *https://www.ntia.doc.gov/SoftwareTransparency.*

Time and Date: NTIA will convene the next meeting of the multistakeholder process on Software Component Transparency on October 22, 2020, from 12:00 p.m. to 4:00 p.m. Eastern Time. The exact time of the meeting is subject to change. Please refer to NTIA's website, *https://www.ntia.doc.gov/SoftwareTransparency,* for the most current information.

Place: The meeting will be held virtually, with online slide share and dial-in information to be posted at *https://www.ntia.doc.gov/SoftwareTransparency.* Please refer to NTIA's website, *https://www.ntia.doc.gov/SoftwareTransparency,* for the most current information.

Other Information: The meeting is open to the public and the press on a first-come, first-served basis.

The virtual meeting is accessible to people with disabilities. Requests for real-time captioning or other auxiliary aids should be directed to Allan Friedman at (202) 482–4281 or *afriedman@ntia.doc.gov* at least seven (7) business days prior to the meeting. Access details for the meeting are subject to change. Please refer to NTIA's website, *https://www.ntia.doc.gov/SoftwareTransparency,* for the most current information.

Dated: August 31, 2020.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2020–19489 Filed 9–2–20; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 3511 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce waivers that the U.S. Department of Education (Department) granted, within the last 30 days, under the CARES Act.

FOR FURTHER INFORMATION CONTACT: Hugh Reid, U.S. Department of Education, 400 Maryland Avenue SW, Room 11114, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7491. Email: *Hugh.Reid@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: Section 3511(d)(3) of the CARES Act requires the Secretary to publish, in the **Federal Register** and on the Department's website, a notice of the Secretary's decision to grant a waiver. The Secretary must publish this notice no later than 30 days after granting the waiver and the notice must include which waiver was granted and the reason for granting the waiver. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted under section 3511.

The Department has approved waivers of the following requirement: Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of fiscal year (FY) 2018 funds for programs in which the State educational agency (SEA) participates as the eligible agency until September 30, 2021.

On April 17, 2020, the Secretary delegated to the Assistant Secretary for Career, Technical, and Adult Education (Assistant Secretary), for programs over which the Assistant Secretary has administrative authority, the authority to grant waivers under section 3511 of the CARES Act. On May 15, 2020, the Office of Career, Technical, and Adult Education (OCTAE) published a notice in the **Federal Register** (85 FR 29440) announcing 41 waivers that were granted to SEAs. Twenty-eight of those waivers were for State grants authorized by Title I of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins), and 13 of those waivers were for State grants authorized by Title II of the Workforce Innovation and Opportunity Act (WIOA) (*i.e.,* the Adult Education and Family Literacy Act (AEFLA)).

On June 15, 2020, OCTAE published a notice in the **Federal Register** (85 FR 36195) announcing six waivers that were granted to SEAs. Three of those waivers were for State grants authorized by Title I of Perkins, and the remaining three waivers were for State grants authorized by Title II of WIOA (AEFLA).

On August 6, 2020, OCTAE published a notice in the **Federal Register** (85 FR 47774) announcing two waivers that were granted to SEAs. One of those waivers was for a State grant authorized by Title I of Perkins, and the other waiver was for a State grant authorized by Title II of WIOA (AEFLA). In the last 30 days, OCTAE granted two waivers to SEAs.

Waiver Data

Extensions of the Obligation Period

Two waivers were granted to SEAs for State grants authorized by Title II of WIOA (AEFLA).

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).[1]

Reasons: These waivers were granted under section 421(b) of GEPA to extend the period of availability of FY 2018 funds until September 30, 2021, pursuant to the 2018 Consolidated Appropriations Act (GEPA section 421(b) waivers). It is not possible to obligate funds on a timely basis, as originally planned, due to extensive school and program disruptions in the States. These disruptions are in response to extraordinary circumstances for which a national emergency related to the COVID–19 pandemic has been duly declared by the President of the United States under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207, and will protect the health and safety of students, staff, and our communities.

Waiver Applicants: The SEA GEPA section 421(b) waiver applicants provided assurance that the SEA will: (1) Use, and ensure that its subgrantees will use, funds under the respective programs in accordance with the provisions of all applicable statutes, regulations, program plans, and applications not subject to these waivers; (2) work to mitigate, and ensure that its subgrantees will work to mitigate, any negative effects that may occur as a result of the requested waiver; and (3) provide the public and all subgrantees in the State with notice of, and the opportunity to comment on, this request by posting information regarding the waiver request and the

[1] Section 3511(b) of the CARES Act only authorizes the Secretary to grant waivers requested by SEAs of the Tydings Amendment, section 421(b) of GEPA, to extend the period of availability of State formula grant funds authorized by Perkins and AEFLA. The Department currently does not have the authority to grant a waiver of the Tydings Amendment with respect to Perkins or AEFLA to States in which the SEA is not the grantee for these State-administered programs.

process for commenting on the State website.

The Assistant Secretary reviewed the SEAs' requests for a GEPA section 421(b) waiver and determined that the following SEAs met the requirements for a GEPA section 421(b) waiver on the dates indicated below:

State grants authorized by Title II of WIOA (AEFLA):

- District of Columbia State Board of Education, August 3, 2020; and
- Pennsylvania Department of Education, August 12, 2020.

The Assistant Secretary also announced the waiver decisions at: *https://www2.ed.gov/about/offices/list/ovae/pi/covid19/index.html.*

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Scott Stump,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2020–19445 Filed 9–2–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0141]

Agency Information Collection Activities; Comment Request; 21st CCLC 4201(b)(1) Waiver Request

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: OMB approved this information collection under emergency processing on August 27, 2020. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before November 2, 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–0141. 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 Miriam Lund, 202–401–2871.

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: 21st CCLC 4201(b)(1) Waiver Request.

OMB Control Number: 1810–0746.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 53.

Total Estimated Number of Annual Burden Hours: 159.

Abstract: The Nita M. Lowey 21st Century Community Learning Centers (21st CCLC) grant program intends to offer a waiver available to State education agencies (SEAs) based on section 8401 [20 U.S.C. 7861] of the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (ESSA) in 2015 to allow SEAs to waive the definition of Community Learning Center(s) for implementation of services during ''nonschool hours or periods when school is not in session (such as before and after school or during summer recess)'' per section 4201(b)(1)(A) [20 U.S.C. 7171] for 21st CCLC programs in school year 2020–2021. The purpose for this new collection is to collect waiver requests from each State wishing to take advantage of the waiver.

This collection is being submitted under the regular clearance process for information collection. Therefore, the 60-day public comment period notice is published for this information collection request. This information collection will allow SEAs to request a waiver of section 4201(b)(1)(A). ED previously requested an emergency clearance because schools are already opening or will be opening very soon, and the flexibility offered through a waiver will enable SEAs and subgrantees to better meet the needs of students through more nimble 21st CCLC programs. The approved collection will allow ED to collect waiver requests without delays in providing support for SEAs, LEAs, and schools.

Dated: August 31, 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. 2020–19474 Filed 9–2–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA®) Information To Be Verified for the 2021–2022 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying FAFSA information. This is the notice for the 2021–2022 award year, CFDA numbers 84.007, 84.033, 84.063, and 84.268.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, U.S. Department of Education, 400 Maryland Avenue SW, Room 294–10, Washington, DC 20202. Telephone: (202) 453–6088. Email: *Jacquelyn.Butler@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: If the Secretary selects an applicant for verification, the applicant's Institutional Student Information Record (ISIR) includes flags that indicate (1) that the applicant has been selected by the Secretary for verification and (2) the Verification Tracking Group in which the applicant has been placed. The Verification Tracking Group indicates which FAFSA information needs to be verified for the applicant and, if appropriate, for the applicant's parent(s) or spouse. The Student Aid Report (SAR) provided to the applicant will indicate that the applicant's FAFSA information has been selected for verification and direct the applicant to contact the institution for further instructions for completing the verification process.

For the 2019–2020 and 2020–2021 award years, the Secretary has issued and continue to issue guidance that provide flexibilities to the verification regulations to help institutions and applicants deal with the challenges resulting from the novel coronavirus disease (COVID–19) pandemic. The Secretary will extend the effective period of its guidance to include the 2021–2022 award year if circumstances warrant an extension and will inform the public of such an extension at the appropriate time.

The following chart lists, for the 2021–2022 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must, under § 668.57, be provided to an institution for that information to be verified.

FAFSA Information	Acceptable documentation
Income information for tax filers: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) 2019 tax account information of the tax filer that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) through the IRS Data Retrieval Tool and that has not been changed after the information was obtained from the IRS; (2) A transcript [1] obtained at no cost from the IRS or other relevant tax authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign government that lists 2019 tax account information of the tax filer; or (3) A copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS or other relevant tax authority of a U.S. territory, or a foreign government that lists 2019 tax account information of the tax filer.
Income information for tax filers with special circumstances: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) For a student, or the parent(s) of a dependent student, who filed a 2019 joint income tax return and whose income is used in the calculation of the applicant's expected family contribution and who at the time the FAFSA was completed was separated, divorced, widowed, or married to someone other than the individual included on the 2019 joint income tax return— (a) A transcript obtained from the IRS orother relevant tax authority thatlists 2019 tax account information ofthe tax filer(s); or (b) A copy of the income tax return and the applicable schedules that were filed with the IRS or other relevant tax authority that lists 2019 tax account information of the tax filer(s); and (c) A copy of IRS Form W–2 [2] for each source of 2019 employment income received or an equivalent document.[2] (2) For an individual who is required to file a 2019 IRS income tax return and has been granted a filing extension by the IRS beyond the automatic six-month extension for tax year 2019— (a) A copy of the IRS's approval of an extension beyond the automatic six-month extension for tax year 2019 [3]; (b) Verification of nonfiling [4] from the IRS dated on or after October 1, 2020; (c) A copy of IRS Form W–2 [2] for each source of 2019 employment income received or an equivalent document [2]; and (d) If self-employed, a signed statement certifying the amount of AGI and U.S. income tax paid for tax year 2019. **Note:** An institution may require that, after the income tax return is filed, an individual granted a filing extension beyond the automatic six-month extension submit tax information using the IRS Data Retrieval Tool, by obtaining a transcript from the IRS, or by submitting a copy of the income tax return and the applicable schedules that were filed with the IRS that lists 2019 tax account information. When an institution receives such information, it must be used to reverify the income and tax information reported on the FAFSA.

FAFSA Information	Acceptable documentation
	(3) For an individual who was the victim of IRS tax-related identity theft— (a) A Tax Return DataBase View (TRDBV) transcript[1] obtained from the IRS; and (b) A statement signed and dated by the tax filer indicating that he or she was a victim of IRS tax-related identity theft and that the IRS has been made aware of the tax-related identity theft. **Note:** Tax filers may inform the IRS of the tax-related identity theft and obtain a TRDBV transcript by calling the IRS's Identity Protection Specialized Unit (IPSU) at 1–800–908–4490. Unless the institution has reason to suspect the authenticity of the TRDBV transcript provided by the IRS, a signature or stamp or any other validation from the IRS is not needed. (4) For an individual who filed an amended income tax return with the IRS, a signed copy of the IRS Form 1040X that was filed with the IRS for tax year 2019 or documentation from the IRS that include the change(s) made to the tax filer's 2019 tax information, in addition to one of the following— (a) IRS Data Retrieval Tool information on an ISIR record with all tax information from the original 2019 income tax return; (b) A transcript obtained from the IRS that lists 2019 tax account information of the tax filer(s); or (c) A signed copy of the 2019 IRS Form 1040 and the applicable schedules that were filed with the IRS.
Income information for nontax filers: Income earned from work	For an individual who has not filed and, under IRS or other relevant tax authority rules (*e.g.*, the Republic of the Marshall Islands, the Republic of Palau, the Federated States of Micronesia, a U.S. territory or commonwealth or a foreign government), is not required to file a 2019 income tax return— (1) A signed statement certifying— (a) That the individual has not filed and is not required to file a 2019 income tax return; and (b) The sources of 2019 income earned from work and the amount of income from each source; (2) A copy of IRS Form W–2[2] for each source of 2019 employment income received or an equivalent document[2]; and (3) Except for dependent students, verification of nonfiling[4] from the IRS or other relevant tax authority dated on or after October 1, 2020.
Number of Household Members	A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each household member for the 2021–2022 award year and the relationship of that household member to the applicant. **Note:** Verification of number of household members is not required if— • For a dependent student, the household size indicated on the ISIR is two and the parent is single, separated, divorced, or widowed, or the household size indicated on the ISIR is three if the parents are married or unmarried and living together; or • For an independent student, the household size indicated on the ISIR is one and the applicant is single, separated, divorced, or widowed, or the household size indicated on the ISIR is two if the applicant is married.
Number in College	(1) A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents listing the name and age of each household member, excluding the parents, who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2021–2022 award year in a program that leads to a degree or certificate and the name of that educational institution. (2) If an institution has reason to believe that the signed statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain documentation from each institution named by the applicant that the household member in question is, or will be, attending on at least a half-time basis unless— (a) The applicant's institution determines that such documentation is not available because the household member in question has not yet registered at the institution the household member plans to attend; or (b) The institution has documentation indicating that the household member in question will be attending the same institution as the applicant. **Note:** Verification of the number of household members in college is not required if the number in college indicated on the ISIR is "1."
High School Completion Status	The applicant's high school completion status when the applicant attends the institution in 2021–2022. (1) *High School Diploma* (a) A copy of the applicant's high school diploma; (b) A copy of the applicant's final official high school transcript that shows the date when the diploma was awarded; or (c) A copy of the "secondary school leaving certificate" (or other similar document) for students who completed secondary education in a foreign country and are unable to obtain a copy of their high school diploma or transcript.

FAFSA Information	Acceptable documentation
	Note: Institutions that have the expertise may evaluate foreign secondary school credentials to determine their equivalence to U.S. high school diplomas. Institutions may also use a foreign diploma evaluation service for this purpose. (2) *Recognized Equivalent of a High School Diploma* (a) General Educational Development (GED) Certificate or GED transcript; (b) A State certificate or transcript received by a student after the student has passed a State-authorized examination (HiSET, TASC, or other State-authorized examination) that the State recognizes as the equivalent of a high school diploma; (c) An academic transcript that indicates the student successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree at any participating institution; or (d) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who excelled academically in high school but did not complete high school, documentation from the high school that the student excelled academically and documentation from the postsecondary institution that the student has met its written policies for admitting such students. (3) *Homeschool* (a) If the State where the student was homeschooled requires by law that such students obtain a secondary school completion credential for homeschool (other than a high school diploma or its recognized equivalent), a copy of that credential; or (b) If such State law does not require the credential noted in 3(a), a transcript or the equivalent signed by the student's parent or guardian that lists the secondary school courses the student completed and documents the successful completion of a secondary school education in a homeschool setting. **Note:** In cases where documentation of an applicant's completion of a secondary school education is unavailable, *e.g.*, the secondary school is closed and information is not available from another source, such as the local school district or a State Department of Education, or in the case of homeschooling, the parent(s)/guardian(s) who provided the homeschooling is deceased, an institution may accept alternative documentation to verify the applicant's high school completion status (*e.g.*, DD Form 214 Certificate of Release or Discharge From Active Duty that indicates the individual is a high school graduate or equivalent). When documenting an applicant's high school completion status, an institution may rely on documentation it has already collected for purposes other than the title IV verification requirements (*e.g.*, high school transcripts maintained in the admissions office) if the documentation meets the criteria outlined above. Verification of high school completion status is not required if the institution successfully verified and documented the applicant's high school completion status for a prior award year.
Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity: (a) An unexpired valid government-issued photo identification[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport. The institution must maintain an annotated copy of the unexpired valid government-issued photo identification that includes— i. The date the identification was presented; and ii. The name of the institutionally authorized individual who reviewed the identification; and (b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____for 2021–2022. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date) _____ (Student's ID Number) (2) If an institution determines that an applicant is unable to appear in person to present an unexpired valid government-issued photo identification and execute the Statement of Educational Purpose, the applicant must provide the institution with— (a) A copy of an unexpired valid government-issued photo identification[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport that is acknowledged in a notary statement or that is presented to a notary; and (b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose**

FAFSA Information	Acceptable documentation
	I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____ for 2021–2022. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date) _____ (Student's ID Number)

[1] This footnote applies, where applicable, whenever an income tax return, the applicable schedules, or transcript is mentioned in the above chart.

The copy of the 2019 income tax return must include the signature of the tax filer, or one of the filers of a joint income tax return, or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security Number, Employer Identification Number, or Preparer Tax Identification Number.

For a tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, the institution must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

An individual who did not retain a copy of his or her 2019 tax account information, and for whom that information cannot be located by the IRS or other relevant tax authority, must submit to the institution—

(a) Copies of all IRS Form W–2s for each source of 2019 employment income or equivalent documents; or

(b) If the individual is self-employed or filed an income tax return with a government of a U.S. territory or commonwealth or a foreign government, a signed statement certifying the amount of AGI and income taxes paid for tax year 2019; and

(c) Documentation from the IRS or other relevant tax authority that indicates the individual's 2019 tax account information cannot be located; and

(d) A signed statement that indicates that the individual did not retain a copy of his or her 2019 tax account information.

If an individual who was the victim of IRS tax-related identity theft is unable to obtain a TRDBV, the institution may accept an equivalent document provided by the IRS or a copy of the signed 2019 income tax return the individual filed with the IRS.

[2] An individual who is required to submit an IRS Form W–2 or an equivalent document but did not maintain a copy should request a duplicate from the employer who issued the original or from the government agency that issued the equivalent document. If the individual is unable to obtain a duplicate W–2 or an equivalent document in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

(a) The amount of income earned from work;

(b) The source of that income; and

(c) The reason why the IRS Form W–2, or an equivalent document, is not available in a timely manner.

[3] For an individual who was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency, an institution must accept a statement from the individual certifying that he or she has not filed an income tax return or a request for a filing extension because of that service.≤

[4] If an individual is unable to obtain verification of nonfiling from the IRS or other relevant tax authority and, based upon the institution's determination, it has no reason to question the student's or family's good-faith effort to obtain the required documentation, the institution may accept a signed statement certifying that the individual attempted to obtain the verification of nonfiling from the IRS or other relevant tax authority and was unable to obtain the required documentation.

For IRS extension filers, the signed statement must also indicate that the individual has not filed a 2019 income tax return and list the sources of any 2019 income, and the amount of income from each source.

Since individuals without a Social Security Number, an Individual Taxpayer Identification Number, or an Employer Identification Number are unable to obtain a verification of nonfiling from the IRS, these individuals whose income is below the IRS filing threshold must submit to the institution a signed and dated statement—

(a) Certifying that the individual(s) does not have a Social Security Number, an Individual Taxpayer Identification Number, or an Employer Identification Number; and

(b) Listing the sources and amounts of earnings, other income, and resources that supported the individual(s) for the 2019 tax year.

[5] An unexpired valid government-issued photo identification is one issued by the U.S. government, any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized American Indian and Alaska Native Tribe, American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

Verification Requirements for Individuals Who Are Eligible for an Auto Zero Expected Family Contribution (EFC)

Only the following FAFSA/ISIR information must be verified:

For dependent students—

- The parents' AGI if the parents were tax filers;
- The parents' income earned from work if the parents were nontax filers; and
- The student's high school completion status and identity/statement of educational purpose, if selected.

For independent students—

- The student's and spouse's AGI if they were tax filers;
- The student's and spouse's income earned from work if they were nontax filers;
- The student's high school completion status and identity/statement of educational purpose, if selected; and
- The number of household members to determine if the independent student has one or more dependents other than a spouse.

Note: Verification of nonfiling [4] from the IRS (or other relevant tax authority, if applicable) dated on or after October 1, 2020, must be provided for (1) independent students (and spouses, if applicable) and parents of dependent students who did not file and are not required to file a 2019 income tax return, and (2) individuals who are required to file a 2019 IRS income tax return but have not filed because they have been granted a tax filing extension by the IRS beyond the automatic six-month extension for the 2019 tax year.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources:

- *2021–2022 Application and Verification Guide.*
- *2021–2022 ISIR Guide.*
- *2021–2022 SAR Comment Codes and Text.*
- *2021–2022 COD Technical Reference.*
- Program Integrity Information—Questions and Answers on Verification at *http://www2.ed.gov/policy/highered/*

reg/hearulemaking/2009/verification.html.

These publications are on the Information for Financial Aid Professionals website at www.*ifap.ed.gov.*

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1087a–1087j, and 42 U.S.C. 2751–2756b.

Robert L. King,

Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2020–19501 Filed 9–2–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–25–000]

Electronic Document Management System (eLibrary) Enhancements; Notice Announcing Release of Modernized Elibrary System

The Federal Energy Regulatory Commission (Commission), hereby gives notice announcing upcoming enhancements to its Electronic Document Management System (eLibrary), that will be available the week of August 31. These enhancements have been undergoing further refinement since the Commission issued its notice announcing the release of its modernized eLibrary system on July 31, 2020. The Commission plans to upgrade its existing system with newer, more robust and user-friendly technology. Ultimately, the new system will provide users with an improved user interface, more reliable search capabilities and greater system stability.

This version includes, but is not limited to the following enhancements:

- A modern look and feel to the eLibrary site
- Improved navigation and consolidated search screens
- Removal of redundant features
- Improved search accuracy and relevance
- On-Demand PDF generation for files in an accession
- Multiple file zip and download from the search results
- Improved reliability

Please see *https://www.ferc.gov/* for additional details on FERC's modernized eLibrary system, including additional information on file formats, text searchable versus image formats, file names, security, et al.

Dated: August 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–19485 Filed 9–2–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2746–000]

Riverstart Solar Park LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Riverstart Solar Park LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–19488 Filed 9–2–20; 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: RP20–1120–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Lucid Energy, EOG Resources and Devon Gas to be effective 9/18/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5100.

Comments Due: 5 p.m. ET 9/8/20.

Docket Numbers: RP20–1121–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Compliance filing Operational Purchase and Sales Report.

Filed Date: 8/27/20.

Accession Number: 20200827–5076.

Comments Due: 5 p.m. ET 9/8/20.

Docket Numbers: RP20–1122–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: 2020 Winter Fuel Filing to be effective 10/1/2020.

Filed Date: 8/27/20.

Accession Number: 20200827–5093.

Comments Due: 5 p.m. ET 9/8/20.

Docket Numbers: RP20–1123–000.

Applicants: Millennium Pipeline Company, LLC.

Description: § 4(d) Rate Filing: RAM 2020—Periodic RAM Adjustment to be effective 10/1/2020.

Filed Date: 8/27/20.

Accession Number: 20200827–5098.

Comments Due: 5 p.m. ET 9/8/20.

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: August 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–19487 Filed 9–2–20; 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: EG20–239–000.

Applicants: Greensville County Solar Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Greensville County Solar Project, LLC.

Filed Date: 8/28/20.

Accession Number: 20200828–5193.

Comments Due: 5 p.m. ET 9/18/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1471–010; ER16–915–003; ER15–1672–009; ER10–2861–008; ER19–2287–001; ER16–2010–004; ER19–2289–001; ER19–2294–001; ER12–1308–011; ER16–711–007; ER16–2561–004; ER13–1504–009; ER19–2305–001.

Applicants: Blue Sky West, LLC, Comanche Solar PV, LLC, Evergreen Wind Power II, LLC, Fountain Valley Power, L.L.C. Goal Line L.P., Hancock Wind, LLC, KES Kingsburg, L.P, Mesquite Power, LLC, Palouse Wind, LLC, Pio Pico Energy Center, LLC, Sunflower Wind Project, LLC, SWG Arapahoe, LLC, Valencia Power, LLC.

Description: Notice of Non-Material Change in Status of Blue Sky West, LLC, et al.

Filed Date: 8/28/20.

Accession Number: 20200828–5159.

Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER19–1741–001; ER17–1603–002; ER17–1037–003; ER17–2245–002; ER14–2140–009; ER14–2141–009.

Applicants: Dominion Energy South Carolina, Inc., Dominion Energy Generation Marketing, Inc, Innovative Solar 37, LLC, Moffett Solar 1, LLC, Mulberry Farm, LLC, Selmer Farm, LLC.

Description: Updated Market Power Analysis, et al. of the Dominion Southeast MBR Sellers.

Filed Date: 8/27/20.

Accession Number: 20200827–5260.

Comments Due: 5 p.m. ET 10/26/20.

Docket Numbers: ER20–939–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance to Revise Tariff in Docket No. EL18–26, AD18–8, ER20–939 to be effective 4/6/2020.

Filed Date: 8/28/20.

Accession Number: 20200828–5187.

Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–1719–001.

Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: Compliance filing: PPL Electric submits Compliance Filing in ER20–1719 re: Order 864 to be effective 1/27/2020.

Filed Date: 8/27/20.

Accession Number: 20200827–5199.

Comments Due: 5 p.m. ET 9/17/20.

Docket Numbers: ER20–1942–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2020–08–28_Deficiency Response to Conventional Resource Deliverability Filing to be effective 8/12/2020.

Filed Date: 8/28/20.

Accession Number: 20200828–5107.

Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2318–001.

Applicants: Milford Solar I, LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 8/11/2020.

Filed Date: 8/28/20.

Accession Number: 20200828–5130.

Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2759–000.

Applicants: Virginia Electric and Power Company.

Description: Request for Limited Waiver, or Alternatively Remedial Relief, et al. of Virginia Electric and Power Company.

Filed Date: 8/27/20.

Accession Number: 20200827–5204.

Comments Due: 5 p.m. ET 9/17/20.

Docket Numbers: ER20–2760–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5752; Queue No. AF2–432 to be effective 8/18/2020.

Filed Date: 8/28/20.

Accession Number: 20200828–5018.

Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2761–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1628R18 Western Farmers Electric Cooperative NITSA NOA to be effective 8/1/2020.

Filed Date: 8/28/20.

Accession Number: 20200828–5025.

Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2762–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: July 2020 RTEP, 30-Day Comment Period Requested to be effective 11/26/2020.

Filed Date: 8/28/20.
Accession Number: 20200828–5120.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2763–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: § 205(d) Rate Filing: WPC Sched B Modification Filing to be effective 11/1/2020.
Filed Date: 8/28/20.
Accession Number: 20200828–5111.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2764–000.
Applicants: Midcontinent Independent System Operator, Inc, Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2020–08–28_SA 3552 NSP–GRE–OTP–WMMPA–CMMPA T–T (Steep Bank) to be effective 9/30/2019.
Filed Date: 8/28/20.
Accession Number: 20200828–5115.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2765–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: SEPA Network Agreement Amendment Filing (Revision No. 8) to be effective 8/1/2020.
Filed Date: 8/28/20.
Accession Number: 20200828–5116.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2766–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: SEPA Network Agreement Amendment Filing (Revision No. 9) to be effective 7/31/2020.
Filed Date: 8/28/20.
Accession Number: 20200828–5117.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2767–000.
Applicants: New York Independent System Operator, Inc, New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: Joint filing of SGIA among NYISO, NYSEG and Puckett Solar, SA 2545 to be effective 8/18/2020.
Filed Date: 8/28/20.
Accession Number: 20200828–5128.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2768–000.
Applicants: Greensville County Solar Project, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authoritization to be effective 10/21/2020.
Filed Date: 8/28/20.
Accession Number: 20200828–5131.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2769–000.
Applicants: Tri-State Generation and Transmission Association, Inc
Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 606 to be effective 12/31/2019.
Filed Date: 8/28/20.
Accession Number: 20200828–5148.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2770–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 813 to be effective 2/25/2020.
Filed Date: 8/28/20.
Accession Number: 20200828–5151.
Comments Due: 5 p.m. ET 9/18/20.

Docket Numbers: ER20–2771–000.
Applicants: Guzman Western Slope LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 8/29/2020.
Filed Date: 8/28/20.
Accession Number: 20200828–5152.
Comments Due: 5 p.m. ET 9/18/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–53–000.
Applicants: Montana-Dakota Utilities Co.
Description: Amendment to Application [Exbibits, C, D & E] Under Section 204 of the Federal Power Act for Authorization to Issue Securities, et al. of Montana-Dakota Utilities Co.
Filed Date: 8/27/20.
Accession Number: 20200827–5227.
Comments Due: 5 p.m. ET 9/1/20.

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: August 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–19486 Filed 9–2–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–14–000]

Carbon Pricing in Organized Wholesale Electricity Markets; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on June 17, 2020, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding on Wednesday, September 30, 2020, from approximately 9:00 a.m. to 5:30 p.m. Eastern time. The conference will be held electronically.

The purpose of this conference is to discuss considerations related to state-adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with Commission-jurisdictional organized wholesale electricity markets (*i.e.,* regions with regional transmission organizations/independent system operators, or RTOs/ISOs). This conference will focus on carbon pricing approaches where a state (or group of states) sets an explicit carbon price, whether through a price-based or quantity-based approach, and how that carbon price intersects with RTO/ISO-administered markets, addressing both legal and technical issues.

The agenda and list of panelists for this conference are attached. There is no fee for attendance, and the conference will be webcast for the public to attend electronically. Information on this technical conference, including a link to the webcast, will also be posted on this conference's event page on the Commission's website, *www.ferc.gov/news-events/events/technical-conference-regarding-carbon-pricing-organized-wholesale-electricity,* prior to the event. The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact:

John Miller (Technical Information), Office of Energy Market Regulation, (202) 502–6016, *john.miller@ferc.gov*
Anne Marie Hirschberger (Legal Information), Office of the General Counsel, (202) 502–8387, *annemarie.hirschberger@ferc.gov*
Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *sarah.mckinley@ferc.gov*

Dated: August 28, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–19484 Filed 9–2–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Rate Order No. WAPA–192

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order extending Pacific Northwest-Pacific Southwest Intertie Project transmission service rates.

SUMMARY: The extension of existing Pacific Northwest-Pacific Southwest Intertie Project transmission service rates has been confirmed, approved, and placed into effect on an interim basis. The existing transmission service rates under Rate Schedules INT–FT5 and INT–NFT4 were set to expire on September 30, 2020. This rate extension makes no change to the existing transmission service rates and extends them through September 30, 2023.

DATES: The extended transmission service rates under Rate Schedules INT–FT5 and NFT–4 will be placed into effect on an interim basis on October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Tracey A. LeBeau, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2525, or email: *dswpwrmrk@wapa.gov;* or Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, telephone (602) 605–2565, or email: *ramsey@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Legal Authority

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Western Area Power Administration's (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No. 00–002.10–05, effective July 8, 2020, the Assistant Secretary for Electricity further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This rate action is issued under the Redelegation Order No. 00–002.10–05 and Department of Energy's (DOE) rate extension procedures set forth at 10 CFR 903.23(a).[1]

Following DOE's review of WAPA's proposal, I hereby confirm, approve, and place Rate Order No. WAPA–192 into effect on an interim basis. This extends, without adjustment, existing Rate Schedules INT–FT5 and INT–NFT4 through September 30, 2023. WAPA will submit Rate Order No. WAPA–192 and the extended rate schedules to FERC for confirmation and approval on a final basis.

Signing Authority

This document of the Department of Energy was signed on August 25, 2020, by Mark A. Gabriel, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 31, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Department of Energy Administrator, Western Area Power Administration

In the Matter of: Western Area Power Administration Extension of Pacific Northwest-Pacific Southwest Intertie Project Transmission Service Rate Schedules, Rate Order No. WAPA–192.

ORDER CONFIRMING, APPROVING, AND PLACING THE TRANSMISSION SERVICE RATES FOR THE PACIFIC NORTHWEST–PACIFIC SOUTHWEST INTERTIE PROJECT INTO EFFECT ON AN INTERIM BASIS

The transmission service rates in Rate Order No. WAPA–192 are established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152).[2]

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Western Area Power Administration's (WAPA) Administrator; (2) the authority to confirm, approve, and place into effect such rates on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No. 00–002.10–05, effective July 8, 2020, the Assistant Secretary for Electricity further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This extension is issued under the Redelegation Order No. 00–002.10–05 and DOE's rate extension

[1] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[2] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

procedures set forth at 10 CFR 903.23(a).[3]

Background

On August 22, 2013, FERC approved and confirmed Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–157 on a final basis for a 5-year period beginning May 1, 2013 and ending April 30, 2018.[4] These rate schedules apply to the Pacific Northwest-Pacific Southwest Intertie Project firm transmission service rates. WAPA's Administrator approved the use of existing Pacific Northwest-Pacific Southwest Intertie Project rates under his authority to set rates for short-term sales to cover the period between May 1, 2018 and October 31, 2018. On December 3, 2018, FERC approved and confirmed the extension of Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–181 through September 30, 2020.[5] The existing rates provide adequate revenue to recover annual expenses, including interest expense, and repay capital investments within allowable time periods. This ensures repayment within the cost recovery criteria set forth in DOE Order RA 6120.2.

Discussion

In accordance with 10 CFR 903.23(a), WAPA filed a notice in the **Federal Register** on June 22, 2020, proposing to extend, without adjustment, Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–192.[6] WAPA determined it was not necessary to hold public information or public comment forums on the proposed transmission service rates extension but provided a 30-day consultation and comment period to give the public an opportunity to comment on the proposed extension. The consultation and comment period ended on July 22, 2020, and WAPA received no comments on the proposed transmission service rates extension.

Submission to the Federal Energy Regulatory Commission

The provisional transmission service rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above and under the authority delegated to me, I hereby confirm, approve, and place into effect, on an interim basis, Rate Order No. WAPA–192, which extends the existing transmission service rates under Rate Schedules INT–FT5 and INT–NFT4 through September 30, 2023. The rates will remain in effect on an interim basis until: (1) FERC confirms and approves this extension on a final basis; (2) subsequent rates are confirmed and approved; or (3) such rates are superseded.

Signed in Lakewood, CO, on August 25, 2020.

Mark A. Gabriel,
Administrator.

[FR Doc. 2020–19513 Filed 9–2–20; 8:45 am]

BILLING CODE 6450–01–P

[3] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[4] Order Confirming and Approving Rate Schedule on a Final Basis, FERC Docket No. EF13–4–000, 144 FERC ¶ 61,143 (2013).

[5] Order Confirming and Approving Rate Schedule on a Final Basis, FERC Docket No. EF18–5–000, 165 FERC ¶ 62,137 (2018).

[6] 85 FR 37450 (Jun. 22, 2020).

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–208; FRS 17034]

Meeting of the Federal Advisory Committee on Diversity and Digital Empowerment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces the September 18, 2020, telephonic and electronic-only meeting of the Federal Communications Commission's (Commission) Advisory Committee on Diversity and Digital Empowerment (ACDDE).

DATES: Friday, September 18, 2020, from 10:00 a.m. to 4:00 p.m.

ADDRESSES: The ACDDE meeting will be held via conference call and will be available to the public via the internet at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Jamila Bess Johnson, Designated Federal Officer (DFO) of the ACDDE, (202) 418–2608, *Jamila-Bess.Johnson@fcc.gov*; Julie Saulnier, Deputy DFO of the ACDDE, (202) 418–1598, *Julie.Saulnier@fcc.gov*; or Jamile Kadre, Deputy DFO of the ACDDE, (202) 418–2245, *Jamile.Kadre@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The agenda for the meeting will include a report from each of the ACDDE working groups. The *Access to Capital Working Group* will report on its ongoing examination of ways to improve access to capital to encourage management and ownership of broadcast properties by a diverse range of voices, including minorities and women. The *Digital Empowerment and Inclusion Working Group* will discuss its work assessing access, adoption, and use of broadband and new technologies by under-resourced communities. The *Diversity in the Tech Sector Working Group* will report on its progress in examining issues pertaining to hiring, promotion, and retention of women and minorities in tech industries. This agenda may be modified at the discretion of the ACDDE Chair and the DFO.

The Committee's mission is to provide recommendations to the Commission on how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees.

The ACDDE meeting is accessible to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live.* Members of the public may submit comments to the ACDDE using the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the ACDDE should be filed in GN Docket No. 17–208.

Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Please allow at least five days' notice; last minute requests will be accepted but may not be possible to accommodate.

Federal Communications Commission.

Thomas Horan,
Chief of Staff, Media Bureau.

[FR Doc. 2020–19448 Filed 9–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)

(BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank(s) indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 5, 2020.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Sunstate Bancshares, Inc., Miami, Florida;* to become a bank holding company by acquiring voting shares of Sunstate Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, August 31, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–19527 Filed 9–2–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ORR Serious Medical Procedure Request (SMR) Form (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new data collection, *the Serious Medical Procedure Request (SMR) Form.*

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: *Description:* Children with complex medical/dental conditions may require surgical intervention or procedures in order to maintain and promote their health while in ORR custody. Procedures requiring general anesthesia, surgeries, and invasive diagnostic procedures (*e.g.,* cardiac catheterization, invasive biopsy, amniocentesis) require advance ORR approval. Before a decision can be rendered by ORR, data on clinical indications, risks and benefits of the surgery/procedure, potential adverse outcomes if services are not rendered, timeframe for recovery, follow-up care, and points of contact must be collected and submitted to ORR. The Form is not required for emergency procedures, procedures performed during hospitalization, or procedures resulting from complication of a previously approved procedure.

Respondents: Healthcare providers, ORR grantee staff.

Annual Burden Estimates:

ESTIMATED OPPORTUNITY BURDEN FOR RESPONDENTS

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Healthcare providers:					
Serious Medical Procedure Request (SMR) Form	195	1	.22	128.7	42.9

Estimated Total Annual Burden Hours: 42.9.

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR Grantee Staff:					
Serious Medical Procedure Request (SMR) Form	195	1	.08	46.8	15.6

Estimated Total Annual Burden Hours: 15.6.

ESTIMATED RECORDKEEPING BURDEN FOR RESPONDENTS

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR Grantee Staff:					
Serious Medical Procedure Request (SMR) Form	195	1	.08	46.8	15.6

Estimated Total Annual Burden Hours: 15.6.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279: Exhibit 1, part A.2 of the Flores Settlement Agreement (*Jenny Lisette Flores, et al.,* v. *Janet Reno, Attorney General of the United States, et al.,* Case No. CV 85–4544–RJK [C.D. Cal. 1996]).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–19537 Filed 9–2–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Understanding Children's Transitions From Head Start to Kindergarten (HS2K) (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to conduct semi-structured, qualitative interviews with Head Start staff (grantee administrators, managers/coordinators, center directors, teachers, staff), parents, affiliated community providers, and partner Local Education Agency (LEA) staff (administrators, elementary school principals, staff, and kindergarten teachers) at six sites. A comparative case study design will explore varying strategies and approaches to supporting children's transitions from Head Start to kindergarten.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed case studies intend to study the transition strategies and approaches employed, across various levels, both within and across the Head Start and elementary school systems. The case studies focus on how relationships across systems support coordinated transition practices, which are hypothesized to lead to the most positive outcomes for children, families, and teachers. Qualitative data collection protocols will explore how the supports for and implementation of transition approaches vary amongst Head Start grantees/delegates, Head Start centers, elementary schools, and LEAs within the same communities, including contextual factors that support or hinder meaningful collaboration.

Respondents: Head Start administrators, LEA administrators, Head Start center directors, elementary school principals, Head Start teachers, kindergarten teachers, elementary school staff, Head Start managers & coordinators, Head Start parents/families (pre- and post-kindergarten transition), Community Service Providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Administrator Interview Protocol (Head Start grantee and delegate agency administrator, Local Education Agency administrator)	30	1	1	30
Site Leadership Interview Protocol (Head Start Center Director, elementary principal)	12	1	1.25	15
Teacher & Staff Interview Protocol (Head Start teacher, kindergarten teacher, elementary staff)	30	1	.80	24
Head Start Manager/Coordinator Interview Protocol	12	1	1.25	15
Head Start Family Background Questionnaire	48	1	.25	12
Head Start Family Focus Group Protocol	48	1	1.25	60

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Kindergarten Family Interview Protocol	12	1	.75	9
Community Partner Interview Protocol	6	1	1	6
Social Network Instrument	90	1	.25	22.5

Estimated Total Annual Burden Hours: 193.5.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9835 and 42 U.S.C. 9844.

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–19536 Filed 9–2–20; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Infant and Toddler Teacher and Caregiver Competencies (ITTCC) Study (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: This is a primary data collection request for the Infant and Toddler Teacher and Caregiver Competencies (ITTCC) study to examine, using qualitative case studies, different approaches to implementing competency frameworks and assessing competencies of teachers and caregivers of infants and toddlers who work in group early care and education (ECE) settings (centers and family child care homes). Each case study will focus on a specific competency framework used by states, institutions of higher education, professional organizations, or ECE programs. This study aims to present an internally valid description of the implementation of competency frameworks and assessment of competencies for up to seven purposively selected cases, not to promote statistical generalization to different sites or service populations.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ITTCC study will examine implementation and assessment of competency frameworks at (1) the system level (that is, among those charged with creating a structure for and supporting implementation in states, institutions of higher education, and/or professional organizations); and (2) the program level (that is, in the center-based settings and family child care homes in which infant/toddler teachers and caregivers work). We will collect information on how competency frameworks have been developed and implemented; how competencies are assessed; how program directors, center directors, family child care providers, and teachers and caregivers use competency frameworks; key lessons related to implementing competency frameworks and assessing competencies; and perspectives on how competencies can help build the capacity of the workforce teaching and caring for infants and toddlers and support quality improvement.

Respondents: System-level staff (this may include lead developers, lead adopters, administrators for state/local quality improvement initiatives, administrators of licensing and/or credentialing agencies, higher education stakeholders, other training and technical assistance providers, state-level oversight of federal programs) and program-level staff (program and/or center directors, professional development coordinators/managers, center-based teachers/caregivers and family child care providers).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
System-Level Screening Protocol (Instrument 1)	30	1	.6	18	9
System-Level Master Semistructured Interview Protocol (Instrument 2)	60	1	1.5	90	45

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Nominations for Programs Protocol (Instrument 3)	15	1	.3	4.5	2.25
Program-Level Screening Protocol (Instrument 4)	70	1	.6	42	21
Program-Level Master Semistructured Interview Protocol (Instrument 5): Directors	20	1	1	20	10
Program-Level Master Semistructured Interview Protocol (Instrument 5): Family child care providers	20	1	1	20	10
Program-Level Master Semistructured Interview Protocol (Instrument 5): Center-based teachers	20	1	0.5	10	5

Estimated Total Annual Burden Hours: 102.25.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Head Start Act Section 640 [42 U.S.C. 9835] and Section 649 [42 U.S.C. 9844], and the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended by the CCDBG Act of 2014 (Pub. L. 113–186).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–19470 Filed 9–2–20; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ORR–3 and ORR–4 Report Forms for the Unaccompanied Refugee Minors Program (OMB #0970–0034)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR) is requesting a 3-year extension of the ORR–3 and ORR–4 Report Forms (OMB #0970–0034, expiration 01/31/2021). ORR proposes revisions to improve clarity, secure outcome-based data, increase compliance with reporting requirements, and reduce burden.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR–3 Report is submitted within 30 days of the minor's initial placement in the state, within 60 days of a change in the minor's status (*e.g.,* change in legal responsibility, change in foster home placement, change in immigration data), and within 60 days of termination from the program. The ORR–4 Report is submitted every 12 months beginning on the first anniversary of the initial placement date, to record outcomes of the minor's progress.

Respondents: Unaccompanied Refugee Minors (URM) State Agencies, URM Provider Agencies, and Youth Participants.

ANNUAL BURDEN ESTIMATES: URM STATE AGENCIES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR–3 Unaccompanied Refugee Minors Placement Report	15	432	0.25	1,620	540
ORR–4 Unaccompanied Refugee Minors Outcomes Report	15	282	0.50	2,115	705

Estimated Total Annual Burden Hours (State Agencies): 1,245.

ANNUAL BURDEN ESTIMATES: URM PROVIDER AGENCIES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR–3 Unaccompanied Refugee Minors Placement Report	24	270	0.50	3,240	1,080
ORR–4 Unaccompanied Refugee Minors Outcomes Report	24	162	1.0	3,888	1,296

Estimated Total Annual Burden Hours (Provider Agencies): 2,376.

ANNUAL BURDEN ESTIMATES: YOUTH PARTICIPANTS

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR–4 Unaccompanied Refugee Minors Outcomes Report	1032	3	0.50	1,548	516

Estimated Total Annual Burden Hours (Youth Participants): 516.

Total Estimated Annual Burden Hours: 4,137.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C. 1522(d).

John M. Sweet Jr,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–19466 Filed 9–2–20; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0008]

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on November 9, 2020, from 8 a.m. Eastern Time to 6 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, *James.Swink@fda.hhs.gov;* 301–796–6313, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On November 9, 2020, the committee will discuss, make recommendations and vote on information regarding the premarket application (PMA) for the VisAbility Micro Insert sponsored by Refocus Group, Inc. The proposed Indication for Use for the VisAbility Micro Insert, as stated in the PMA, is as follows:

The VisAbility Micro Insert is indicated for bilateral scleral implantation to improve unaided near vision in phakic, presbyopic patients between the ages of 45 and 60 years of age, who have a manifest spherical equivalent between –0.75D and +0.50 D with less than or equal to 1.00D of refractive cylinder in both eyes, and require a minimum near correction of at least +1.25 D reading add.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/advisory-committees/medical-devices-advisory-committee/ophthalmic-devices-panel.* (Select the link for the 2020 Meeting Materials.) The meeting will include slide presentations with audio components to allow the presentation of materials in a manner

that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 20, 2020. Oral presentations from the public will be scheduled on November 9, 2020, between approximately 1 p.m. Eastern Time and 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2020.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Artair Mallet at *artair.mallett@fda.hhs.gov* or 301–796–9638 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 26, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–19482 Filed 9–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1530]

Control of Nitrosamine Impurities in Human Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a final guidance for industry, entitled ''Control of Nitrosamine Impurities in Human Drugs.'' This guidance recommends steps manufacturers of active pharmaceutical ingredients and drug products should take to detect and prevent objectionable levels of nitrosamine impurities in pharmaceutical products. The guidance also describes conditions that may introduce nitrosamine impurities. The recent unexpected finding of nitrosamine impurities, which are probable human carcinogens, in drugs such as angiotensin II receptor blockers, ranitidine, nizatidine, and metformin, has made clear the need for a risk assessment strategy to identify and minimize nitrosamines in any pharmaceutical product at risk for their presence.

DATES: The announcement of the guidance is published in the **Federal Register** on September 3, 2020.

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

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1530 for ''Control of Nitrosamine Impurities in Human Drugs.'' 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 guidance to the Office of Communications, Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., 4th Floor, Silver Spring, MD 20993–0002. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dongmei Lu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6649, Silver Spring, MD 20993, 240–402–7966.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Control of Nitrosamine Impurities in Human Drugs.'' We are issuing this guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because of the importance of providing timely information to manufacturers regarding risk assessments, testing, and other appropriate actions they should take to reduce and mitigate nitrosamine impurities in active pharmaceutical ingredients (APIs) and drug products. Although this guidance document is immediately in effect, it remains subject to comment in accordance with FDA's GGP regulation (§ 10.115(g)(3)(D)).

Nitrosamines have been classified as probably carcinogenic to humans by the World Health Organization. This guidance recommends steps manufacturers of APIs and drug products should take to detect and prevent objectionable levels of nitrosamine impurities in pharmaceutical products. The guidance also describes conditions that may introduce nitrosamine impurities.

The recent discovery of nitrosamine impurities in some types of drug products, including angiotensin II receptor blockers, ranitidine, nizatidine, and metformin, led FDA and other international regulators to conduct a detailed analysis of these impurities in affected APIs and drug products. Recently, preliminary results from FDA stability testing raised concerns that *N*-Nitrosodimethylamine (NDMA) levels in some ranitidine products stored at room temperature can increase with time to unacceptable levels. Results from other tests FDA conducted suggest that the NDMA levels increase with storage time. On April 1, 2020, FDA requested that all ranitidine products be withdrawn from the U.S. market.

Based on the testing results and the Agency's current understanding of the chemistry, FDA has developed this guidance to provide API and drug product manufacturers information on the potential root causes of nitrosamine formation. It recommends ways API and drug product manufacturers can conduct risk assessments of their products, whether approved, marketed, or with pending applications. The guidance also suggests actions they should take to reduce or prevent the presence of nitrosamines in APIs and drug products.

API and drug product manufacturers should assess the risk of nitrosamine contamination or formation in their drugs. These risk assessments should be conducted in a timely manner. Manufacturers do not need to submit risk assessment documents to the Agency, but they should retain them so that they are available if requested. FDA may request an expedited risk assessment, confirmatory testing, or other regulatory action based on information available to the Agency.

For products at the pre-submission stage, FDA recommends that applicants conduct a risk assessment for nitrosamine impurities in APIs and proposed drug products and conduct confirmatory testing as needed prior to submission of an original application. However, the risk assessment and submission of any confirmatory testing or changes to the drug master file or application may be submitted in an amendment if they are not available at the time of the original submission filing. For applications that are pending with the Agency, applicants should conduct the risk assessment expeditiously and inform FDA if confirmatory testing finds nitrosamine levels above the recommended acceptable daily intake (ADI) limit. If a nitrosamine impurity is detected above the limit of quantitation but is within the ADI limit, the applicant should amend the application as appropriate. The Agency will work with the applicant to resolve issues during the review cycle or immediately after approval, and before distribution, if determined to be necessary by the Agency.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on the ''Control of Nitrosamine Impurities in Human Drugs.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 210 and 211 have been approved under OMB control number 0910–0139; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information for the permanent discontinuation or interruption in manufacturing of certain drug and biological products have been approved under OMB control number 0910–0759; the collections of information pertaining to the guidance for industry entitled ''Controlled Correspondence Related to Generic Drug Development'' have been approved under OMB control number 0910–0797.

III. Electronic Access

Persons with access to the internet may obtain the document at *https://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: August 28, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–19519 Filed 9–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; 30-Day Comment Request; Specimen Resource Locator (National Cancer Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

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: Joanne Demchok, Program Director, Cancer Diagnosis Program, Division of Cancer Treatment and Diagnosis, 9609 Medical Center Drive, Rockville, MD 20892 or call non-toll-free number 240–276–5959 or Email your request, including your address to: *peterjo@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on June 18, 2020, page 36871 (Vol. 85, No. 118 FR 36871) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Specimen Resource Locator, OMB #0925–0703: Expiration Date 11/30/2020, EXTENSION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The availability of specimens and associated data is critical to increase our knowledge of cancer biology, and to translate important research discoveries to clinical application. The discovery and validation of cancer prevention markers require access, by researchers, to quality clinical biospecimens. In response, to this need, the National Cancer Institute's (NCI) Cancer Diagnosis Program has developed, and is expanding, a searchable database: Specimen Resource Locator (SRL). The SRL allows scientist in the research community and the NCI to locate specimens needed for their research. The SRL will list all NCI supported repositories and their links. This administrative submission is an on-line form that will collect information to manage and improve a program and its resources for the use of all scientists. This submission does not involve any analysis.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 105.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hour
Private Sector	Initial Request	70	1	30/60	35
State Government		70	1	30/60	35
Federal Government		60	1	30/60	30
Private Sector	Annual Update	20	1	5/60	2
State Government		20	1	5/60	2
Federal Government		10	1	5/60	1
Total			250		105

Dated: August 26, 2020.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2020–19446 Filed 9–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0185; OMB Control Number 1625–0102]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0102, National Response Resource Inventory; without

change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before October 5, 2020.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0185]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0185], and must be received by October 5, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0102.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 28646, May 13, 2020) required by 44 U.S.C. 3506(c)(2). We received four submissions to the 60-day Notice. Three submissions were unrelated to the Notice, and one submission had four ICR-related comments. The first comment noted that the Response Resource Inventory (RRI) is a practical and useful tool for the Coast Guard to maintain a national database for response equipment. The second comment stated that the estimated time and cost burden seem to be accurate. The third comment suggested that the Coast Guard should consider enhancing the RRI by updating the database technology and creating a public-facing portal to allow non-OSRO (Oil Spill Removal Organizations) to access the inventory. Because the data entered into RRI, including OSRO inventories, is categorized as For Official Use Only (FOUO), it is not releasable to the public. The fourth comment suggested that the Coast Guard modernize data collection technology to reduce the burden of information collection through automation. Due to resource constraints, the Coast Guard has not yet developed a plan to modernizing data collection through automation. In response to the comments, no changes were made to the Collection.

Information Collection Request

Title: National Response Resource Inventory.

OMB Control Number: 1625–0102.

Summary: The information is needed to improve the effectiveness of deploying reponse equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) requires the Coast Guard to compile and maintain a comprehensive list of spill removal equipment in a response resource inventory (RRI). This collection helps fulfill that requirement.

Forms: None.

Respondents: Oil spill removal organizations.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 1,378 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 28, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–19495 Filed 9–2–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900253G]

Energy and Mineral Development Program (EMDP); Solicitation of Proposals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Office of Indian Energy and Economic Development (IEED), through its Division of Energy and Mineral Development (DEMD), is soliciting grant proposals from Tribes and Tribal Energy Development Organizations for technical assistance funding to hire consultants to identify, evaluate or assess the market for energy or mineral resources that a Tribe will process, use, or develop.

DATES: Applications will be accepted until 5 p.m. Mountain Daylight Time on December 2, 2020].

ADDRESSES: Email applications to *ieedgrants@bia.gov* in accordance with the directions at Step 4 of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Winter Jojola-Talburt, Deputy Chief, Division of Energy and Mineral Development, 13922 Denver West Pkwy., Suite 200, Lakewood, CO 80401; telephone (720) 207–8063; email: *winter.jojola-talburt@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
II. Number of Projects Funded
III. Background
IV. Eligibility for Funding
V. Who May Perform Feasibility Studies Funded by EMDP Grants
VI. Applicant Procurement Procedures
VII. Limitations
VIII. EMDP Application Guidance
IX. Review and Selection Process
X. Evaluation Criteria
XI. Transfer of Funds
XII. Reporting Requirements for Award Recipients
XIII. Conflicts of Interest
XIV. Questions and Requests for IEED Assistance
XV. Separate Document(s)
XVI. Paperwork Reduction Act
XVII. Authority

I. General Information

Award Ceiling: $2,500,000.
Award Floor: $10,000.
CFDA Number: 15.038.
Cost Sharing or Matching Requirement: No.
Number of Awards: 25 to 30.
Category: Minerals and Mining on Indian Land.

II. Number of Projects Funded

DEMD anticipates award of approximately twenty-five (25) to thirty (30) grants under this announcement ranging in value from approximately ten thousand dollars ($10,000) to two million five hundred thousand dollars ($2,500,000). The program can fund projects only one year at a time. DEMD will use a competitive evaluation process based on criteria described in the Review and Selection Process section at section IX of this notice.

III. Background

The Office of the Assistant Secretary—Indian Affairs, through IEED, is soliciting proposals from Indian Tribes, as described in Section IV of this notice, for projects that conduct resource inventories and assessments, feasibility studies, or other pre-development studies necessary to process, use and develop energy and mineral resources. These resources and their uses include, but are not limited to, biomass (woody and waste) for heat or electricity; transportation fuels; hydroelectric, solar, or wind generation; geothermal heating or electricity production; district heating; other forms of distributed energy generation; oil, natural gas, geothermal, and helium; sand and gravel, coal, precious minerals, and base minerals (lead, copper, zinc, etc.).

EMDP projects may include, but are not limited to:

- Initial resource exploration;
- Defining potential targets for development;
- Performing a market analysis to establish production/demand for a commodity;
- Performing economic evaluation and analysis of the resource;
- Baseline studies related to energy and mineral projects; and
- Other pre-development studies necessary to promote the use and development of energy and mineral resources.

The IEED administers this program through DEMD.

These grants will be funded under a non-recurring appropriation of the BIA budget. Congress appropriates funds on a year-to-year basis. Thus, while some projects may extend over several years, funding for successive years depends on each fiscal year's appropriations.

The funding periods and amounts referenced in this solicitation are subject to the availability of funds at the time of award, as well as the Department of the Interior (DOI) and Indian Affairs priorities at the time of the award. Neither DOI nor Indian Affairs will be held responsible for proposal or application preparation costs. Publication of this solicitation does not obligate DOI or Indian Affairs to award any specific grant or to obligate all or any part of available funds. Future funding is subject to the availability of appropriations and cannot be guaranteed. DOI or Indian Affairs may cancel or withdraw this solicitation at any time.

IV. Eligibility for Funding

Only Indian Tribes, as defined at 25 U.S.C. 5304(e), and Tribal Energy Development Organizations (TEDOs), as defined at 25 U.S.C 3501(12), are eligible for EMDP grants. Under the statutory definition, Indian Tribes means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.,* which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

TEDOs are: (1) Any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian Tribe (including an organization incorporated under 25 U.S.C. 5124 or 5203); and (2) any organization of two or more entities, at least one of which is an Indian Tribe, that has the written consent of the governing bodies of all Indian Tribes participating in the organization to apply for a grant, loan, or other assistance under 25 U.S.C. 3502 or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian Tribe pursuant to 25 U.S.C. 3504(a)(2)(A)(ii) or (b)(2)(B).

Eligible applicants will be referred to as ''Tribes'' and ''TEDOs'' throughout this notice.

EMDP grants may only fund projects occurring on Indian land. The term ''Indian land'' means:

- Any land located within the boundaries of an Indian reservation, pueblo, or rancheria;
- Any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held: (i) In trust by the United States for the benefit of an Indian Tribe or an individual Indian; (ii) by an Indian Tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or (iii) by a dependent Indian community; and
- Land that is owned by an Indian Tribe and was conveyed by the United

States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or that was conveyed by the United States to a Native Corporation in exchange for such land. *See* 25 U.S.C. 3501(2).

V. Who May Perform Feasibility Studies Funded by EMDP Grants

The applicant determines who will conduct its feasibility study. An applicant has several choices, including but not limited to:

- TEDOs;
- Universities and colleges;
- Private consulting firms; or
- Non-academic, non-profit entities.

VI. Applicant Procurement Procedures

The applicant is subject to the procurement standards in 2 CFR 200.318 through 200.326. In accordance with 2 CFR 200.318, an applicant must use its own documented procurement procedures which reflect Tribal laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in 2 CFR part 200.

VII. Limitations

EMDP grant funding must be expended in accordance with applicable statutory and regulatory requirements, including 2 CFR part 200. As part of the grant application review process, DEMD may conduct a review of an applicant's prior IEED grant awards(s).

Applicants that are currently under BIA sanction Level 2 or higher resulting from non-compliance with the Single Audit Act are ineligible for an EMDP award. Applicants at Sanction Level 1 will be considered for funding.

An applicant may submit more than one grant application for multiple, distinct projects. For example, an applicant may submit one application to identify sand and gravel resources and another application to identify wind energy resources; however, an applicant cannot combine these two subjects into one application. Each project requires its own stand-alone project narrative, budget, designated Tribal project lead, and verification of eligibility, and will be evaluated based on its own merit.

EMDP awards may not be used for:

- Projects not occurring on Indian land;
- Establishing or operating a Tribal office, and/or purchase of office equipment;
- Salaries or fringe benefits for Tribal employees, except for clearly defined technical related tasks. Salary requests must comply with the detailed budget components as described under Step 2—Budget (Mandatory Component 4);
- Indirect costs as defined in 2 CFR part 200 and overhead costs;
- Purchasing equipment such as computers, software, vehicles, field gear, anemometer (Met) towers, and the like, to perform pre-development activities. However, leasing these types of equipment for pre-development activities is permitted;
- Purchasing or leasing equipment to develop energy and mineral resources, such as solar panels, well drilling rigs, backhoes, bulldozers, cranes, trucks, etc. However, leasing this equipment for pre-development activities is allowable;
- Drilling wells for the commercial sale of hydrocarbons, geothermal resources, and other fluid or solid minerals. Funds may be used for testing, sampling, coring, or temperature surveys. DEMD will not fund the drilling, completion, or recompletion of an oil/gas well, but will fund the testing and/or sampling of a well if the data collected is deemed necessary to achieve the objective outlined in the grant proposal;
- Legal fees;
- Application fees associated with permitting unless it can be demonstrated that the task requiring a permit is an essential component of the grant;
- Academic research projects;
- Development of unproven technologies that are not warrantable;
- Training;
- Contracted negotiation fees;
- Purchase of data currently available at DEMD and accessible to applicants. Contact DEMD to verify data availability. DEMD will provide a Tribe with available data upon request;
- Studies directly related to meeting National Environmental Policy Act (NEPA) requirements for project development. However, the EMDP will support a preliminary environmental issue analysis used to evaluate project feasibility;
- Attending conventions, or travel to foreign countries. However, in some cases, domestic conventions that have relevance to the scope of the EMDP project will be allowed. This will be evaluated on a case-by-case basis and will require written justification within the proposal;
- Feasibility studies of broadband related projects that are eligible for funding under IEED's National Tribal Broadband Grant (NTBG) program;
- Businesses, development projects, or technologies that are addressed by IEED's Native American Business Development Institute (NABDI) grant program; or studies regarding legal infrastructure or energy regulatory structures addressed by IEED's Tribal Energy Development Capacity (TEDC) grant program; and
- Any other activities not authorized by the Tribal resolution or the grant award letter.

VIII. EMDP Application Guidance

All EMDP applicants must use the standard forms Application for Federal Assistance SF–424 and the Project Narrative Attachment Form. These forms can be found at *www.grants.gov.* A complete proposal must contain the six mandatory components as described below.

Step 1. Complete the Application for Federal Assistance SF–424

Instructions To Download the Application for Federal Assistance SF–424

1. Go to *www.grants.gov.*
2. Select the ''forms'' tab. This will open a page with a table titled ''SF–424 FAMILY FORMS.''
3. Under the column ''Agency Owner,'' third row down, is listed, *Grants.gov*—Application for Federal Assistance SF–424.
4. Click on the blue PDF letters to download the three-page document.

Application for Federal Assistance SF–424 (Mandatory Component 1)

Within the Application for Federal Assistance SF–424, please complete the following sections:

- Item 8a. Applicant Information—Legal Name.
- Item 8b.
- Item 8c.
- Item 8d. Address.
- Item 8f. Name and contact information of person to be contacted on matters involving this application.
- Item 9. Select I: Indian/Native American Tribal Government (Federally Recognized).
- Item 11. CFDA Title box—Type in the numbers: 15.038.
- Item 12. Title box—Type in: IEED EMDP Grant.
- Item 15. Descriptive Title of Applicant's Project. Type in short description of proposal.
- Item 21. Read certification statement. Check ''agree'' box.
- Authorized Representative section: Complete all boxes except ''signature of authorized representative.'' Be sure to type in the Tribal leader's information. Be sure to include the Tribal leader's preferred title (*e.g.,* Governor, President, Chairman).

Save the Application for Federal Assistance SF–424 and name the file using the following format: *Tribal Name* EMDP Grant Application SF–424.

Example for naming the SF–424 Application for Federal Assistance file: Pueblo of Laguna EMDP Grant Application SF–424.

Step 2. Prepare the Project Narrative, Budget, Critical Information Page, and Obtain a Tribal Resolution

Project Narrative (Mandatory Component 2)

The Project Narrative must not exceed 15 pages. At a minimum, it should include:

- Tribal Executive Summary, no longer than one page, that summarizes the proposed project, resource(s) to be utilized, long term goals and objectives of the Tribe, and total funding amount requested. The Tribal Executive Summary should be an authentic representation of the project intent, from the perspective of the Tribal applicant.
- Discussion on the economic viability of the project. Economic viability is the ability of the project to secure financing—whether from public, commercial, or concessional sources—while having a positive impact on society and the environment. Discussion should include: sources and uses of funds, revenue, expenses, job creation, return on investment, payback period, potential secondary markets, and other positive impacts. If an initial financial, economic, or business case analysis has not been completed please provide estimates based on comparable projects of similar scale.
- Discussion on project viability including, but not limited to: Reason(s) for the project; description of the anticipated outcomes that will result if the project were to be funded; whether the project is new or builds on previous work that is partially complete; how the project is phased, how long it is expected to take through completion, and what element the current project is intended to satisfy; the Tribe's motivation to develop the proposed energy or mineral resource(s), including any short and long term benefits to the Tribe; and potential barriers, including and not limited to environmental and cultural constraints for land development, etc.
- Scope of Work and Deliverables including: A clear and concise description of the tasks to be performed, in chronological order; a logical methodology for completing the task items; and a detailed description of all deliverable products the proposed EMDP project is to generate, including all technical data to be obtained during the study.
- Description of the consultant(s) and key personnel the applicant wishes to retain, including resumes, contact information, technical expertise, training, qualifications, and suitability to undertake the proposed scope of work. This information may be included as an attachment to the application and will not be counted towards the 15-page limitation.

Verification of Eligibility (Mandatory Component 3)

DEMD will only consider applications from Tribes and TEDOs for the use of carrying out projects to assess, evaluate, and promote the development of energy and mineral resources on Indian land.

The Verification of Proposal Eligibility must include the following:

- The full name, address, and telephone number of the Tribe or TEDO submitting the application, including:

a. The full name(s) of the Tribe(s) proposed to be served; and

b. A copy of the TEDO's charter, articles of incorporation, bylaws, or other organic documents showing that it meets the definition of a TEDO pursuant to 25 U.S.C. 3501(12).

- Narrative and documentation that the proposed project is located on Indian land (project location map, title status report, legal land descriptions, etc.).

Budget (Mandatory Component 4)

The budget should consist of a complete the SF 424a budget form and provide a budget narrative that clearly describes all major line item grant expenditures. The budget must identify the amount of grant funding requested and a comprehensive breakdown of all projected and anticipated expenditures, including contracted personnel fees; consulting fees (hourly or fixed); travel costs; data collection and analysis costs; and other relevant project expenses and their subcomponents.

- Travel costs should be itemized by airfare, vehicle rental, lodging, and per diem, based on the current Federal government per diem schedule.
- Data collection and analysis costs should be itemized in sufficient detail for the DEMD review committee to evaluate the charges.
- Other expenses may include computer rental, report generation, drafting, and advertising costs for a proposed project.

The budget narrative should correlate to the project scope of work and clearly break down the project into defined tasks with an associated budget line item for each task. Tasks and costs should include a justification in the budget narrative.

Critical Information Page (Mandatory Component 5)

Applicants must include a critical information page that includes:

- Project Manager's contact information;
- Data Universal Numbering System (DUNS) number;
- An active Automated Standard Application for Payment (ASAP) number;
- Counties where the project is located; and
- Congressional District number where the project is located.

Tribal Resolution (Mandatory Component 6)

Applicants must include as an attachment to their application a Tribal resolution authorizing the submission of a FY 2020 EMDP grant application. It must be signed by authorized Tribal representative(s). Tribal resolutions should not specify a starting date for the project to avoid complications in the event of funding delays or similar contingencies. The resolution must include:

- A description of the energy and mineral resource(s) to be studied;
- A statement confirming that the information provided in the Verification of Eligibility is accurate;
- A statement that the Tribe is willing to consider developing any potential energy and mineral resource discovered;
- A statement describing how the Tribe wishes to have the EMDP project performed (*i.e.,* by whom);
- A statement to the effect that the Tribe will consider public release of information obtained from the EMDP project. Information *does not* include any detailed proprietary data or reports to any individual, private company, or government agency without the written consent of the Tribe; information, does, however, refer to that which may be suitable for press releases, or a presentation at a government or private meetings and conferences.

TEDO applicants are required to have an authorizing resolution(s) from each Tribe proposed to be served.

Step 3. Prepare the Project Narrative Attachment Form for Submission

Note: The Project Narrative Attachment Form is required to submit mandatory component 2 (Project Narrative), mandatory component 3 (Verification of Eligibility), mandatory component 4 (Budget), mandatory component 5 (Critical Information Page), and mandatory component 6 (Tribal Resolution).

Instructions To Download the Project Narrative Attachment Form

- Go to *www.grants.gov*.
- Select the ''forms'' tab. This will open a page within the table titled ''SF–424 FAMILY FORMS.''
- Under the column ''Agency Owner'' three quarters down the table (52nd row), is listed, *Grants.gov*—Project Narrative Attachment Form.
- Click on the blue PDF letters to download the one page document.

When the applicant has successfully downloaded the Project Narrative Attachment Form, follow the next steps to upload documents:

- On the Project Narrative Attachment Form, click on the button titled ''Add Project Narrative File.''
- Select the Project Narrative that you want to upload and click ''open'' to upload the file.
- On the same Project Narrative Attachment Form, you will find a grey button titled ''Add Optional Project Narrative File.'' Use this button to upload the Budget Narrative, Critical Information Page, and the Tribal Resolution as attachments.

When the applicant has completed uploading the Project Narrative and the attachments (Budget, Critical Information Page, and Tribal Resolution) to the Project Narrative Attachment Form, the applicant will save and name the file using the following format: *Tribal Name* EMDP Grant Attachments.

Example for naming the Project Narrative Attachment Form file: Pueblo of Laguna EMDP Grant Attachments.

Step 4. Submit the Completed EMDP Grant Proposal

Applicants must submit the Application for Federal Assistance SF–424 form and the Project Narrative Attachment Form in a single email to the email listed in the **ADDRESSES** section of this notice and:

- State ''EMDP APPLICATION NARRATIVE AND SF–424'' in the email subject line; and
- Include ''Attention: Ms. Winter Jojola-Talburt, Deputy Chief, Division of Energy and Mineral Development, Office of Indian Energy and Economic Development'' in the first line of the email.

Applications and mandatory attachments received and date-stamped after the time listed in the **DATES** section of this notice will not be considered by the Awarding Official. DEMD will accept applications at any time before the deadline and will send a notification of receipt to the return email address on the application package, along with a determination of whether the application is complete.

Incomplete Applications. Applications submitted without one or more of the six mandatory components described above will be returned to the applicant with an explanation. The applicant will then be allowed to correct any deficiencies and resubmit the proposal for consideration on or before the deadline. This option will not be available to an applicant once the deadline has passed.

IX. Review and Selection Process

Upon receiving an EMDP grant proposal, the DEMD will perform a preliminary review to determine if it contains the six (6) mandatory components. DEMD staff may return a proposal that it deems incomplete or ineligible. In appropriate circumstances it may retain the proposal but request additional information.

DEMD will also determine whether the proposed project duplicates or overlaps previous or currently funded DEMD technical assistance projects. DEMD may request further explanation of Tribes with outstanding project funds from previous years.

Any proposal that is received after the date and time in the **DATES** section of this notice will not be reviewed. If an application is not complete and the submission deadline has not passed, the applicant will be notified and given an opportunity to resubmit its application.

The DEMD Review Committee (Committee), comprised of IEED staff, staff from other Federal agencies, and subject matter experts, will evaluate the proposals against the ranking criteria. Proposals will be evaluated using the four ranking criteria listed below, with a maximum achievable total of 100 points.

Final award selections will be approved by the Assistant Secretary—Indian Affairs and the Associate Deputy Secretary, DOI. Applicants not selected for award will be notified in writing.

X. Evaluation Criteria

Tribal Executive Summary: 5 points. This criterion will evaluate that the summary of the project is succinct but inclusive of key aspects of the project, identifies the resource to be evaluated, includes summary of Tribal goals and objectives, and total funding requested. The Tribal Executive Summary should be an authentic representation of the project intent, from the perspective of the Tribal applicant. The DEMD review committee will view unfavorably proposals that show little evidence or scant regard for the applicant's unique circumstances.

Economic Viability: 30 points. This rating criterion gauges the project's capability to attract financing, either through conventional loans, grants, or investments. The narrative should therefore address the expected source(s) of funding for the project, the project's costs and revenues, and its return on investment, potential for job creation, payback period, and potential secondary markets.

Project Viability: 25 points. An application will be evaluated under this criterion on how clearly and convincingly it describes the project's anticipated outcomes. The application should therefore explain whether the project is new or builds on previous work that is partially complete. It should describe how the project is phased, how long it is expected to complete, and what need or goal the project is intended to satisfy or attain. It should also address the Tribe's motivation to develop the proposed energy and mineral resource, including short and long term benefits to the Tribe. And it should identify potential barriers, including but not limited to environmental and regulatory obstacles.

Scope of Work and Deliverables: 30 points. The Committee will rate the proposal on the extent to which it provides a clear and concise description of the tasks to be performed (in chronological order); demonstrates a logical methodology for completing project tasks; sufficiently describes all deliverable project products, including all technical data to be obtained during the study; and provides documentation that the consultants retained possess the requisite background and credentials to conduct the study.

Budget: 10 points. The application's budget narrative should clearly describe all major line-item expenditures that are proposed. The Committee will rank more highly proposals whose budget narratives correlate to a project's scope of work and clearly link each project task with a budget line-item and justification.

EMDP applications will be ranked using only these criteria (as described above)—

- *Executive Summary:* 5 points.
- *Economic Viability:* 30 points.
- *Project Viability:* 25 points.
- *Scope of Work and Deliverables:* 30 points.
- *Budget:* 10 points.
- *Total:* 100 points.

XI. Transfer of Funds

IEED's obligation under this solicitation is contingent on receipt of congressionally appropriated funds. No liability on the part of the U.S.

Government for any payment may arise until funds are made available to the awarding officer for this grant and until the recipient receives notice of such availability, to be confirmed in writing by the grant officer.

All payments under this agreement will be made by electronic funds transfer through the ASAP. All award recipients are required to have a current and accurate Data Universal Numbering System (DUNS) number to receive funds. All payments will be deposited to the banking information designated by the applicant in the System for Award Management (SAM).

XII. Reporting Requirements for Award Recipients

The applicant must deliver all products and data required by the signed Grant Agreement for the proposed EMDP feasibility study project to DEMD within 30 days of the end of each quarter and 90 days after completion of the project.

DEMD requests that all reports be delivered in digital format. Reports and data can be provided in either Microsoft Word or Adobe Acrobat PDF format. Spreadsheet data can be provided in Microsoft Excel, Microsoft Access, or Adobe PDF formats. All vector figures and images should be converted to PDF format. Do not convert vector figures to raster images. If files are too large to be submitted through electronic mail, they may be copied to a CD, DVD or thumb drive and mailed. Furthermore, all geological data needs to be uploaded in commonly used software (PETRA, etc.).

Quarterly Reporting Requirements: Quarterly narrative and financial status reports are to be submitted to the DEMD project monitor named in the award letter for the project, as well as the Grant Officer listed in the grant award. The quarterly narrative report can be a one to two page summary of events, accomplishments, problems and results that took place during the quarter. The quarterly financial status report should be submitted as Federal Financial Report, SF 425, and include a listing of the funds expended during the quarter, how the funds were spent, and the amount remaining. Quarterly reports are due thirty (30) days after the end of a project's quarter.

Final Reporting Requirements: Final narrative and financial reports are to be submitted to the DEMD project monitor named in the award letter for the project, as well as the Grant Officer listed in the grant award. The final narrative report should include, as attachments, all other products generated by the EMDP studies. Products include all reports and technical data obtained during the study. The final financial status report should be submitted as Federal Financial Report, SF 425, and include a listing of the funds expended during the project, how the funds were spent, and any amount remaining. Final reports are due ninety (90) days following the end of the project's period of performance.

In addition, this funding opportunity and financial assistance award must adhere to the following provisions:

XIII. Conflicts of Interest

Applicability

- This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

In the procurement of supplies, equipment, construction, and services by recipients and by sub-recipients, the conflict of interest provisions in 2 CFR 200.318 apply.

Requirements

- Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or sub-recipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or sub-recipient or in development of the requirement leading to the funding announcement.
- No actual or prospective recipient or sub-recipient may solicit, obtain, or use non-public information regarding the evaluation, award, administration of an award to that recipient or sub-recipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or sub-recipient.

Notification

- Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by sub-recipients.
- Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.
- Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make the required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR part 180).

Data Availability

- Applicability. The DOI is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
  - The scientific data relied upon;
  - The analysis relied upon; and
  - The methodology, including models, used to gather and analyze data.

XIV. Questions and Requests for IEED Assistance

DEMD staff may provide technical consultation, upon written request by an applicant. The request must clearly identify the type of assistance sought. Technical consultation does not include funding to prepare a grant proposal, grant writing assistance, or pre-determinations as to the likelihood that a proposal will be awarded. The applicant is solely responsible for preparing its grant proposal. Technical consultation may include clarifying application requirements, confirming whether an applicant previously submitted the same or similar proposal, and registration information for SAM or ASAP.

DEMD also offers Tribes many in-house technical capabilities and services at no charge. These services include: Searching nearby reference materials for technical literature on previous investigations and work performed in and around reservations; providing well log interpretation, including correlation of formation tops, identification of producing horizons, and generation of cross-sections; supplying technical mapping capabilities, using data from well log formation tops and seismic data; providing contour mapping capabilities, including isopachs, calculated grids, color-fill plotting, and posting of surface features, wells, seismic lines, and legal boundaries; supplying three-dimensional modeling of mine plans; providing economic analysis and modeling for energy and mineral projects; supplying marketing studies for various energy and mineral commodities; and offering a preliminary opportunity assessment for a renewable energy resource.

XV. Separate Document(s)

- Application for Federal Assistance SF–424 Form.
- Project Narrative Attachment Form (This form includes the Project Narrative, Verification of Eligibility, Budget, Tribal Resolution, and Critical Information page).

XVI. Paperwork Reduction Act

The information collection requirements contained in this notice have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 1076–0174. The authorization expires on November 30, 2022. An agency may not conduct or sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number.

XVII. Authority

This is a discretionary grant program authorized under the Snyder Act (25 U.S.C. 13), the Indian Mineral Development Act of 1982 (25 U.S.C. 2106), 25 U.S.C. 3502(a)(2)(B), and the Further Consolidated Appropriations Act 2020 (Pub. L. 116–94).

The Snyder Act authorizes the BIA to expend such moneys as Congress may appropriate for the benefit, care, and assistance of Indians for the purposes listed in the Act. EMDP grants facilitate two of the purposes listed in the Snyder Act: ''General support and civilization, including education'' and ''industrial assistance and advancement.''

The Indian Mineral Development Act of 1982 requires that DOI ensure that, upon the request of any Indian Tribe or individual Indian and to the extent of his available resources, the Tribe or individual Indian will have available advice, assistance, and information during the negotiation of a Mineral Agreement. Under the Act, the Secretary may fulfill this responsibility by providing financial assistance to the Indian Tribe or individual Indian to secure independent assistance. EMDP grants are issued in response to requests from Tribes who seek advice, assistance, and information from independent sources regarding their mineral resources and who may contemplate entering into a Minerals Agreement with a production company.

25 U.S.C. 3502(a)(2)(B) authorizes the DOI to provide grants to Indian Tribes and Tribal energy development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land.

The Further Consolidated Appropriations Act 2020 authorizes the BIA to carry out the operation of Indian programs by direct expenditure, contracts, cooperative agreements, compacts, and grants, either directly or in cooperation with States and other organizations.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–19502 Filed 9–2–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201D0102DR/DS5A300000/DR.5A311.IA000118]

Notice of Cancellation of Environmental Impact Statement for Proposed Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Indian Affairs (BIA) announces that it has discontinued preparation of an Environmental Impact Statement (EIS) for the Coquille Indian Tribe's (Tribe) application for the proposed conveyance of 2.4-acres of land into trust and development of a gaming facility in the City of Medford, Jackson County, Oregon. The Proposed Action included (1) conveyance of the Medford Site into trust by the BIA, and (2) conversion of an existing bowling alley on the Medford Site into a gaming facility by the Tribe. On May 27, 2020, the Assistant Secretary—Indian Affairs declined to accept conveyance of the Medford Site into trust. Accordingly, the Department will take no Federal action, and there is no longer a need for an EIS.

DATES: Cancellation of this EIS is immediate.

ADDRESSES: Mail all comments, statements, or questions concerning this notice to: Mr. Bryan Mercier, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 Northeast 11th Avenue, Portland, Oregon 97232–4165.

FOR FURTHER INFORMATION CONTACT: Jacilyn Snyder, BIA Northwest Regional Environmental Protection Specialist, at (503) 231–6780.

SUPPLEMENTARY INFORMATION: On January 15, 2015, the BIA published in the **Federal Register** a Notice of Intent to prepare an EIS. The BIA initiated scoping on February 2, 2015. On May 27, 2020, the Assistant Secretary—Indian Affairs declined to accept conveyance of the Medford Site into trust pursuant to the Department's regulations at 25 CFR part 151. Under the Department's regulations, the Secretary must consider jurisdictional problems that may arise because of the conveyance. The Assistant Secretary determined pursuant to 25 CFR 151.11(b) that the Tribe's anticipated benefits do not outweigh potential jurisdictional concerns raised by the

State, county, and municipal governments having regulatory jurisdiction over the Medford Site. Accordingly, the Department will take no Federal action, and there is no longer a need for an EIS.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–19503 Filed 9–2–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–30207; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Intent To Award 16 Temporary Concession Contracts for Guided Interpretive Colorado River Trips Within Grand Canyon National Park

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: The National Park Service hereby gives public notice that it intends to award 16 temporary outfitter and guide concession contracts to qualified persons for the conduct of Guided Interpretive Colorado River Trips within Grand Canyon National Park for a term not to exceed three years.

DATES: The National Park Service intends for the temporary outfitter and guide concession contracts to commence on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Jennifer Parker, Chief of Commercial Services, NPS Regional Office Serving Interior regions 6, 7, 8, (303) 969–2661, or by email at *jennifer_parker@nps.gov.*

SUPPLEMENTARY INFORMATION: The National Park Service intends to award temporary outfitter and guide concession contracts to the concessioners currently operating under the following concession contracts: CC–GRCA006–08, CC–GRCA007–08, CC–GRCA010–08, CC–GRCA011–08, CC–GRCA015–08, CC–GRCA016–08, CC–GRCA017–08, CC–GRCA018–08, CC–GRCA020–08, CC–GRCA021–08, CC–GRCA022–08, CC–GRCA024–08, CC–GRCA025–08, CC–GRCA026–08, CC–GRCA028–08, CC–GRCA029–08. If the National Park Service is unable to reach acceptable terms with a concessioner operating under one of the above-listed contracts, the National Park Service may award the respective temporary outfitter and guide concession contract to a different qualified person. The National Park Service has determined that the issuance of temporary outfitter and guide concession contracts not to exceed three years is necessary to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services in accordance with 36 CFR 51.24.

Authority: 54 U.S.C. 101913(11)(a); 36 CFR 51.24(a).

Lena McDowall,

Deputy Director, Management and Administration.

[FR Doc. 2020–19510 Filed 9–2–20; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–28973; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Continuation of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service hereby gives notice that, pursuant to the terms of the concession contracts identified in the table below, the National Park Service intends to the contracts for a period of one year beginning on January 1, 2020.

DATES: The contract continuations will begin on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Acting Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Washington, DC 20240, Telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: The concession contracts listed in the table below have been extended for the maximum time allowable under 36 CFR 51.23. Under the provisions of the existing contracts and pending the issuance of prospectuses and the completion of the public solicitation process to award new concession contracts, the National Park Service intends to continue the existing contracts for a period not-to-exceed one year beginning on January 1, 2020. Except for their expiration dates, the terms and conditions of the existing contracts will remain unchanged. The continuation of the existing contracts does not confer or affect any rights with respect to the award of new concession contracts. The publication of this notice reflects the intent of the National Park Service but does not bind the National Park Service to continue any of the contracts listed in the table below.

Park unit	CONCID	Concessioner
Cape Hatteras National Seashore	CAHA001–98	Koru Village Incorporated.
Glen Canyon National Recreation Area	GLCA002–88	ARAMARK Sports and Entertainment Services, Inc.
Glen Canyon National Recreation Area	GLCA003–69	ARAMARK Leisure Services, Inc.
Independence National Historical Park	INDE001–94	Concepts by Staib, Walter Staib.
Lake Mead National Recreation Area	LAKE001–73	Rex G. Maughan and Ruth G. Maughan.
Lake Mead National Recreation Area	LAKE002–82	Lake Mead R.V. Village, LLC or LMNRA Guest Services, Inc.
Lake Mead National Recreation Area	LAKE005–97	Rex G. Maughan and Ruth G. Maughan.
Lake Mead National Recreation Area	LAKE006–74	Las Vegas Boat Harbor, Inc.
Lake Mead National Recreation Area	LAKE009–88	Temple Bar Marina, LLC or LMNRA Guest Services, Inc.
National Mall and Memorial Parks	NACC003–86	Guest Services, Inc.

Lena McDowall,

Deputy Director, Management and Administration.

[FR Doc. 2020–19509 Filed 9–2–20; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–28974; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Extension of Concession Contracts and Intent To Award Temporary Concession Contract

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service hereby gives public notice that it proposes to extend the expiring concession contracts listed in the table below until the date shown in the ''Extension Date'' column, or until the effective date of a new contract, whichever occurs sooner. The National Park Service hereby gives public notice that it intends to award one temporary concession contract as described below.

DATES: The National Park Service intends for the extensions and temporary concession contract to commence on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Acting Program Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Washington, DC 20240, Telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: All of the concession contracts listed in the first table below will expire by their terms on or before December 31, 2019. The National Park Service intends to extend the concession contracts shown until the specific date shown in the ''Extension Date'' column, or until the effective date of a new concession contract, whichever occurs first.

For the second table, the contract is extended until the date shown in the ''Extension Date'' column. Under the provisions of current concession contracts, the National Park Service authorizes extension of visitor services for the listed contracts under the terms and conditions of the current contract (as amended if applicable). The extension of operations does not affect any rights with respect to selection for award of a new concession contract. The National Park Service has determined the proposed extensions are necessary to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. The publication of this notice merely reflects the intent of the National Park Service and does not bind the National Park Service to extend or award any of the contracts listed below.

The information in the third table shows concession contracts for which the National Park Service intends to award temporary concession contracts to qualified persons under the authority of 36 CFR 51.24(a), for a term not to exceed 3 years. The NPS intends for the temporary concession contracts to commence as of the specific dates shown in the ''Effective Date'' column. This notice is not a request for proposals.

TABLE 1—CONCESSION CONTRACTS EXTENDED UNTIL THE DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT

Park unit	CONCID	Concessioner	Extension date
Acadia NP	ACAD014–09	Carriages of Acadia, Inc	12/31/2020
Bryce Canyon NP	BRCA003–10	The Lodge at Bryce Canyon, LLC	12/31/2020
Buck Island Reef NM	BUIS015–07	D.T.R.T. Enterprises, LLC	12/2/2020
Geo. Washington MP	GWMP003–13	Belle Haven Marina, Inc	12/31/2020
Glacier NP	GLAC001–10	Glacier Park Boat Company, Inc	12/31/2020
Golden Gate NRA	GOGA010–98	Peanut Wagon, Inc	12/31/2020
Grand Canyon NP	GRCA002–08	Grand Canyon North Rim, LLC	12/31/2020
Grand Canyon NP	GRCA004–10	Mangum Enterprises, Inc	12/31/2020
Grand Canyon NP	GRCA006–08	AzRA Acquisition, LLC	12/31/2020
Grand Canyon NP	GRCA007–08	Arizona River Runners, Inc	12/31/2020
Grand Canyon NP	GRCA010–08	Canyoneers, Inc	12/31/2020
Grand Canyon NP	GRCA011–08	Colorado River & Trail Expeditions, Inc	12/31/2020
Grand Canyon NP	GRCA015–08	Grand Canyon Expeditions Company, Inc	12/31/2020
Grand Canyon NP	GRCA016–08	Canyon Expeditions, Inc	12/31/2020
Grand Canyon NP	GRCA017–08	Grand Canyon Whitewater, LLC	12/31/2020
Grand Canyon NP	GRCA018–08	Hatch River Expeditions, Inc	12/31/2020
Grand Canyon NP	GRCA020–08	Arizona Raft Adventures, LLC	12/31/2020
Grand Canyon NP	GRCA021–08	O.A.R.S. Grand Canyon, Inc	12/31/2020
Grand Canyon NP	GRCA022–08	Outdoors Unlimited River Trips	12/31/2020
Grand Canyon NP	GRCA024–08	ARAMARK Sports & Ent. Services, Inc	12/31/2020
Grand Canyon NP	GRCA025–08	Tour West, Inc	12/31/2020
Grand Canyon NP	GRCA026–08	Western River Expeditions, Inc	12/31/2020
Grand Canyon NP	GRCA028–08	Canyon Explorations, Inc	12/31/2020
Grand Canyon NP	GRCA029–08	Grand Canyon Discovery, LLC	12/31/2020
Grand Teton NP	GRTE006–10	Barker-Ewing Scenic Tours, Inc	12/31/2020
Grand Teton NP	GRTE008–10	Grand Teton Fly Fishing, LLC	12/31/2020
Grand Teton NP	GRTE010–10	Snake River Angler, Inc	12/31/2020
Grand Teton NP	GRTE011–10	Heart 6 Ranch, LLC	12/31/2020
Grand Teton NP	GRTE014–10	Snake River Angler	12/31/2020
Grand Teton NP	GRTE015–10	Triangle X Ranch	12/31/2020
Grand Teton NP	GRTE017–10	O.A.R.S. West, Inc	12/31/2020
Grand Teton NP	GRTE020–10	Solitude Float Trips, Inc	12/31/2020
Grand Teton NP	GRTE040–10	Lost Creek Ranch	12/31/2020
Grand Teton NP	GRTE043–10	Teton Whitewater, LC	12/31/2020
Grand Teton NP	GRTE045–10	C–H Ranch Corporation	12/31/2020
Grand Teton NP	GRTE052–10	RPK Investments, Inc	12/31/2020
Great Smoky Mtns NP	GRSM002–09	Stokely Consolidated Investments, LLC	12/31/2020
Great Smoky Mtns NP	GRSM003–10	Tammy Monhollen	12/31/2020

TABLE 1—CONCESSION CONTRACTS EXTENDED UNTIL THE DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT—Continued

Park unit	CONCID	Concessioner	Extension date
Great Smoky Mtns NP	GRSM006–07	Smoky Mountain Stables, Inc	11/30/2020
Great Smoky Mtns NP	GRSM010–10	Great Smoky Mountains Association	12/31/2020
Isle Royale NP	ISRO001–10	Isle Royale Resorts, LLC	12/31/2020
Muir Woods NM	MUWO001–09	Cloudless Skies Parks Company, LLC	9/30/2020
Ozark NCR	OZAR001	Narvey's Alley Spring Canoe Rental, LLC	12/31/2020
Ozark NCR	OZAR018	Two Rivers Canoes, LLC	12/31/2020
Prince William FP	PRWI001–08	Recreational Adventures Campground, LLC	12/31/2020
Southeast Region	SERO001–09	Eastern National	12/31/2020
Yellowstone NP	YELL001–10	Medcor, Inc	13/31/2020
Yellowstone NP	YELL004–08	Yellowstone Park Service Stations, Inc	12/31/2020
Yukon-Charley Rivers National Preserve	YUCH001–10	Eric Decker	12/31/2020
Zion NP	ZION003–09	Xanterra Parks & Resorts, Inc	12/31/2020

TABLE 2—CONCESSION CONTRACTS EXTENDED UNTIL THE DATE SHOWN

Park unit	CONCID	Concessioner	Extension date
Big Bend NP	BIBE002–08	Big Bend Resorts, LLC	6/30/2021
Channel Islands NP	CHIS001–11	The Island Packers Corporation	12/31/2021
Death Valley NP	DEVA002–11	NEG282, LLC	1/12/2022
Dry Tortugas NP	DRTO001–10	Yankee Freedom III, LLC	10/31/2021
Everglades NP	EVER005–10	Florida National Parks and Monuments Association.	8/31/2021
Fort McHenry NM&HS	FOMC001–10	Evelyn Hill, Inc., Bradford Hill	11/30/2021
Golden Gate NRA	GOGA002–09	American Youth Hostels, Inc	4/30/2021
Olympic NP	OLYM003–10	Aramark Sports & Entertainment Services, LLC	1/31/2021
Pictured Rocks NL	PIRO001	Pictured Rocks Cruises, Inc	12/31/2021
Statue of Liberty NM	STI001–07	Statue Cruises, LLC	2/28/2021
Statue of Liberty NM	STLI004–09	Evelyn Hill, Inc. , Bradford Hill	10/31/2021
Yosemite NP	YOSE001–10	Best's Studio, Inc	2/28/2021

TABLE 3—TEMPORARY CONCESSION CONTRACT

Park unit	CONCID	Services	Effective date
Eisenhower NHS	EISE001–07	Transportation	1/1/2020

Lena McDowall,

Deputy Director, Management and Administration.

[FR Doc. 2020–19508 Filed 9–2–20; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2020–0007; EEEE500000 20XE1700DX EX1SF0000.EAQ000; OMB Control Number 1014–0016]

Agency Information Collection Activities; Pipelines and Pipeline Rights-of-Way (ROW)

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 2, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2020–0007 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0016 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our

information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Lessees and pipeline ROW holders design the pipelines that they install, maintain, and operate. To ensure those activities are performed in a safe manner, BSEE needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. BSEE uses the information to review pipeline designs prior to approving an application for an ROW or lease term pipeline to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. BSEE reviews proposed pipeline routes to ensure that the pipelines would not conflict with any State requirements or unduly interfere with other OCS activities. BSEE reviews proposals for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). BSEE reviews notifications of relinquishment of ROW grants and requests to decommission pipelines for regulatory compliance and to ensure that all legal obligations are met. BSEE monitors the records concerning pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule witnessing trips and inspections. Information is also necessary to determine the point at which DOI or Department of Transportation (DOT) has regulatory responsibility for a pipeline and to be informed of the identified operator if not the same as the pipeline ROW holder.

Title of Collection: 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way (ROW).

OMB Control Number: 1014–0016.

Form Number: Forms BSEE–0149—Assignment of Federal OCS Pipeline Right-of-Way Grant, and Form BSEE–0135—Identification of Right-of-Way Pipeline Operator.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 60 Oil and Gas Drilling and Production Operators in the OCS. Not all the potential respondents will submit information at any given time, and some may submit multiple times.

Total Estimated Number of Annual Responses: 2,961.

Estimated Completion Time per Response: Varies from .5 hour to 107 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 34,560.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits, or voluntary.

Frequency of Collection: Submissions are generally on occasion and varies by section.

Total Estimated Annual Nonhour Burden Cost: $1,379,369.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Acting Chief, Regulations and Standards Branch.

[FR Doc. 2020–19516 Filed 9–2–20; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1216]

Certain Vacuum Insulated Flasks and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 29, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Steel Technology, LLC d/b/a Hydro Flask of Bend, Oregon and Helen of Troy Limited of El Paso, Texas. A supplement was filed on August 18, 2020. The complaint, as supplemented, 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 vacuum insulated flasks and components thereof by reason of infringement of: (1) The sole claims of U.S. Design Patent No. D806,468 (''the '468 patent''); U.S. Design Patent No. D786,012 (''the '012 patent''); U.S. Design Patent No. D799,320 (''the '320 patent''); and (2) U.S. Trademark Registration No. 4,055,784 (''the '784 trademark''); U.S. Trademark Registration No. 5,295,365 (''the '365 trademark''); U.S. Trademark Registration No. 5,176,888 (''the '888 trademark''); and U.S. Trademark Registration No. 4,806,282 (''the '282 trademark''). 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 Proctor, 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 August 28, 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:

(a) 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 the sole claim of the '468 patent; the sole claim of the '012 patent; and the sole claim of the '320 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) there is a violation of subsection (a)(1)(C) 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 the '784 trademark; the '365 trademark; the '888 trademark; and the '282 trademark, 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 ''vacuum insulated flasks made of stainless steel and caps for such flasks, including round caps with a strap secured on either side of the cap, and straw caps.'';

(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:

Steel Technology, LLC d/b/a, Hydro Flask, 525 NW York Drive, Bend, OR 97703.

Helen of Troy Limited, 1 Helen Of Troy Plaza, El Paso, TX 79912.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Everich and Tomic Houseware Co., Ltd., 29/F, UDC Times Building, Tower A, No. 8, Xinye Road, Hangzhou, China 310016.

Cangnan Kaiyisi E-Commerce Technology, Co., Ltd., Room 201, No. 119, Building 4, Demonstration Industrial Park, Longjin, Avenue, Longgang Town, Cangnan County, Wenzhou, Zhejiang, China 325800.

Shenzhen Huichengyuan Technology Co., Ltd., No. 249 Shopping Street, Fuwei Road, Xiashiwei Village, Fuyong, Baoan District, Shenzhen, Guangdong, China 518130.

Sinbada Impex Co., Ltd., Room 1001, Baiyue Center, Zhidi Plaza, 200, Huaining Road, Government Affairs District, Hefei, Anhui, China 231000.

Yongkang Huiyun Commodity Co., Ltd., No. 1, Jiasheng Road, Fangyan Town, Yongkang, Jinhua, Zhejiang, China 321308.

Wuyi Loncin Bottle Co., Limited, Yugui Road, Huachuan Industry Zone, Yongkang, Jinhua, Zhejiang, China 321300.

Yiwu Honglu Daily Necessities Co., Ltd., No. 53, Lake Gate Village, Yiwu City, Zhejiang, China 322003.

Zhejiang Yuchuan Industry & Trade Co., Ltd., Wangyuan Industry Zone, Quanxi Town, Wuyi County, Jinhua, Zhejiang, China 321201.

Zhejiang Yongkang Unique Industry & Trade Co., Ltd., No. 3, Yuansan Road, Baiyun Industry Zone, Yongkang, Jinhua, Zhejiang, China 321300.

Suzhou Prime Gifts Co., Ltd., Room 412, Block 38, Qidi Tech Park, No. 60, Weixin Road, Ind. Zone, Suzhou, Jiangsu, China 215021.

Hangzhou Yuehua Technology Co., Ltd., Room 203, Building 4, Chuangzhi Lvgu Development Centre, No. 788, Hongpu Road, Jianggan Dist., Hangzhou, Zhejiang, China 310000.

Guangzhou Yawen Technology Co., Ltd., Room 503, No. 85 South Shatai Road, Tianhe District, Guangzhou, China 510000.

Yiwu Yiju E-commerce Firm, Room 502, Unit 1, Building 55, Zongtang 1st District, Jiangdong Street, Yiwu City, Zhejiang Province, China 322000.

Jinhua Ruizhi Electronic Commerce Co., Ltd., No. 19 East Huangyantou Village, Bailongqiao Town, Wucheng District, Jinhua City, Zhejiang Province, China 321000.

Womart (Tianjin) International Trade Co., Ltd., 18–1–402, Yilinyuan, Donghai Street, Tianjin, China 300000.

Shenzhen Yaxin General Machinery Co., Ltd., 301A, 3/F, No. 17, Phase 1, Xinxing Industrial Park, Xinhe Community, Fuhai Street, Baoan District, Shenzhen, China, 518130.

Dunhuang Group a.k.a. DHgate, 6F Dimeng Commercial Building, No. 3–2 Hua Yuan Road, Haidian District, Beijing, China 100191.

Eddie Bauer, LLC, 10401 NE 8th Street Suite 500, Bellevue, WA 98004.

PSEB Holdings, LLC, Corporation Trust Center 1209 Orange Street, Wilmington, DE 19810.

HydroFlaskPup, 4525 East Gelding Drive, Phoenix, Arizona 85032.

(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 respondent 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 the 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: August 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–19465 Filed 9–2–20; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (20–070)]

Name of Information Collection: NFS 1827, Patents, Data, Copyrights

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by September 30, 2020.

ADDRESSES: All comments should be addressed to Travis Kantz, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 202–358–2375.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Travis Kantz, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 281–792–7885 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Contractors performing research and development are required by statutes, NASA implementing regulations, and OMB policy to submit reports of inventions, patents, data, and copyrights, including the utilization and disposition of same. The NASA New Technology Summary Report reporting form is being used for this purpose.

II. Methods of Collection

NASA FAR Supplement clauses for patent rights and new technology encourage the contractor to use an electronic form and provide a hyperlink to the electronic New Technology Reporting Web (e-NTR) site *http://invention.nasa.gov.* This website has been set up to help NASA employees and parties under NASA funding agreements (*i.e.,* contracts, grants, cooperative agreements, and subcontracts) to report new technology information directly, via a secure internet connection, to NASA.

III. Data

Title: NFS 1827—Patents, Data, and Copyrights.

OMB Number: 2700–0052.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses, colleges and university and/or other for-profit institutions.

Estimated Annual Number of Activities: 3372.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 3372.

Estimated Time per Response: 3 hours average.

Estimated Total Annual Burden Hours: 10,116.

Estimated Total Annual Cost: 518,191.45.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Roger Kantz,

NASA PRA Clearance Officer.

[FR Doc. 2020–19524 Filed 9–2–20; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0107]

Information Collection: Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request.''

DATES: Submit comments by October 5, 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: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0107 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–2020–0107. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0107 on this website.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML20126G469 and ML20126G490. The supporting statement is available in ADAMS under Accession No. ML20170A358.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's

Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 13, 2020 (85 FR 28667).

1. *The title of the information collection:* ''Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request.''
2. *OMB approval number:* 3150–0018.
3. *Type of submission:* Extension.
4. *The form number if applicable:* There is no form number for the online submission form.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR part 50), ''Domestic Licensing of Production and Utilization Facilities'' who seek exemptions from the requalification requirements specified in 10 CFR 55.59 as allowed by 10 CFR 55.11, ''Specific Exemptions.''
7. *The estimated number of annual responses:* 60.
8. *The estimated number of annual respondents:* 60.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 120.
10. *Abstract:* The NRC requested an emergency review of this information collection in order to add this form to the previously approved information collection OMB Control Number 3150–0018 for a period of 6 months. The purpose of this information collection is to request an extension of the approval of the ''Part 55 Exemption Request and Part 55 Research and Test Reactor Exemption Request'' online forms that simplify the filing the exemption requests because the existing system may be burdensome for licensees under current conditions. Under the existing collection under OMB Control No. 3150–0018, licensees are already able to seek exemptions from the requirements of 10 CFR part 55, Operators' Licenses. This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

10 CFR part 55 contains specific requirements for the licensing of utilization facility operators and senior operators. Due to the impacts of the COVID–19 public health emergency (PHE), the NRC will also consider exemption requests for operators and senior operators from the requirements in 10 CFR 55.59(a)(1) (requiring the operators and senior operators to successfully complete the Commission-approved requalification program) and in 10 CFR 55.59(a)(2) (requiring the operators and senior operators to pass a comprehensive requalification written examination and an annual operating test); these exemptions would allow delay of these requalification program requirements during the COVID–19 PHE as allowed by 10 CFR 55.11, ''Specific Exemptions.''

Dated: August 28, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–19457 Filed 9–2–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0119]

Information Collection: NRC Form 149, "OCFO Invitational Traveler Request Form"

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed collection of information. The information collection is entitled, NRC Form 149, ''OCFO Invitational Traveler Request Form.''

DATES: Submit comments by November 2, 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–2020–0119. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC–2020–0119 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–2020–0119. A copy of the collection of information and

related instructions may be obtained without charge by accessing Docket ID NRC–2020–0119 on this website.

• *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 supporting statement and NRC Form 149 are available in ADAMS under Accession Nos. ML20162A209 and ML20162A211.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID: NRC–2020–0119 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions 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, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 149, ''OCFO Invitational Traveler Request Form.''
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Form 149.
5. *How often the collection is required or requested:* The collection is required when there is an invitational traveler that will be reimbursed by the NRC. This occurs on an as needed basis and does not have a regular schedule for submission.
6. *Who will be required or asked to respond:* The invitational traveler will be asked to respond and NRC staff that are associated with the purpose of the invitational traveler may also be asked to respond on an as needed basis.
7. *The estimated number of annual responses:* 250.
8. *The estimated number of annual respondents:* 250.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 50 hours.
10. Abstract: The NRC provides reimbursement for people on invitational travel for the NRC. As such, the NRC would reimburse them through our Financial Accounting and Integrated Management Information System (FAIMIS). Additionally, the travel itself would be processed in our electronic travel system (ETS2). Both the financial and travel systems must be set up appropriately for the invitational traveler to travel and receive reimbursement from the NRC. The information collected on Form 149 meets the requirements for the invitational traveler to have a profile created in FAIMIS and in ETS2. The information collected is necessary to meet the criteria for both systems.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: August 28, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–19459 Filed 9–2–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0098]

Information Collection: COVID–19 Work Hour Controls Exemption Request Form

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''COVID–19 Work Hour Controls Exemption Request Form.''

DATES: Submit comments by October 5, 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: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0098 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 *http://www.regulations.gov* and search

for Docket ID NRC–2020–0098. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0098 on this website.

• *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML20107J348. The supporting statement is available in ADAMS under Accession No. ML20170A641.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''COVID–19 Work Hour Controls Exemption Request Form.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 23, 2020 (85 FR 22757).

1. *The title of the information collection:* COVID–19 Work Hour Controls Exemption Request Form.
2. *OMB approval number:* 3150–0146.
3. *Type of submission:* Extension.
4. *The form number if applicable:* There is no form number for the online submission form.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'' who seek exemptions from the work hour controls specified in 10 CFR 26.205(d)(1)–(7) as allowed by 10 CFR 26.9, ''Specific exemptions.''
7. *The estimated number of annual responses:* 40.
8. *The estimated number of annual respondents:* 40.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 80.
10. *Abstract:* The NRC requested an emergency review of this information collection in order to add this form to the previously approved information collection OMB Control Number 3150–0146 for a period of 6 months. The purpose of this information collection is to request an extension of the approval of online COVID–19 Work Hour Controls Exemption Request Form. The form simplifies the filing the exemption requests because the existing system may be burdensome for licensees under current conditions. Under the existing collection under OMB Control No. 3150–0146, licensees are already able to seek exemptions from the requirements of 10 CFR part 26, Fitness-For-Duty Programs. This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

10 CFR 26.205(d)(1)–(7) identifies specific work hour control requirements for individuals subject to the requirements of 10 CFR part 26. Due to the impacts of the COVID–19 Public Health Emergency (PHE), the NRC is prepared to grant, upon request from individual licensees, exemptions from the work hour controls specified in 10 CFR 26.205(d)(1)–(7) as allowed by 10 CFR 26.9, ''Specific exemptions.''

The objective of using the online form to submit exemptions from 10 CFR 26.205(d)(1)–(7) is to ensure that the control of work hours and management of worker fatigue do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe operation of these facilities. Specifically, the licensee can submit an exemption request if (1) a licensee's staffing levels are affected by the COVID–19 PHE, (2) a licensee determines that it can no longer meet the work-hour controls of 10 CFR 26.205(d)(1)–(d)(7), and (3) the licensee can effect site-specific administrative controls for COVID–19 PHE fatigue-management for personnel specified in 10 CFR 26.4(a).

Dated: August 28, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–19461 Filed 9–2–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–230 and CP2020–260; MC2020–231 and CP2020–261; MC2020–232 and CP2020–262]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 9, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–230 and CP2020–260; *Filing Title:* USPS Request to Add Priority Mail Contract 651 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 28, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 9, 2020.

2. *Docket No(s).:* MC2020–231 and CP2020–261; *Filing Title:* USPS Request to Add Priority Mail Contract 652 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 28, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 9, 2020.

3. *Docket No(s).:* MC2020–232 and CP2020–262; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 164 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 28, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 9, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–19505 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 24, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 162 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–226, CP2020–256.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19438 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 17, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 7 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–222, CP2020–252.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19434 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 24, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 161 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–225, CP2020–255.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19437 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 652 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–231, CP2020–261.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19443 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 21, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 160 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–224, CP2020–254.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19436 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 164 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–232, CP2020–262.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19444 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 158 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–221, CP2020–251.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19433 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 26, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 163 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–229, CP2020–259.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19441 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 651 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–230, CP2020–260.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19442 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 24, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 650 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–227, CP2020–257.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19439 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 25, 2020, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & Parcel Select Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–228, CP2020–258.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19440 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 17, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 159 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–223, CP2020–253.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–19435 Filed 9–2–20; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995, the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Title and purpose of information collection: Continuing Disability Report; OMB 3220–0187. Under Section 2 of the Railroad Retirement Act (45 U.S.C. 231a), an annuity is not payable or is reduced for any month in which the annuitant works for a railroad or earns more than prescribed dollar amounts from either non-railroad employment or self-employment. Certain types of work may indicate an annuitant's recovery from disability. The provisions relating to the reduction or non-payment of an annuity by reason of work, and an annuitant's recovery from disability for work, are prescribed in 20 CFR 220.17–220.20. The RRB conducts continuing disability reviews (CDR) to determine whether an annuitant continues to meet the disability requirements of the law. Provisions relating to when and how often the RRB conducts CDR's are prescribed in 20 CFR 220.186.

Form G–254, *Continuing Disability Report,* is used by the RRB to develop

information for a CDR determination, including a determination prompted by a report of work, return to railroad service, allegation of medical improvement, or a routine disability review call-up. Form G–254a, Continuing Disability Update Report, is used to help identify a disability annuitant whose work activity and/or recent medical history warrants completion of Form G–254 for a more extensive review.

Completion is required to retain a benefit. One response is requested of each respondent to Forms G–254 and G–254a.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (85 FR 39225 on June 30, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Continuing Disability Report.

OMB Control Number: 3220–0187.

Forms submitted: G–254, G–254a, and RL–8a.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under the Railroad Retirement Act, a disability annuity can be reduced or not paid, depending on the amount of earnings and type of work performed. The collection obtains information about a disabled annuitant's employment and earnings.

Changes proposed: The RRB proposes no changes to Form G–254 and Form G–254a. The RRB proposes to remove Form RL–8A from the information collection.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
G–254:			
Annuitant	1,000	35	583
Employer verification	100	5	8
Doctor, hospital, or clinic verification	100	5	8
Vocational, Rehabilitation	100	5	8
Other governmental agency verification	100	5	8
School verification	100	5	8
G–254a	1,500	5	125
Total	3,000		748

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov.*

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.

Brian Foster,

Clearance Officer.

[FR Doc. 2020–19514 Filed 9–2–20; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10830; 34–89713; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of public meeting.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, September 24, 2020 from 10:00 a.m. until 4:00 p.m. (ET). Written statements should be received on or before September 24, 2020.

ADDRESSES: The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St NE, Washington, DC 20549. The meeting will be webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements 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.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Chief Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during that portion of the meeting reserved for an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**.

The agenda for the meeting includes: Welcome remarks; approval of previous meeting minutes; a panel discussion

regarding self-directed IRAs; a panel discussion regarding minority community investor inclusion; a discussion of a recommendation to restate and amend the by-laws of the Committee; subcommittee reports; and a non-public administrative session.

Dated: August 31, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–19518 Filed 9–2–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89707; File No. SR–CBOE–2020–074]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating To Adopt Compression Orders

August 28, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt Compression orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Compression or Position Compression Cross (''PCC'') orders. Currently, the Exchange facilitates compression forums on the trading floor at the end of each calendar week, month, and quarter in which Trading Permit Holders (''TPHs'') may reduce open positions in series of S&P 500 Index (''SPX'') options in order to mitigate the effects of capital constraints on market participants. SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires that every registered broker-dealer maintain certain specified minimum levels of capital.[3] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[4]

All Options Clearing Corporation (''OCC'') clearing members are subject to the Net Capital Rules. However, a subset of clearing members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S. bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[5] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation approved a comprehensive regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[6] Generally, these rules imposed higher minimum capital requirements, more restrictive capital eligibility standards, and higher asset risk weights than were previously mandated for clearing members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, these rules do not permit deductions for hedged securities or offsetting options positions.[7] Rather, capital charges under these standards are based on the aggregate notional value of short positions regardless of offsets. As a result, Clearing Trading Permit Holders (''CTPHs'') generally must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.[8] The impact of these regulatory capital rules is compounded in the SPX options market due to the large notional value of SPX contracts and the significant number of open SPX positions.

The Exchange believes these regulatory capital requirements have impeded efficient use of capital and undermine the critical liquidity role that Market-Makers play in the SPX options market by limiting the amount of capital CTPHs can allocate to clearing member transactions. Specifically, the Exchange understands these rules have caused, and may continue to cause, CTPHs to impose stricter position limits on their clearing members. These stricter position limits may impact the liquidity Market-Makers might supply in the SPX market,[9] which impact may be heightened when markets are volatile, and this impact may be compounded when a CTPH has multiple Market-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1.

[4] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.,* vertical spreads).

[5] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[6] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[7] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by market-makers and institutions, are risk-limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying assets), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined. Whereas regulatory capital requirements have historically reflected the risk-limited nature of carrying offsetting positions, these positions may now be subject to large regulatory capital requirements. Various factors, including administration costs; transaction fees; and limited market demand or counterparty interest, however, discourage market participants from closing these positions even though many market participants likely would prefer to close the positions rather than carry them to expiration.

[8] *See* Letter from Cboe, New York Stock Exchange, and Nasdaq, Inc., to the Honorable Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, March 18, 2020.

[9] The Exchange notes Market-Makers participate on over 95% of SPX option trades on the Exchange.

Maker client accounts, each having largely risk-neutral portfolio holdings.[10] The Exchange believes that permitting TPHs to close open interest in offsetting SPX options positions in open outcry compression forums has had a beneficial effect on the bank regulatory capital requirements of CTPHs' parent companies without adversely affecting the quality of the SPX options market.

In November 2019, bank regulatory agencies approved a rulemaking requiring banks to replace the Current Exposure Method (''CEM'') with the Standardized Approach to Counterparty Credit Risk (''SA–CCR'') by January 1, 2022.[11] The Exchange believes CEM's primary flaws arise from the methodology's insensitivity to actual risk. For example, CEM does not account for the delta (*i.e.,* market sensitivity) of an option position or fully recognize the offsetting of positions with opposite economic exposures. The Exchange believes implementation of SA–CCR will help correct many of CEM's flaws by incorporating risk-sensitive principles, such as delta weighting options positions and more beneficial netting of derivative contracts that have economically meaningful relationships. This means that SA–CCR will be less penal to CTPHs (and the market participants for which they clear options positions) than CEM as it relates to options positions. However, the implementation of SA–CCR will not eliminate the need for market-makers to manage their positions or be concerned about the accumulation of cleared positions that ultimately contribute to risk weighted asset requirements of their clearing firms and thus the capital ratios with which those firms need to comply.

The Exchange notes there are very few clearing banks, and even fewer that clear for options market-makers. Increased clearing of over-the-counter products, such as swaps, by these same clearing banks means there is a risk of less available clearing bandwidth for listed options, even with the adoption of SA–CCR. Additionally, market-makers will continue to hold positions that are virtually riskless but have a significant capital impact that could be compressed in order to free up balance sheets to enable market-makers to continue to provide meaningful liquidity to the market. Therefore, even when all banks have implemented SA–CCR, the Exchange believes compression will continue to be a valuable tool for market participants.[12]

From March 16 to June 12, 2020, the Exchange's trading floor was closed due to the coronavirus pandemic. During that time, the Exchange operated in an all-electronic configuration, which would have prevented market participants from reducing open SPX interest in open outcry compression forums. As a result, the Exchange adopted current Rule 5.24(e)(1)(E) to permit TPHs to reduce open interest in SPX options in electronic compression forums while the trading floor was closed.[13] When the trading floor reopened on June 15, 2020, electronic compression forums were no longer available. However, the Exchange received feedback from customers while the floor was closed and since the floor has reopened regarding the benefits of the electronic compression forums, including the efficiency it provided with respect to the execution of the orders via an unexposed cross and the flexibility to effect these executions at more times than currently available in open outcry. In addition to verbal feedback the Exchange received, in early May, the Exchange received a letter signed by seven TPHs noting the increased efficiency in execution of compression trades the electronic compression forums provided and requesting permanent approval of daily electronic compression. The firms noted the significance of the functionality for evaluation of their risks and capital needs. Additionally, the firms noted daily compression using the electronic functionality then-available permitted them to respond to intra-month reviews of regulatory capital necessary for their positions by clearing firms, to which firms are unable to respond in real-time using the current open outcry compression forums. Therefore, the Exchange proposes to adopt Compression orders that can be executed electronically or in open outcry on a permanent basis via unexposed crosses.

The proposed rule change defines ''Compression'' or ''PCC'' order in Rule 5.6(c) as an order in SPX option contracts that may execute without exposure pursuant to Rules 5.32, 5.33, or 5.88 against another Compression order(s) totaling an equal number of option contracts.[14] A Trading Permit Holder may use Compression orders only to reduce the capital associated with its open SPX positions. Current Rule 5.88 specifies when compression forums may occur.[15] As proposed, as was the case for electronic compression forums while the trading floor was closed, the Exchange will announce the times at which TPHs may submit compression-list positions and at which the Exchange will make compression-list positions files available to TPHs.[16] The Exchange will provide TPHs with reasonable, sufficient notice of the timing at which lists must be submitted (as described in Rule 1.5), as well as when the Exchange will provide the lists of offsetting positions (as further discussed below). As further discussed below, a TPH may not include a closing SPX position in a Compression order unless it previously includes that position on a compression list provided to the Exchange in accordance with the required timeframe.[17]

While the Exchange intends to accept compression-list positions and make individual position files available at the end of each calendar week, month, and quarter, as it currently does, the Exchange believes it will be beneficial to offer TPHs the ability to compress their open positions more frequently. For example, while the trading floor was closed, the Exchange engaged in this process daily due to the volatility present at the time, which resulted in market participants, particularly market-makers, taking on positions in a larger range of strikes than they would during normal market conditions due to the

[10] Several TPHs have indicated to the Exchange that these rules could hamper their ability to provide consistent liquidity in the current SPX market, and have inquired about the ability engage in compression trading prior to the end of the current quarter.

[11] Some TPHs have implemented SA–CCR while others have not.

[12] The Exchange notes another market offers its members a compression tool for a competitive product. *See* Chicago Mercantile Exchange, Inc. (''CME'') Rule 857.

[13] Pursuant to current Rule 5.24(e)(1), electronic compression forums would be available until August 31, 2020 when the trading floor is inoperable. Because the proposed rule change proposes to adopt Compression Orders on a permanent basis, the proposed rule change deletes the temporary electronic compression forum rule in Rule 5.24(e)(1)(E). Additionally, because the proposed definition of Compression Orders and the proposed provisions regarding the execution of Compression Orders include the same information as set forth in current Rule 5.88 regarding compression forums, the proposed rule change deletes Rule 5.88.

[14] This is substantially similar the definition in Rule 5.24(e)(1).

[15] *See* Rule 5.88(a)(6) (compression forums occur on the last business day of each calendar week, each of the last three business days of each calendar month, and each of the last five business days of each calendar quarter). Pursuant to Rule 1.5, the Exchange will announce the times when the execution of Compression orders may occur.

[16] *See* current Rule 5.24(e)(1)(E)(i).

[17] For example, if the Exchange indicates it will accept compression lists and provide individualized lists on a daily basis, if a TPH identifies a position it would like to compress intraday but did not submit it on a compression list the prior day (as required by the Exchange), the TPH could not submit that position in a Compression order that day. Instead, it could submit a compression list that day and then include it in a Compression order the following trading day.

sharp swings in the value of the S&P 500 Index.[18] As noted above, TPHs believed the ability to compress more frequently enabled them to more adequately and efficiently respond to intra-month reviews by their clearing firms of regulatory capital necessary for their open positions. The proposed flexibility will permit the Exchange to react to market conditions and facilitate TPHs' reduction of SPX open interest in response to volatility as necessary, such as during times of extreme market volatility when the ability to close open interest to alleviate bank regulatory capital requirements is particularly important.

As is the case with current open outcry compression forums, all TPHs (or their CTPHs on their behalf) [19] may submit lists of open positions (''compression-list positions'') to the Exchange that they wish to close against opposing (long/short) positions of other TPHs using Compression orders.[20] The proposed rule change streamlines the process of how the Exchange will make information regarding offsetting positions and multi-leg positions available. The Exchange will continue to determine the size of offsetting compression list positions, including combinations of offsetting multi-leg positions, and send individual positions files to each TPH that submitted compression-list positions to the Exchange.[21] Currently, pursuant to Rule 5.88(a)(2), the Exchange makes available to all TPHs (on the Exchange website) a list including the size of the offsetting compression-list positions (including multi-leg positions) in each series (and multi-leg position) for which both long and short compression-list positions were submitted to the Exchange (''compression-list positions file''). The Exchange has identified no added value from the public posting of this list, as it has observed the TPHs that participate in the open outcry compression forums are those that submit the compression-list positions. All TPHs will continue to be able to submit compression-list positions and thus have access to the compression-list positions file if they submit compression-list positions, so the Exchange no longer believes it is necessary to post the list on its website. Additionally, the Exchange will no longer send the compression-list positions file to each TPH that submitted compression-list positions to the Exchange. The Exchange understands from TPHs that the individual position file, which shows offsetting size for their single and multi-leg positions, provides them with the information they seek by participating in the compression forums. Therefore, the Exchange believes it is no longer necessary to create and disseminate this separate list.

Because TPHs that participate in compression forums generally consent to having their identities disclosed to other participating TPHs, the Exchange also proposes to eliminate the steps of initially providing the individual position files on an anonymous basis and then requiring TPHs to consent to having their identities disclosed, as it is no longer necessary.[22] Instead, the individual position files the Exchange distributes will identify the TPHs that hold offsetting positions. TPHs generally submit compression-list positions with the goal of identifying other TPHs with offsetting positions that will enable them to engage in compression transactions. Including the identities of those TPHs at the outset is therefore consistent with the goal of compression forums and the proposed Compression orders and more efficient than the current process.

Pursuant to proposed subparagraph (1)(B) in the definition of Compression order, the information the Exchange will include in the individual position files it sends to each TPH that submitted compression-list positions to the Exchange the same information the Exchange provides pursuant to current Rule 5.88(a)(4), as well as two types of additional information regarding compression positions. First, the file will also include series positions within a strike range determined by the Exchange. Currently, the Exchange provides information (including offsetting positions of other TPHs) for various multi-leg positions. This additional information is a list of single-leg positions and offsetting positions of other TPHs. The Exchange provided this series information in addition to multi-leg information while the trading floor was closed. The Exchange believes this additional information will permit TPHs to create larger packages of positions that may be compressed.[23] Second, the individual positions file will also include combos (*i.e.,* purchase (sale) of a call and a sale (purchase) of a put with the same expiration date and strike price), in addition to the currently provided multi-leg positions of vertical call spreads, vertical put spreads, and box spreads.[24] The Exchange included combos in the files it provided to TPHs when electronic compression forums were available.[25] Because a combo is essentially a ''synthetic future,'' it is a common multi-leg strategy among market participants. Market participants often establish market neutral hedges by purchasing (selling) a number of combos with an offsetting SPX option position.[26] As a result, market participants maintain a significant number of combos in their portfolios. Additionally, when markets are volatile (as they were earlier in 2020), market participants often take on positions in a larger range of strikes, which positions can be put together as combos.

The Exchange believes closing combo positions will be advantageous because such positions can be risk neutral, which means the closing of the entire combo has little or no impact on a TPH's risk profile. However, the current compression forum framework limits multi-leg positions to vertical call [27] and put [28] spreads and boxes. The Exchange notes that just as one put spread and one call spread combine to create a box spread, two combos similarly create a box spread.[29] For example, a box spread

[18] *See* Cboe Options Exchange Notice C2020033103, issued May 31, 2020.

[19] The Exchange understands the CTPHs coordinate with market participants for which they clear positions regarding the positions CTPHs may wish to close on those market participants' behalf in accordance with their clearing relationship. The Exchange notes the current rule permits OCC to also submit lists on behalf of TPHs. However, the Exchange understands that occurs only upon the direction of TPHs, rather than upon any initiative taken by OCC. In other words, OCC may provide a list to the Exchange in an administrative capacity at the directive of a TPH. Therefore, the proposed rule change deletes from the rule the ability of OCC to submit a list to the Exchange on behalf of a Trading Permit Holder, because OCC does not make any substantive determinations regarding what positions should be compressed.

[20] *See* proposed Rule 5.6(c), subparagraph (1)(A) of definition of Compression order; *see also* current Rule 5.88(a)(1).

[21] *See* proposed Rule 5.6(c), subparagraph (1)(B) of definition of Compression order; *see also* current Rule 5.88(a)(4).

[22] *See* proposed Rule 5.6(c), subparagraph (1)(B) of proposed definition of Compression order; *see also* current Rule 5.88(a)(4) and (5). Because these lists will no longer be anonymous, the Exchange no longer believes it is necessary to separate provide a list of TPHs that submitted compression-list positions, which was provided only so that TPHs could reach out to those TPHs to see if they had the offsetting positions. Therefore, it is deleting that provision. *See* current Rule 5.88(a)(3).

[23] *See* current Rule 5.24(e)(1)(E)(ii).

[24] *See* proposed Rule 5.6(c), subparagraph (1)(B) of proposed definition of Compression order.

[25] *See* current Rule 5.24(e)(1)(E)(iv); *see also* current Rule 5.88, Interpretation and Policy .01, which lists what multi-leg position strategies are currently made available in the files.

[26] *See, e.g.,* Rule 5.85(e).

[27] A vertical call spread involves the purchasing and selling of an equal number of call options with the same expiration date but different strike prices.

[28] A vertical put spread involves the purchasing and selling of an equal number of put options with the same expiration date but different strike prices.

[29] A box spread involves purchasing (selling) a bull call spread and purchasing (selling) a bear put spread. In other words, a box spread is composed of a long (short) call and short (long) put position

would be entered by purchasing 100 DEC 2040 calls and selling 100 DEC 2070 calls (*i.e.,* bull call spread) and selling 100 DEC 2040 puts and purchasing 100 DEC 2070 puts (*i.e.,* bear put spread). The purchase of 100 DEC 2040 calls and sale of 100 DEC 2040 puts comprises a combo (as does the sale of 100 DEC 2070 calls and purchase of 100 DEC 2070 puts). The Exchange believes that providing TPHs with this additional way to identify multi-leg positions with offsetting interest will enable more efficient closing of such common strategy positions and is merely providing information regarding positions TPHs are seeking to close that is already including in these lists in a different form. Like the other multi-leg strategies currently covered by Rule 5.88, the Exchange will compile a list of possible combos.

The lists generated by the Exchange pursuant to the proposed definition of Compression orders are provided to TPHs for informational purposes only. Individual TPHs will continue to determine whether to submit compression-list positions and whether to submit Compression orders for execution. The Exchange's provision of the list does not constitute advice, guidance, a commitment to trade, an execution, or a recommendation to trade, as is the case today for open outcry compression forums.

Proposed subparagraph (1)(C) of the proposed definition of Compression order provides that to the extent a Clearing TPH submits compression-list positions with offsetting to the Exchange on behalf of a Trading Permit Holder(s), the Exchange will not include those positions on the individual position files the Exchange makes available pursuant to proposed subparagraph (1)(B). The Exchange understands from Clearing TPHs that they have their own ability to identify compressible positions among the TPHs for which they clear. As discussed above, the need for compression stems from the regulatory capital requirements applicable to CTPHs, which as a result may impose stricter position limits on the firms for which they clear. Therefore, CTPHs are well-positioned to know which positions of the firms for which they clear could be compressed in order for those firms to remain in compliance with the position limits imposed by CTPHs when they conduct their regulatory reviews. Because CTPHs are in a position to identify offsetting positions, it is unnecessary for those positions to be included in the individual lists that are distributed to other TPHs that submitted compression-list positions, which are intended to assist those TPHs to identify counterparties with offsetting positions. It may be counterproductive and potentially confusing for TPHs if the individual positions lists include positions for which no counterparty is being sought. While the Exchange initially implemented compression forums to assist TPHs in finding counterparties with offsetting positions that were similarly seeking to compress positions, the Exchange believes expanding the use of Compression orders to CTPHs in this manner will provide them with more efficient means to comply with regulatory capital rules and permit the firms for which they clear to have access to liquidity to provide to the market. The Exchange believes it is still appropriate for CTPHs to submit compression-list positions prior to using Compression orders so that the Exchange may review those positions to determine they are for the purpose of compression.

Proposed subparagraph (2) of the proposed definition of Compression order permits Compression orders to be entered in $0.01 increments and permits the legs of complex Compression orders to be executed in $0.01 increments. This is consistent with the increment currently available for closing transactions in open outcry compression forums. As discussed below, complex orders in any ratio are permitted to be executed in open outcry compression forums, so the proposed rule change does not expand the complex order strategies that may trade in pennies for compression purposes. The proposed rule change will permit open positions in Compression orders to be entered and executed in pennies, unlike in current open outcry compression forums, which requires any opening transactions to be executed in the standard increment for SPX. The Exchange believes this is appropriate given that opening positions may partly comprise Compression orders as long as the total order is net position closing or neutral (as discussed below), and legs of single orders are systematically unable to be input or executed in different minimum increments. Additionally, the Exchange believes it may be confusing to have different portions of orders trade in different increments. The Exchange notes if a TPH opens a position using a Compression order, it would only be able to close that position using the standard increment for the class (unless it closes it using a Compression order, subject to the proposed requirements of that order type in this proposed rule change).

Unlike in compression forums, where persons can negotiate leg pricing to accommodate the current rule, such negotiation is not available in electronic trading. While the proposed rule change may increase the number of SPX contracts that may trade in pennies, given that a Compression order that will open any positions must be net position closing or neutral (as discussed below), the Exchange expects the majority of contracts that will benefit from this provision will be ones that close positions, as is the case today. As noted above, the Exchange believes permitting Compression orders to be partially comprised of opening positions will increase amount of open SPX interest TPHs are willing to close, and penny pricing for all contracts in Compression orders will further encourage closing of these positions. Because many series the Exchange expects TPHs will attempt to close will be out-of-the-money, and essentially worthless, TPHs may not otherwise close positions in these series if a higher minimum increment causes the price to be too much higher than the option's value. The Exchange believes it is reasonable to permit these orders to be entered and executed in penny increments to provide flexibility that will enable TPHs to maximize the number of open SPX positions they can close using Compression orders.

The proposed rule change will also permit a complex Compression order to have any ratio.[30] Currently, complex orders with any ratio may execute on the trading floor, including in open outcry compression forums (and thus they may execute in pennies); however, complex orders with a ratio of greater than three-to-one (except for Index Combos, which may have a ratio of up to eight-to-one combo) are not currently permitted to execute electronically.[31] Additionally, in open outcry (including in compression forums), complex orders with a ratio of less than one-to-three or greater than-three-to-one (except for Index Combos) do not receive complex order priority benefits and instead must execute at prices for which each leg betters any priority customer order on the Book rather than improve one leg.[32] As noted above, complex Compression orders may only execute if no leg executes at the same price as a priority

at one strike price and a short (long) call and long (short) put position at another strike price.

[30] *See* proposed Rule 5.6(c), subparagraph (2) of proposed definition of Compression order.

[31] *See* Rule 1.1, definition of complex order.

[32] *See* Rule 5.85(b).

customer order in the simple book,[33] and thus will be subject to the same priority as larger-ratio complex orders submitted in compression forums today. Therefore, permitting complex Compression orders with any ratio to execute electronically or in open outcry is consistent with current execution opportunities for complex orders in open outcry compression forums, and merely extends these execution opportunities to electronic compression trading. This proposed provision will therefore not result in any additional orders trading ahead of priority customer orders resting in the book.

One key characteristic of complex compression transactions is that they are intended to close open interest to alleviate bank regulatory capital requirements while bearing little, if any, market risk. As a result, market participants often minimize the net delta of the compression strategy (*i.e.,* create a package with a delta of zero or near zero). Delta is the ratio comparing the change in the price of the underlying asset to the corresponding change in the price of a derivative. For example, if an index option has a delta value of 0.65, this means that if the underlying index increases in value by 1, the price of the option will increase by $0.65, all else equal. Delta values can be positive or negative depending on the type of option. For example, the delta for a call option always ranges from 0 to 1, because as the underlying asset increases in price or value, call options increase in price. Put option deltas always range from −1 to 0 because as the underlying asset increases in price or value, the value of put options decrease. For example, if a put index option has a delta of −0.33, if the value of the underlying index increases by 1, the price of the put option will decrease by $0.33. Generally speaking, an at-the-money option usually has a delta of approximately 0.5 or −0.5.

In order to minimize the delta of a compression strategy, the Exchange understands that market participants often include combos[34] to offset any residual delta that the other legs may create. For example, suppose two market participants seek to execute a transaction to close their respective offsetting positions in a spread containing 100 contracts of SPX Series A and 100 contracts of SPX Series B, which has a net delta of 0.02. In order to offset this minimal delta, the market participants include two contracts of an SPX combo with a mutually agreed upon expiration and strike price. The addition of these combos neutralizes the delta market risk of the positions to be compressed but creates a package with a ratio of 50–1. Orders with this ratio may currently execute in open outcry but may not execute electronically. The Exchange believes permitting all complex orders with any ratio to be submitted as Compression orders will provide TPHs with additional flexibility to close open interest to eliminate as much regulatory capital associated with their portfolios as possible while minimizing any possible associated risk. Additionally, it is consistent with permissible executions in current open outcry compression forums.

Proposed subparagraph (3) of the definition of Compression order provides that a Compression order may be comprised of all closing positions or a combination of opening and closing positions as long as it is net position closing or neutral. In other words, the number of contracts in closing positions must be larger than or equal to the number of contracts in opening positions.[35] Any closing position submitted as part of a Compression order must have been included in a compression-position list submitted to the Exchange, and Compression orders may be used solely for the purpose of reducing required capital associated with TPH's positions. The Exchange believes requiring closing positions included in compression-list positions to be submitted to the Exchange on compression position lists will create an additional control to limit use of Compression orders for legitimate compression purposes. The proposed rule change is similar to current open outcry compression forums, which permit opening orders to execute against closing orders. The goal of compression is for market participants to close open interest to reduce regulatory capital attributable to those positions. However, permitting a TPH to include opening positions in Compression orders may still result in a reduction of regulatory capital necessary for a TPH's positions, even if it opens new positions, which will provide TPHs with additional flexibility to maximize its reduction in required regulatory capital. The files the Exchange makes available are intended to provide potential offset opportunities for TPHs looking to compress open SPX positions. However, TPHs often do not have the same number of offsetting positions to complete a risk neutral compression transaction. For example, TPH 1 might have an offsetting position with TPH 2 in three out of four series that comprise a box spread. By trading a box spread, which is risk neutral, the TPHs can substantially reduce the regulatory capital attributable to the three series that offset while only needing to open positions in one series in which they did not have existing position. As another example, a TPH may determine it is necessary to add a combo position when attempting to close other positions in order to flatten the delta risk of a compression trade. To do so, a TPH may need to open a position in one series of the combo it and another TPH do not have offsetting positions for that combo. The Exchange believes permitting TPHs to include opening positions may provide more opportunities to close open interest to alleviate bank regulatory capital requirements attributable to their open positions using Compression orders than if they were restricted to only closing positions.

The Exchange believes permitting TPHs to include opening positions may provide additional opportunities to reduce more regulatory capital attributable to their portfolios using Compression orders than if they were restricted to only closing positions. The requirement that Compression orders be net position closing or neutral is consistent with the goal of compression, which is to close open interest to alleviate bank regulatory capital requirements attributable to their portfolios. If an order is net closing, then more positions will be closed than opened, ultimately reducing the regulatory capital associated with the positions of the TPH.

While regulatory capital reduction may be achieved with the closing of positions, it may also be achieved by ''swapping'' open positions with new positions with which there is lower regulatory capital associated. The Exchange understands TPHs may do this for risk management purposes. Specifically, TPHs retain certain options positions in their portfolios for hedging and risk exposure purposes. However, the calculation of regulatory capital associated with options positions involves a complex formula, but it ultimately is calculating an amount based on the quantity of a position times the strike price (which is why the large notional value of SPX options has

[33] *See* proposed Rule 5.33(n) and 5.85(j). Note the Exchange proposes to add Rule 5.33(m) in rule filing SR–CBOE–2020–060.

[34] As described above, a ''combo'' is a purchase (sale) of a call and a sale (purchase) of a put with the same expiration date and strike price, which is essentially a ''synthetic future'' and a common multi-leg strategy among market participants.

[35] If the contra-side Compression order is comprised of orders from multiple contra-parties, the positions for each contra-party must be net position closing or neutral. This is consistent with the goal of compression, which is to reduce the regulatory capital attributable to positions of a specific market participant.

created issues for TPHs). Therefore, an option position with a lower strike price will likely have lower regulatory capital associated with that position than regulatory capital associated with a higher strike price. A market participant may identify options with lower strikes that provide it with substantially similar risk exposure as some of its open positions while maintaining a hedge within its portfolio. Merely closing such higher-strike positions may reduce the required capital associated with the market participant's portfolio, but such closure may leave portions of that portfolio unhedged and thus subject to higher risk. By ''swapping'' its current open positions in options with higher strikes with positions in options with lower strikes (often using boxes and combos), a market participant may maintain the same risk exposure in its portfolio while replacing higher-strike positions with lower-strike positions in order to swap related exposures. For example, suppose a TPH has 100 contracts in an SPX box spread with October expiration and strike prices of 3500 and 3600. Suppose another TPH has 100 contracts for the offsetting box spread, but also want to buy 100 contracts in an SPX box spread with October expiration and strike prices of 1500 and 1600. Each TPH in this close would be opening positions in 400 contracts as well as closing positions in 400 contracts, making each side net position neutral. While each TPH would have the same number of open positions after this transaction, the regulatory capital associated with each TPH's positions would be significantly reduced given the newly opened positions have strike prices 2000 lower than the closed positions. Execution of this transaction would be riskless and would provide meaningful regulatory capital relief to the TPHs. Ultimately, transactions like this are essentially riskless exchanges that carry no profit or loss for market participants, but rather are intended to provide a seamless method for market participants to reduce margin and capital requirements while maintaining the same risk exposure within their portfolios.[36]

Currently, TPHs may only execute compression transactions in open outcry compression forums in accordance with open outcry trading rules, except that opening transactions in SPX option could not execute against opening transactions through a compression forum, and only closing transactions could be executed in $0.01 increments.[37] In accordance with standard open outcry trading rules, a floor broker would represent a cross of orders representing this interest to the trading crowd. While other in-crowd market participants have the opportunity to respond and participate in the transaction, generally the orders represented in the cross execute cleanly against each other.

The proposed rule change will permit Compression orders to be executed electronically and in open outcry as unexposed clean crosses.[38] While orders in open outcry compression forums are currently required to be exposed, they generally execute as clean crosses. Therefore, permitting Compression orders to execute as clean crosses replicates how SPX orders generally execute in open outcry compression forums. As proposed, a Compression order with one leg submitted for electronic execution will execute automatically on entry without exposure if the execution price: (a) Is not at the same price as a Priority Customer order resting in the Book; and (b) is at or between the national best bid or offer (''NBBO'').[39] This provision provides that Compression orders with single legs submitted for electronic execution must execute in accordance with the same priority principles that apply to all other simple orders on the Exchange, which protects Priority Customer orders in the simple book and prohibits trades through prices available in the book. A Compression order with multiple legs submitted for electronic execution will execute automatically on entry without exposure if: (1) Each option leg executes at a price that complies with Rule 5.33(f)(2),[40] provided that no option leg executes at the same price as a Priority Customer Order in the Simple Book; (2) each option leg executes at a price at or between the NBBO for the applicable series; and (3) the execution price is better than the price of any complex order resting in the COB, unless the submitted complex order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order.[41] This provision provides that Compression orders with multiple legs submitted for electronic execution may only execute if they provide additional protection to Priority Customer orders on the Simple Book compared to other ''standard'' complex order executions, as Compression orders may only execute if no leg trades at the same price as a customer order on the book rather than just improving one leg (which priority principles require for other electronic complex order executions). The System cancels a Compression order if it cannot execute.[42] Therefore, if an order cannot execute in accordance with the execution price and priority requirements described above, it will be cancelled.

Similarly, proposed Rule 5.85(j)[43] describes how Compression orders submitted for open outcry execution will execute. A Compression order with a single leg will execute without representation on the trading floor if it executes at a price that is not at the same price as a Priority Customer order resting on the Book and is at or between the NBBO. These are the same proposed execution price requirements for electronic Compression orders with a single leg and are also the same as the

[36] The Exchange notes TPHs similarly swap exposures in order to reduce capital and margin requirements by exchanging positions in options with positions in future. *See* SR–CBOE–2020–060 (the Exchange's recent proposal to adopt related futures cross (''RFC'') orders (which were recently adopted by another options exchange), which would provide market participants with an additional mechanism to reduce required capital associated with their positions while maintaining risk exposure within their portfolios).

[37] *See* current Rule 5.88(b).

[38] *See* proposed Rules 5.30(a)(2) and (b)(2), 5.33(c), 5.70(a)(2), and 5.83(a)(2) and (b)(2). Unlike current compression forums, which are restricted to Regular Trading Hours, electronic Compression orders may be executed during Regular or Global Trading Hours, as the Exchange makes electronic trading of SPX options available during Global Trading Hours. This will provide TPHs with additional flexibility regarding when they may execute Compression orders and related capital that may be put back into the market. FLEX SPX options may currently be executed in open outcry compression forums, and the proposed rule change clarifies the availability of Compression orders for FLEX SPX options, which will execute in the same manner as Compression orders for non-FLEX SPX options. *See* Rule 5.72(a), which provides that trading of FLEX Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Chapter 5, Section F of the Rules. Since Compression orders will not be exposed, as proposed, FLEX Compression orders would execute in the same manner as opposed to in a FLEX Auction pursuant to Rule 5.72.

[39] *See* proposed Rule 5.32(g).

[40] Rule 5.33(f)(2) requires complex orders to execute only if the execution price: At a net price: (1) That would cause any component of the complex strategy to be executed at a price of zero; (2) worse than the synthetic best bid or offer (''SBBO'') or equal to the SBBO when there is a Priority Customer Order at the SBBO, except all-or-none complex orders may only execute at prices better than the SBBO; (3) that would cause any component of the complex strategy to be executed at a price worse than the individual component prices on the Simple Book; (4) worse than the price that would be available if the complex order Legged into the Simple Book; or (5) that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy.

[41] *See* proposed Rule 5.33(n).

[42] *See* proposed Rules 5.32(g)(1) and 5.33(n)(1).

[43] The Exchange proposes to add Rule 5.85(i) in rule filing SR–CBOE–2020–060.

priority principles that apply to all other simple orders executed on the trading floor, which protects Priority Customer orders in the simple book and prohibits trades through prices available in the book.[44] A Compression order with multiple legs will execute without representation on the trading floor if: (1) Each option leg executes at a price that complies with Rule 5.85(b),[45] provided that no option leg executes at the same price as a Priority Customer Order in the Simple Book; (2) each option leg executes at a price at or between the NBBO for the applicable series; and (3) the execution price is better than the price of a complex order resting in the COB, unless the Compression order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order. Like the execution and priority requirements described above for electronic complex Compression orders, this proposed provision provides that complex Compression orders with multiple legs submitted for open outcry execution must execute in accordance with the same priority principles that apply to all other complex orders executed on the trading floor on the Exchange, except that additional protection will be provided for Priority Customer Orders in the Simple Book (the proposed priority principle is the same as the priority applicable to larger-ratio complex orders executed in open outcry). As a result, this proposed provision protects Priority Customer orders in the simple book and COB and prohibits trades through prices available in the book. A Compression order may not be executed in open outcry unless these criteria are satisfied. While open outcry Compression orders do not need to be represented on the trading floor, executions of such orders will be systematically recorded and reported by TPHs in the same manner they currently record and report open outcry transactions.

Generally, in SPX options (and other classes), the Exchange lists series with narrower strike intervals that are closer to the at-the-money value, and with wider strike intervals that are further from the at-the-money value. The Exchange's internal listing procedures are intended to balance the need to list sufficient strikes to provide market participants with flexibility to manage their risk with Market-Makers' quoting obligations. The Exchange recently reviewed and modified these procedures for SPX options in an effort to reduce the number of listed strikes in a manner intended to permit Market-Makers to further reduce regulatory capital attributable to their SPX open interest (and thus free up capital to continue to provide liquidity).[46]

The proposed rule change moves the provision regarding solicitation in current Rule 5.88(c) to subparagraph (4) of the proposed definition of Compression order in Rule 5.6(c) with no substantive changes, and thus that provision will apply to Compression orders in the same manner it applies to compression forums, as the process for providing compression position lists and files will generally be the same. Proposed subparagraph (5) of the proposed definition of Compression order in Rule 5.6(c) also provides that Rule 5.9 (related to exposure of orders on the Exchange) will not apply to executions of Compression orders, as they will be able to execute without exposure, as discussed above.[47]

Pursuant to the proposed rule change, Compression orders will be identified as such when submitted into the System for execution. As a result, the Exchange's Regulatory Division intends to put in place a regulatory review plan that will permit it to ensure any Compression orders are submitted and executed in accordance with the proposed rule.

The Exchange understands from customers, and SPX Market-Makers in particular, that there continues to be significant need to reduce regulatory capital attributable to their open interest based on then-current market conditions. These market participants regularly avail themselves of open outcry compression forums when available, in which they use the information provided in the Exchange-provided position lists to identify potential counterparties that similarly need to close SPX open interest. Providing TPHs, and Market-Makers in particular, with the ability to more efficiently close or exchange SPX open interest using this Exchange-provided information, either electronically or in open outcry, will provide them with additional flexibility to obtain needed relief from the effect of bank regulatory capital requirements on the options market at more times than are currently available and either electronically or in open outcry. As noted above, because some CTPHs carrying these are bank-owned broker/dealers, those CTPHs are subject to further bank regulatory capital requirements, which result in these additional punitive capital requirements being passed on to their market-maker clients.[48] Such flexibility is particularly true during times of extreme volatility, such as the recent the historic levels of market volatility, which can make providing liquidity in SPX options immensely more challenging. The Exchange believes use of Compression orders to close or exchange open SPX interest in order to alleviate bank regulatory capital requirements may be more efficient and effective than current open outcry compression forums, given that orders generally execute in compression forums as clean crosses.

The Exchange believes the proposed rule change to expand and enhance functionality currently only available on the trading floor will allow liquidity providers to execute trades to reduce regulatory capital attributable to SPX open interest in a substantially similar manner as they are currently able to in open outcry compression forums. The Exchange believes Compression orders will assist TPHs to more efficiently and effectively reduce any potential negative impact on the market-making community that may result from bank regulatory capital requirements, which could reduce liquidity available in an extremely volatile market when the market needs this liquidity the most. The Exchange believes the proposed rule change will eliminate certain existing inefficiencies that exist in current open outcry compression forums, which the Exchange expects will free up liquidity providers' much needed capital, which will benefit the entire market and all investors.

[44] *See* Rule 5.85(a).

[45] Pursuant to Rule 5.85(b), a complex order (1) with any ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) or (2) that is an Index Combo order may be executed at a net debit or credit price without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the Book if the price of at least one leg of the order improves the corresponding bid (offer) of a Priority Customer order(s) in the Book by at least one minimum trading increment as set forth in Rule 5.4(b). A complex order with any ratio less than one-to-three (.333) and greater than three-to-one (3.00) (except for an Index Combo order) may be executed in open outcry on the trading floor at a net debit or credit price without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the Book if each leg of the order betters the corresponding bid (offer) of a Priority Customer order(s) in the Book on each leg by at least one minimum trading increment as set forth in Rule 5.4(b).

[46] While SPX options are listed for trading exclusively on Cboe Options, it competes with other listed options, such as options on the SPDR S&P 500 exchange-traded fund.

[47] *See* current Rule 5.24(e)(1)(E)(iii)(b).

[48] *See* Letter from Cboe, New York Stock Exchange, and Nasdaq, Inc., to the Honorable Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, March 18, 2020.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[49] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[50] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[51] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it seeks to further mitigate the potentially negative effects of the bank capital requirements on liquidity in the SPX markets. As described above, current regulatory capital requirements could potentially impede efficient use of capital and undermine the critical liquidity role that Market-Makers and other liquidity providers play in the SPX options market by limiting the amount of capital CTPHs allocate to clearing member transactions. Specifically, the rules may cause CTPHs to impose stricter position limits on their clearing members. In turn, this could force Market-Makers to reduce the size of their quotes and result in reduced liquidity in the market. The Exchange believes that permitting TPHs to close SPX options positions to reduce regulatory capital attributable to their portfolios will permit to contribute to the availability of liquidity in the SPX options market and help ensure that these markets retain their competitive balance. The Exchange believes that the proposed rule would serve to protect investors by helping to ensure consistent continued depth of liquidity, particularly given current market conditions when liquidity is needed the most by investors.

The proposed rule change will provide liquidity providers and other market participants with the ability to reduce regulatory capital attributable to their open interest in SPX options electronically or in open outcry in a substantially similar manner as they are able to do on the trading floor. The proposed flexibility with respect to when the Exchange will accept and make available lists of positions TPHs would like to compress will permit the Exchange to react to market conditions and facilitate TPHs' reduction of SPX open interest in response to volatility as necessary. Permitting Compression orders to be submitted for execution at any time will also provide TPHs with flexibility to complete these compression transactions in accordance with their own needs (as long as they previously submitted the applicable positions to be closed to the Exchange in advance), as well as to address intra-month position reviews by their CTPHs. The Exchange believes this enhanced compression process will allow market participants to reduce the necessary regulatory capital associated with their options positions and permit them to provide more liquidity in the market. This additional liquidity may result in tighter spreads and more execution opportunities, which benefits all investors, particularly in volatile markets.

Additionally, the Exchange believes the proposed rule change will 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 by adding information (combos and individual positions) to the lists the Exchange will make available to TPHs for informational purposes. The Exchange believes the additional information that may be provided to TPHs in compression forums may encourage TPHs to close additional positions via the compression process. With respect to the addition of combos, that information may enable TPHs to more efficiently and effectively close positions comprising a common multi-leg strategy in the SPX market via Compression orders, which, in general, helps to protect investors and the public interest because closing positions via the compression process serves to alleviate the adverse impact of bank capital requirements. The information regarding individual and combo positions is currently included in the compression position lists the Exchange provides to TPHs in different forms—the single leg positions are part of multi-leg strategies and combos are parts of box spreads. The proposed rule change merely provides the Exchange with the ability to list single leg positions and combo positions separately, which will provide TPHs with additional flexibility when locating counterparties with which to execute Compression orders. This may create opportunities for TPHs to compress additional positions, which frees up additional liquidity and ultimately benefits investors.

The Exchange also believes the proposed rule change is consistent with the Act, because the proposed compression process is a streamlined version of the current open outcry compression forums on the trading floor. It eliminates the provisions of compression-list positions files, which the Exchange understands were generally unused by TPHs. Additionally, it eliminates the additional steps the Exchange and TPHs must take to have TPHs names disclosed with their associated compression-list positions, as TPHs that currently participate in open outcry compression forums do not choose to remain anonymous. The Exchange understands that TPHs generally submit compression-list positions with the goal of identifying other TPHs with offsetting positions that will enable them to engage in compression transactions. Therefore, eliminating the ability to remain anonymous in the individual position files is consistent with the goal of Compression orders and more efficient than the current process. Submission of compression-list positions will constitute TPHs' consent to disclosure of their names and associated positions on the individual positions files. The Exchange believes the proposed rule will provide an enhanced and more efficient open outcry and electronic mechanism for compression of SPX open positions.

The Exchange believes the proposed rule change to exclude compression-list positions submitted by a Clearing TPH to the Exchange on behalf of a Trading Permit Holder(s) from the individual position files will further remove impediments to and perfect the mechanism of a free and open market and a national market system. As discussed above, the need for compression stems from the regulatory capital requirements applicable to CTPHs, which as a result may impose stricter position limits on the firms for which they clear. Therefore, CTPHs are well-positioned to know which positions of the firms for which they clear could be compressed in order for

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] *Id.*

those firms to remain in compliance with the position limits imposed by CTPHs when they conduct their regulatory reviews. Because CTPHs are in a position to identify offsetting positions, it is unnecessary for those positions to be included in the individual position files, which are intended to assist those TPHs to identify counterparties with offsetting positions.[52] It may be counterproductive and potentially confusing for TPHs if the individual positions lists include positions for which no counterparty is being sought. While the Exchange initially implemented compression forums to assist TPHs in finding counterparties with offsetting positions that were similarly seeking to compress positions, the Exchange believes expanding the use of Compression orders to CTPHs in this manner will provide CTPHs with more efficient means to comply with regulatory capital rules and permit the firms for which they clear to have access to liquidity to provide to the market, which ultimately benefits all investors.

The proposed rule change imposes priority requirements that will protect Priority Customer orders and orders on top of the book that comprise the BBO. In fact, the proposed priority requirements for complex orders will provide customers orders in the book with additional protection with respect to electronic complex orders and smaller ratio complex orders in open outcry, as no leg of a Compression order may execute at the same price as any Priority Customer order on the Simple Book.

The proposed rule change is consistent with how compression transactions currently execute on the trading floor. The proposed rule change is replicating a procedure that is currently available to market participants only on the trading floor and enhances the current open outcry procedure. The proposed rule change will protect Priority Customer orders and orders on top of the book that comprise the BBO, as well as Priority Customer orders on the top of the COB, and thus will provide additional protection to customers on the book compared to other executions of orders on the Exchange. While orders are currently required to be exposed on the trading floor, the Exchange has observed that market participants generally defer their allocations to permit a clean cross, as that is necessary for these transactions to achieve their intended effect and not leave market participants with unhedged positions (and thus more risk). As a result, the lack of exposure of Compression orders will be practically consistent with how orders are currently executed in compression forums—it just eliminates the need to represent the orders on the floor, which representation during compression forums has been demonstrated to be unnecessary.

While orders in compression forums are currently required to be exposed to the trading crowd, the Exchange has observed that market participants generally deferred their allocations to permit a clean cross. Because orders that are executed in compression forums on the trading floor are generally not broken, and because the purpose of these trades is unrelated to profits and losses (making the price at which the transaction is executed relatively unimportant like competitive trades), the Exchange believes it is appropriate to not require exposure of these orders in an electronic or open outcry setting. As noted above, during the time the Exchange's trading floor was closed, the Exchange made Compression orders available to TPHs for immediate (and thus unexposed) electronic execution. The Exchange received feedback from several TPHs regarding the increased efficiency provided by electronic Compression orders, which feedback included requests to make Compression orders available when the trading floor reopened. The Exchange believes it is unlikely that TPHs on the trading floor would seek to break up the execution of Compression orders in the future, as several TPHs engage in compression to reduce capital attributable to the positions in their portfolio and would similarly expect to be able to execute their Compression orders without other TPHs breaking them up. The Exchange understands this type of mutual understanding among TPHs contributes to smoother operations on the trading floor. The Exchange also believes that TPHs understand the benefits that compression may bring to liquidity on the trading floor.

Even if TPHs decided to attempt to break up these orders in the future, the Exchange believes the benefits of permitting Compression orders to execute as clean crosses greatly outweigh any benefits that may result from exposing these orders for potential break up. The Exchange notes that the benefits of requiring a broker to expose an order on the trading floor generally flow to that order, which include the potential of price improvement for the order and to locate liquidity against which to execute the order. In the case of a Compression order, the representing broker has already located the necessary liquidity to execute the order, as that is necessary given the nature of these transactions. If TPHs believed it was reasonably possible that other TPHs in the trading crowd would break up Compression orders, those TPHs would not attempt to execute those orders on the trading floor (and thus there would be no orders for other TPHs to break up). If an electronic Compression order that immediately executes without exposure were available (as it was when the trading floor was closed), then TPHs would merely submit Compression orders for electronic execution. Permitting open outcry Compression orders will permit TPHs to cross these orders using the same tools they use to currently execute those orders.

It is critical that TPHs are able to efficiently manage capital and margin requirements so that they continuously have sufficient capital available to provide to the markets, which benefits all market participants, including those that may seek to break up Compression orders. Many TPHs clear through CTPHs that have been impacted by bank regulatory capital requirements, and therefore the Exchange believes all TPHs on the trading floor understand and respect the need of other TPHs to reduce capital attributable to their positions in accordance with capital reviews performed by CTPHs as efficiently as possible, including through the use of compression.

While the proposed rule change eliminates certain steps with respect to the compression files the Exchange provides, as discussed above, the Exchange believes these steps provide no current value to the process. As a result, the Exchange believes the proposed process is practically consistent with the current process. Because the changes create a process that is practically consistent with the current process, the Exchange does not believe they will have any negative impact on the ability of TPHs to effect compression transactions. The proposed rule change streamlines the process by eliminating steps that add no demonstrable value to the compression process and will enable TPHs to engage in compression transactions more efficiently.

The Exchange believes the proposed rule change to permit Compression orders to have any ratio will 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

[52] The Exchange notes CTPHs can continue to submit compression position lists without a list of offsetting positions, in which case those positions would be included in the individual position files and assist those CTPHs with identifying TPHs with offsetting positions.

public interest, as it will provide TPHs with the ability to maximize positions they may close while minimizing market risk. Currently in open outcry compression forums, complex orders may be executed in any ratio (and in pennies if closing positions). Because the proposed priority requirements are consistent with the open outcry complex order priority for larger ratio orders, the Exchange believes the proposed rule change will not disadvantage the simple order market, as no leg of a Compression order may execute at the same price as a resting Priority Customer order in the simple book.

The proposed rule change to permit the opening portions of Compression orders to be entered and executed in pennies will benefit investors, as it will eliminate potential confusion about different portions of different trades executing at different increments. The Exchange believes this is appropriate given that opening positions may partly comprise Compression orders as long as the total order is net position closing or neutral and legs of single orders are systematically unable to be input or executed in different minimum increments. The Exchange believes restricting use of Compression orders to positions intended to reduce required capital associated with a TPH's positions will limit the use of Compression orders, including the inclusion of opening positions in those orders, to the intended purpose of these orders. Additionally, the Exchange believes it may reduce potential investor confusion that may result from requiring different portions of orders to trade in different increments, if that were systematically possible. Unlike in compression forums on the trading floor, where persons can negotiate leg pricing to accommodate the current rule, such negotiation is not available in electronic trading. While the proposed rule change may increase the number of SPX contracts that may trade in pennies, given that a Compression order that will open any positions must be net position closing or neutral, the Exchange expects the majority of contracts that execute as part of Compression orders will be ones that close positions, as is the case today.

As noted above, the Exchange believes permitting Compression orders to be partially comprised of opening positions will increase amount of open SPX interest TPHs are willing to close, and penny pricing for all contracts in Compression orders will further encourage closing of these positions. Because many series the Exchange expects TPHs will attempt to close will be out-of-the-money, and essentially worthless, TPHs may not otherwise close positions in these series if a higher minimum increment causes the price to be too much higher than the option's value. The Exchange believes it is reasonable to permit these orders to be entered and executed in penny increments to provide flexibility that will enable TPHs to maximize the number of open SPX positions they can close using Compression orders. While the Exchange understands there may be a concern that market participants may attempt to use Compression orders to execute orders in pennies that would otherwise be required to execute in a larger increment, the Exchange believes this minimal risk is outweigh by the benefits the proposed rule change may provide to the market and all investors. Additionally, the Exchange believes the requirements that Compression orders be net closing or neutral and include closing positions previously submitted to the Exchange on compression position lists, and be for the purpose of reducing required capital associated with open positions will create additional controls to limit use of Compression orders for legitimate compression purposes that further minimizes this potential risk.

It is critical to the ongoing stability of the options markets that TPHs are able to efficiently manage capital and margin requirements so that they continuously have sufficient capital available to provide to the markets, which benefits all market participants, including those that may seek to break up Compression orders. As all TPHs are subject to capital and margin requirements, the Exchange believes all TPHs on the trading floor understand and respect the need of other TPHs to manage these requirements as efficiently as possible. The Exchange believes the proposed rule change, which is limited to one class the Exchange believes is being significantly impacted by bank regulatory capital requirements and the one class in which open outcry compression forums may currently occur, as well as limiting the use of Compression orders for reducing the required capital associated with a TPH's open SPX positions, is narrowly tailored for the specific purpose of facilitating the ability of liquidity providers to alleviate the negative effects of current bank regulatory capital requirements. The Exchange believes the proposed rule change will protect investors by providing a more seamless execution of compression transactions and thus facilitate a more efficient way for liquidity providers to meeting their capital requirements, which will protect investors by contributed to the continued depth of liquidity in the SPX options market.

Based on activity in open outcry compression forums and the number of orders executed in electronic compression forums when the trading floor was closed, the Exchange believes it has sufficient system capacity to handle any additional traffic that may result from the proposed rule change. The Exchange's Regulatory Division intends to incorporate Compression orders into its surveillances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as Compression orders will be available to all market participants with SPX open interest. As discussed above, while the proposed rule change is directed at market-makers, all market participants may submit Compression orders in the same manner as long as all criteria of the proposed rule are satisfied. While compression-list positions submitted by CTPHs on behalf of TPHs for which they clear will no longer be included in individual position files, the Exchange believes this is appropriate given that bank regulatory capital requirements apply to CTPHs, who are therefore positioned to identify offsetting positions among TPHs for which they clear that will enable them to more efficiently comply with those requirements. Ultimately, this still benefits TPHs on whose behalf CTPHs submit compression-list positions, as the resulting compression transactions will result in the ability of those TPHs to provide additional liquidity to the market.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it will apply only to SPX options, which are currently listed for trading only on the Exchange. Additionally, open outcry compression forums are currently limited to SPX options. In addition, the proposed rule change is intended create a more efficient effective mechanism for market participants to close SPX option interest to reduce regulatory capital attributable to their portfolios.

Compression orders are not seeking price improvement but rather looking to free up capital that will permit those parties to continue to provide liquidity to the market, and thus is not intended to have a competitive impact.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–074. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–074 and should be submitted on or before September 18, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–19453 Filed 9–2–20; 8:45 am]

BILLING CODE 8011–01–P

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 53898, August 31, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, September 2, 2020 at 9:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, September 2, 2020 at 9:00 a.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: September 1, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–19649 Filed 9–1–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89705; File No. SR–IEX–2020–12]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rules 2.220(a)(7) and 11.410(a) To Include MIAX PEARL, LLC in the List of Away Trading Centers To Which the Exchange Routes and the Market Data Sources the Exchange Will Use To Determine MIAX PEARL's Top of Book Quotation

August 28, 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 August 25, 2020, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend IEX Rules 2.220(a)(7) and 11.410(a) to include MIAX PEARL, LLC (''MIAX PEARL'') in the list of away trading centers to which the Exchange routes and the market data sources the Exchange will use to determine MIAX PEARL's Top of Book[6] quotation, in anticipation of MIAX PEARL's planned launch. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[7] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[8]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).
[2] 15 U.S.C. 78a.
[3] 17 CFR 240.19b–4.
[4] 15 U.S.C. 78s(b)(1).
[5] 17 CFR 240.19b–4.
[6] *See* IEX Rule 11.410(a)(1).
[7] 15 U.S.C. 78s(b)(3)(A).
[8] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization 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 IEX Rules 2.220(a)(7) [9] and 11.410(a) [10] to include MIAX PEARL LLC (''MIAX PEARL'') in the list of away trading centers to which the Exchange routes and the market data sources the Exchange will use to determine Top of Book [11] quotations, in anticipation of MIAX PEARL's planned launch of equities trading on September 25, 2020.[12]

Specifically, the Exchange proposes to amend IEX Rule 2.220(a)(7) to add MIAX PEARL to the list of away trading centers to which IEX Services routes orders. As set forth in IEX Rule 11.230(b)(2), IEX Services routes eligible orders to away trading centers with accessible Protected Quotations in compliance with Regulation NMS Rule 611.[13] The Exchange must include MIAX PEARL in its list of away trading centers to which it routes, because MIAX PEARL's best-priced, displayed quotation will be a Protected Quotation under Regulation NMS Rule 600(b)(62) [14] for purposes of Regulation NMS Rule 611.[15]

The Exchange also proposes to amend and update the table in IEX Rule 11.410(a) specifying the primary and secondary sources for MIAX PEARL market data as a result of MIAX PEARL's establishment of Top of Market and Depth of Market Feeds [16] (''MIAX PEARL Market Data Feeds'' or ''direct feeds''). As specified in IEX Rule 11.410(a)(2), the Exchange uses market data from each away trading center that produces a Protected Quotation [17] to determine each away trading center's Top of Book quotation, as well as the NBBO [18] for certain reporting, regulatory and compliance systems within IEX. As proposed, the Exchange will use the direct feeds as the primary source to determine MIAX PEARL's Top of Book quotes. The Exchange also proposes to use securities information processor (''SIP'') data, *i.e.,* CQS SIP data for securities reported under the Consolidated Quotation Services and Consolidated Tape Association plans and UQDF SIP data for securities reported under the Nasdaq Unlisted Trading Privileges plan, as the secondary source to determine MIAX PEARL's Top of Book quotes.

The Exchange is not proposing any other changes to IEX Rules 2.220(a)(7) and 11.410. The proposed changes do not alter the manner in which orders are handled or routed by the Exchange.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) [19] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

For the reasons discussed in the Purpose section, the Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because including MIAX PEARL in the list of away trading centers to which IEX routes and including the MIAX PEARL Market Data Feeds in the primary sources of market data the Exchange will use to determine away trading center Top of Book quotes (with the SIP as the secondary source) will facilitate the Exchange's compliance with the applicable requirements of Regulation NMS.

Additionally, adding MIAX PEARL to the list of away trading centers to which IEX routes and listing the MIAX PEARL Market Data Feeds as the primary source of market data the Exchange will use to determine away trading center Top of Book quotes (with the SIP as the secondary source) provides transparency with respect to the away trading centers to which IEX Services may route orders and the sources of market data the Exchange will use to determine MIAX PEARL's Top of Book quotes.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed update does not impact competition in any respect since its purpose is to enhance transparency with respect to the operation of the Exchange and its use of market data feeds, and to update an away market name.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [23] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [24] permits the Commission to designate a shorter time if such action is consistent

[9] IEX Rule 2.220(a)(7) lists the away trading centers that IEX Services LLC (''IEX Services'') routes to as outbound router for the Exchange.

[10] IEX Rule 11.410(a) specifies the market data sources for each away trading center that the Exchange uses for necessary price reference points.

[11] *See* IEX Rule 11.410(a)(1).

[12] *See https://www.miaxoptions.com/alerts/2020/07/20/miax-pearl-equities-updated-dom-and-esesm-interface-specifications.*

[13] 17 CFR 242.611.

[14] 17 CFR 242.600(b)(62).

[15] *See* MIAX PEARL Equities Rule 2617(c).

[16] *See* MIAX PEARL Equities Rule 2625.

[17] *See* IEX Rule 1.160(bb).

[18] *See* IEX Rule 1.160(u).

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.

The proposed rule change will merely amend IEX rules to reflect the planned September 25, 2020 launch of MIAX PEARL as an away trading center with Protected Quotes and specify that IEX will route orders to MIAX PEARL and use the direct feeds as the primary source (with the SIP as the secondary source) to determine MIAX PEARL's Top of Book quotation.

The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rule change concurrent with MIAX PEARL's launch of equities trading, thereby facilitating IEX's compliance with the applicable requirements of Regulation NMS and providing clarity to market participants with respect to whether IEX routes to MIAX PEARL and how IEX determines MIAX PEARL's Top of Book quotation. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[25]

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 under Section 19(b)(2)(B)[26] 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–IEX–2020–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2020–12. 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 will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* 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–IEX–2020–12 and should be submitted on or before September 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–19452 Filed 9–2–20; 8:45 am]

BILLING CODE 8011–01–P

[25] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89710; File No. SR–LTSE–2020–14]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Suspend the Application of Order Price Collars in Rule 11.190(f)(1) Until September 8, 2020

August 28, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2020, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes to temporarily suspend until September 8, 2020, the provisions of Rule 11.190(f)(1) pending further systems development work.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement on 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement on the Purpose of, and the Statutory Basis for, the Proposed Rule Change [3]

1. Purpose

LTSE Rule 11.190(f)(1) prevents an incoming order or order resting on the Order Book, including those marked ISO, from executing at a price outside the Order Collar price range (*i.e.,* prevents buy orders from trading at prices above the collar and prevents sell orders from trading at prices below the collar). The Order Collar price range is calculated using the numerical guidelines for clearly erroneous executions (''CEE'').[4] Under Rule 11.190(f)(1), executions are permitted at prices within the Order Collar price range, inclusive of the boundaries. Thus, Rule 11.190(f)(1) seeks to prevent an execution that would otherwise be handled under the CEE procedures.

The Exchange is set to become operational on August 28, 2020.[5] However, the automated processes to set the Order Collar price range pursuant to Rule 11.190(f)(1) are not yet fully operational and it is anticipated that they will not be fully operational when the Exchange launches. Therefore, to ensure the Exchange operates in conformity with its Rule Book, the Exchange proposes to temporarily suspend Rule 11.190(f)(1) until September 8, 2020, pending further systems development work. The Exchange will continue to work diligently to finalize the implementation of the Order Collar price range as described in Rule 11.190(f)(1). Additionally, the Exchange will inform its Members of the proposed rule change in a Regulatory Information Circular.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Order Collar provisions of Rule 11.190(f)(1) are a prophylactic measure to prevent trade executions outside of certain price bands. The Exchange has in effect other provisions to address trade executions at prices outside of these price bands, such as Rule 11.270 (Clearly Erroneous Executions). Additionally, Rule 11.281 (Limit-Up Limit-Down) prevents trades in NMS Stocks from occurring outside specified price bands.[8] The Exchange further notes that other national securities exchanges operate without order price collars during their regular, continuous market trading sessions.[9] Moreover, the proposed rule change would only suspend the application of Rule 11.190(f) for a short period of time during which the Exchange will only be offering trading in a limited number of securities.[10] After that time, the Exchange expects to implement Rule 11.190(f)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with clarity and certainty regarding the operations of the Exchange. Additionally, the proposed rule change would not be an inappropriate burden on intramarket competition as it would be applied equally to all Members. It also is not a burden on intermarket competition as other exchange similarly operate without order price collars.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. According to the Exchange, waiver of the 30-day operative delay provisions will avoid the disruption associated with delaying the commencement of trading on the Exchange, which is anticipated to occur on August 28, 2020. The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest or impose a significant burden on competition because it is designed to temporarily suspend application of a prophylactic rule and that the proposed rule change does not impose any burden on Members or market participants. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will ensure that the rule change becomes operative on the day that LTSE commences trading on the Exchange. Accordingly, the Commission hereby waives the

[3] Unless otherwise defined, capitalized terms are used herein as defined in the LTSE Rulebook.

[4] *See* LTSE Rule 11.270(f)(1)(D).

[5] *See LTSE Production Securities Phase-In Set for Friday, August 28,* LTSE (August 24, 2010), *available at https://assets.ctfassets.net/cchj2z2dcfyd/4Ul3ygPsrihSz4lpQnBThu/56a54c087891a5aa20152398bdb51cea/MA-2020-022__Reminder_Production_Securities_Launching_August_28_-_Google_Docs.pdf.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] Rule 11.281 was adopted under the LULD Plan, *see* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019), and is designed to prevent trades in NMS Stocks from occurring outside specified price bands, which are set at a percentage level above and below the average reference price of a security over the preceding five-minute period.

[9] *See, e.g.,* MEMX Rulebook (8.17.20), *available at https://info.memxtrading.com/wp-content/uploads/2020/08/MEMX-Rulebook-8.17.20.pdf;* Rulebook—The Nasdaq Stock Market, *available at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules* (last accessed August 27, 2020).

[10] *See supra* note 5.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five business day notification requirement for this proposed rule change.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

operative delay and designates the proposed rule change operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2020–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LTSE–2020–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LTSE–2020–14 and should be submitted on or before September 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–19454 Filed 9–2–20; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89703; File No. SR–FINRA–2020–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Security Futures Risk Disclosure Statement

August 28, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 14, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend: (1) Section 8.2 (Position Limits and Large Trader Reporting) of the Security Futures Risk Disclosure Statement (''2018 Statement'' or ''Statement'') to reflect the higher position limits for security futures contracts and changes to the large trader reporting timeframe adopted by the Commodity Futures Trading Commission (''CFTC'');[4] (2) Section 2.7 (Trading Halts) of the 2018 Statement to reflect the updated market-wide circuit breaker benchmark and thresholds approved by the SEC;[5] and (3) the introductory section of the 2018 Statement to reflect that exchanges may now list security futures on certain debt instruments. FINRA is not proposing any textual changes to FINRA rules. The National Futures Association (''NFA'') has proposed parallel amendments to the Statement for its members.[6]

The proposed updated Statement (the ''2020 Statement''), reflecting all cumulative updates, is attached as Exhibit 3a. The proposed supplement pertaining to changes to the specified paragraphs under Sections 8.2 and 2.7, and the Introduction, as described herein (the ''2020 Supplement'') is attached as Exhibit 3b.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[4] *See* Position Limits and Position Accountability for Security Futures Products, 84 FR 51005 (September 27, 2019) (amending CFTC Regulation 41.25); *see also* Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 FR 69178 (November 18, 2013) (amending CFTC Rule 17.02, among others).

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (Order Approving File No. SR–FINRA–2011–054).

[6] *See* Letter from Carol A. Wooding, NFA's Senior Vice President and General Counsel, to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC, dated May 29, 2020.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Subparagraph (A) under Rule 2370(b)(11) (Delivery of Security Futures Risk Disclosure Statement) requires a member to deliver the current security futures risk disclosure statement to each customer at or prior to the time such customer's account is approved for trading security futures.[7] Thereafter, the member must distribute each new or revised security futures risk disclosure statement to each customer having an account approved for such trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction. The Rule requires FINRA to advise members when a new or revised security futures risk disclosure statement is available.

The Statement is a uniform statement that was jointly developed by several self-regulatory organizations (''SROs''), including FINRA and the NFA, and approved by the SEC in 2002.[8] Since then, specified sections of the Statement have undergone updates,[9] the most recent of which occurred in 2018, which incorporated all cumulative updates made since 2002.[10] The 2018 Statement is currently posted on *FINRA.org.*[11]

Proposed Updates to the Statement

A. Section 8.2 (Position Limits and Large Trader Reporting)

In general, security futures contracts that trade on U.S.-regulated exchanges are subject to position limits or position accountability rules, and reporting requirements for large open positions. Section 8.2 of the Statement describes, in general terms, these requirements by specifying the position limit thresholds, and reporting requirements for large open positions,[12] which accord with CFTC Regulation 41.25 (Additional conditions for trading for security futures products.), governing position limits and position accountability for security futures products, and Rule 17.02 (Form, manner and time of filing reports.), pertaining to CFTC Form 102 (Identification of ''Special Accounts'').[13] The CFTC has amended these requirements and for that reason, FINRA is proposing to update Section 8.2 to reflect the current terms of CFTC Regulation 41.25 and Rule 17.02(b)(2) that increase the default position limits, modify the criteria for setting a higher position limit and position accountability level, and adjust the time during which position limits must be in effect and the time by which firms must submit Form 102 to the CFTC and the exchange on which the reportable position exists.[14]

FINRA is proposing to update the second, third, and fourth paragraphs under Section 8.2 of the Statement to read as follows (proposed updates are marked):

Position limits are required for security futures contracts [that overlie] *on* a security [that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer.] Position limits also apply only to an expiring security futures contract during its last [five] *three* trading days. A regulated exchange must establish *a default* position limits on *a* security futures *contract* that [are] *is* no greater than [13,000] *25,000* [(]100-share[)] contracts *(or the equivalent if the contract size is different than 100 shares), either net or on the same side of the market,* unless the underlying security [meets certain volume and shares outstanding thresholds] *exceeds 20 million shares of estimated deliverable supply,* in which case the limit may be [increased to 22,500 (100 share) contracts] *set at a level no greater than 12.5 percent of the estimated deliverable supply of the underlying security, either net or on the same side of the market.*

For *a* security futures contract[s overlying] *on* a security [or securities] with [an average] *a six-month total* trading volume of more than [20 million] *2.5 billion* shares *and there are more than 40 million shares of estimated deliverable supply, a* regulated exchange[s] may adopt *a* position accountability rule[s] *in lieu of a position limit, either net or on the same side of the market.* Under position accountability rules, a trader holding a position in a security futures contract that exceeds [22,500] *25,000 100-share* contracts (or [such lower limit established by an exchange] *the equivalent if the contract size is different than 100 shares*) *or such lower level specified under the rules of the exchange,* must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions on individual equity securities and 200

[7] In general, the Security Futures Risk Disclosure Statement provides customers with disclosures regarding the characteristics and potential risks of investing in standardized security futures contracts traded on regulated U.S. exchanges.

[8] *See* Securities Exchange Act Release No. 46862 (November 20, 2002), 67 FR 70993 (November 27, 2002) (Order Approving File No. SR–NASD–2002–129); *see also* Securities Exchange Act Release No. 46613 (October 7, 2002), 67 FR 64176 (October 17, 2002) (Notice of Filing and Effectiveness of File No. SR–NFA–2002–05).

[9] *See* Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2010–045) (revising Section 8.1 of the Statement to indicate that price adjustments for ordinary dividends may be made for a specified class of security future contracts based on the rules of the exchange and the clearing organization); *see also* Securities Exchange Act Release No. 71981 (April 21, 2014), 79 FR 23034 (April 25, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2014–019) (revising Section 5.2 of the Statement to list a product with a physical delivery settlement cycle shorter than three business day, and to indicate the then normal clearance and settlement cycle for securities transactions).

[10] *See* Securities Exchange Act Release No. 83407 (June 11, 2018), 83 FR 28045 (June 15, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–024) (updating Sections 5.2 and 6.1 of the Statement, respectively, to reflect that the normal clearance and settlement cycle for securities transactions is now two business days, and update the address for the Securities Investor Protection Corporation (''SIPC'')); *see also* Securities Exchange Act Release No. 83825 (August 10, 2018), 83 FR 40819 (August 16, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–028) (updating Section 6.1 of the Statement to change the reference to SIPC's cash limit protection from $100,000 to $250,000).

[11] *See* FINRA's Security Futures Topic Page, *https://www.finra.org/rules-guidance/key-topics/security-futures.*

[12] Section 8.2 provides in part: ''Position limits are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts. For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.'' With respect to reporting large open positions, Section 8.2 also indicates that ''brokerage firms must submit identifying information on the account holding the reportable position on a form referred to as either an ''Identification of Special Accounts Form'' or a ''Form 102'') to the CFTC and to the exchange on which the reportable position exists within three business days of which a reportable position is first established.''

[13] 17 CFR 17.02(b)(2).

[14] *See supra* note 4.

contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an ''Identification of Special Accounts Form'' or a ''Form 102'') to the CFTC and to the exchange on which the reportable position exists [within three business days of] *no later than the following business day* when a reportable position is first established.

B. Section 2.7 (Trading Halts)

Section 2.7 of the Statement addresses the impact of a trading halt on the value of security futures contracts and states that in certain circumstances, exchanges are required by law to halt trading in security futures contracts. Currently, Section 2.7 states, in part, that ''regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average (''DJIA'') experiences one-day declines of 10-, 20- and 30-percent.'' The SEC has approved proposals by SROs, including FINRA, to shift the benchmark against which to assess serious market decline from the DJIA to the S&P 500, and reduce the market decline thresholds to seven-, 13- and 20-percent.[15] FINRA is therefore proposing to update Section 2.7 of the Statement to reflect these changes by updating the fifth sentence of the first paragraph under Section 2.7 to read as follows (proposed updates are marked):

In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the [Dow Jones Industrial Average (''DJIA'')] *S&P 500 Index* experiences one-day declines of 10 *seven*-, 20 *13*- and 30 *20*-percent.

C. Introductory Section to the Statement

The Statement begins with a brief introductory section (''Introduction''), stating that the Statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. The Introduction also describes the types of securities on which security futures can be based, providing, in part, that ''[a]t present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future.'' The SEC and CFTC adopted SEC Rule 6h–2 [16] and an amendment to CFTC Regulation 41.21,[17] respectively, to permit security futures to be based on individual debt securities or narrow-based indexes composed of such securities.[18] In recognition of this change, FINRA is proposing to update the second sentence of the first paragraph of the Introduction to include a reference to debt instruments so that it reads (proposed updates are marked):

At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), *futures on certain debt instruments* as well as narrow-based security indices.

D. Availability of Updated Statement on FINRA.org

Currently, the 2018 Statement and its corresponding 2018 Supplement are posted on FINRA's website.[19] The preceding updates to the Statement made in 2010 and 2014 are also posted on the website.[20] In accordance with existing guidance, a member could satisfy Rule 2370(b)(11)(A) by redistributing the entire Statement to its security futures customers or separately distributing each new supplement to those customers who have already received the Statement.[21] FINRA reminds members that they may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the 2020 Statement or 2020 Supplement, provided that members adhere to the standards contained in the SEC's May 1996 and October 1995 released on electronic delivery,[22] and as discussed in *Notice to Members* 98–3. Members may also transmit the 2020 Statement or 2020 Supplement, as appropriate, to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.[23]

As noted above, the Statement is a uniform statement that was jointly developed by FINRA, the NFA, and several other securities and futures exchanges. FINRA is proposing to incorporate the updates proposed herein into the main body of the 2020 Statement and to publish it on the FINRA website.

To facilitate a member's compliance with Rule 2370(b)(11)(A) as articulated in guidance, FINRA is also proposing to encapsulate the proposed updates to the Statement into the 2020 Supplement that would show the proposed updates to Sections 8.2 and 2.7, and the Introduction, as described above. The 2020 Supplement would appear on FINRA's website as a separate document to continue to afford members with the flexibility to comply with the requirements of Rule 2370(b)(11)(A) by separately distributing the Supplement to customers who have already received the 2018 Statement.[24]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change in coordination with the parallel changes that the NFA has proposed to the Statement for its members.[25] FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission notice of the filing of the proposed rule change for immediate effectiveness.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[26] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and

[15] *See supra* note 5.

[16] 17 CFR 240.6h–2.

[17] 17 CFR 41.21.

[18] *See* Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006).

[19] *See supra* note 11.

[20] *See supra* note 11.

[21] *See Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement); *see also Regulatory Notice* 14–24 (May 2014) (stating, a member may separately distribute new supplements to such customers and that a member is not required to redistribute the entire Statement or earlier supplements).

[22] *See* Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995), 60 FR 53458 (October 13, 1995). *See also* Securities Act Release No. 7856 (April 28, 2000), 65 FR 25843 (May 4, 2000) (affirming the framework for electronic delivery established in the 1995 and 1996 releases).

[23] *See supra* note 22.

[24] FINRA's Security Futures Topic Page includes an ''Archive'' in which the 2002 Security Futures Risk Disclosure Statement (with the August 2010 and April 2014 supplements appended), and the separate August 2010 Supplement and April 2014 Supplement currently sit. In an effort to streamline this topic page, FINRA is proposing to remove these older materials from the Archive on the basis that those updates are incorporated into the main body of the Statement. In their stead, FINRA is proposing to move the 2018 Statement and the 2018 Supplement to the ''Archive'' section of the Security Futures Topic Page.

[25] *See supra* note 6.

[26] 15 U.S.C. 78*o*–3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that updating the Statement to incorporate into the main body all updates discussed within the supplement will help to accurately inform customers of the characteristics and risks of security futures. The proposed updated Statement would also reflect the circumstances under which regulated exchanges are required to halt trading in all security futures contracts and set forth the position limit and accountability rules that currently apply to transactions in security futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. While FINRA recognizes that there may be a burden associated with the distribution of the proposed updated Statement or supplement, FINRA believes that any such burden would be outweighed by the benefit to customers of accurately disclosing the characteristics and risks of security futures. FINRA also believes that any burden will be minimal because firms currently have an existing obligation to deliver each new or updated Statement or supplement to customers. Firms may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the proposed updated Statement or supplement, provided firms adhere to the standards described above. Firms also may transmit the proposed updated Statement or supplement to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.[27] Moreover, Rule 2370(b)(11) provides flexibility on when each updated Statement or supplement must be delivered after a customer's account is approved for trading security futures. Instead of having to automatically and immediately distribute an updated Statement or supplement to every customer having an account approved for trading security futures, a firm may distribute an updated Statement or supplement no later than the time a confirmation of a transaction is delivered to each customer who enters into a security futures transaction. Accordingly, firms would not be required to distribute the proposed updated Statement or supplement to customers who have accounts approved for trading security futures but do not engage in any new security futures transactions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[30] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[31] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that FINRA may immediately implement the proposed change in coordination with the parallel changes that the NFA has proposed to the Statement for its members. Because the proposal merely updates the Statement with changes already approved by the CFTC, with respect to position limits on futures contracts, and the Commission, with respect to trading halts, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2020–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that

[27] *See Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–025 and should be submitted on or before September 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–19451 Filed 9–2–20; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16633 and #16634; Louisiana Disaster Number LA–00103]

Presidential Declaration of a Major Disaster for the State of Louisiana

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4559–DR), dated 08/28/2020.

Incident: Hurricane Laura.

Incident Period: 08/22/2020 through 08/27/2020.

DATES: Issued on 08/28/2020.

Physical Loan Application Deadline Date: 10/27/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/28/2020, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis

Contiguous Counties (Economic Injury Loans Only):

Louisiana: Acadia, Evangeline, Rapides, Vermilion, Vernon

Texas: Jefferson, Newton, Orange

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.375
Homeowners Without Credit Available Elsewhere	1.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 166338 and for economic injury is 166340.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–19499 Filed 9–2–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11165]

30-Day Notice of Proposed Information Collection: Statement of Non-Receipt of a U.S. Passport

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to October 5, 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:

- *Title of Information Collection:* Statement of Non-Receipt of a U.S. Passport.
- *OMB Control Number:* 1405–0146.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO/CR).
- *Form Number:* DS–86.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 22,868.
- *Estimated Number of Responses:* 22,868.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 5,717 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Statement of Non-receipt of a U.S. Passport, form DS–86, is used by the U.S. Department of State to collect information for the purpose of issuing a replacement passport to customers whose passports have been issued but who have not received their passport documents in the mail.

Methodology

The information collected on form DS–86 is used by the Department of State to help ensure that no person bears more than one valid or potentially valid U.S. passport book of the same type and/or passport card at any one time, except as authorized by the Department. The information on the form is also used to address passport fraud and misuse.

When needed, the Statement of Non-receipt of a U.S. Passport is either provided by the Department to the passport applicant or accessed online from the Department's website at *www.eforms.state.gov* or as a printable PDF at *www.travel.state.gov.*

Zachary Parker,

Director.

[FR Doc. 2020–19520 Filed 9–2–20; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36427]

Akron Barberton Cluster Railway Company—Amendment of Lease Exemption—Metro Regional Transit Authority

Akron Barberton Cluster Railway Company (ABC), a Class III switching and terminal railroad, filed a verified notice of exemption under 49 CFR 1150.41 to amend its lease from Metro Regional Transit Authority (Metro) of an existing rail freight operating easement on a 6.72-mile rail line extending from approximately milepost 40.42 in Akron to approximately milepost 33.70 in Krumroy, in Summit County, Ohio (the Line).[1]

ABC states it will continue to provide freight rail service between the industries on the Line and connecting line-haul carriers Wheeling & Lake Erie Railway Company and CSX Transportation, Inc., in Akron/Barberton, Ohio. ABC further states that Metro, as the owner and lessor of the freight easement, will retain a residual common carrier obligation on the Line but will not operate any freight rail service on the Line.

ABC certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class II or Class I rail carrier and will not exceed $5 million. ABC also states that the lease agreement does not contain any provision that would limit ABC's future interchange of traffic on the line with a third-party connecting carrier.

ABC intends to consummate the amendment to the lease on or shortly after September 17, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 10, 2020 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36427, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on ABC's representative, Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to ABC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 28, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2020–19456 Filed 9–2–20; 8:45 am]

BILLING CODE 4915–01–P

[1] ABC obtained authority to lease and operate the subject rail line in *Akron Barberton Cluster Railway—Lease & Operation Exemption—Metro Regional Transit Authority,* FD 34362 (STB served July 11, 2003), and authority for a previous lease amendment in *Akron Barberton Cluster Railway—Lease & Operation Exemption—Metro Regional Transit Authority,* FD 35944 (STB served July 23, 2015).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Effective Date of Modifications to the Harmonized Tariff Schedule of the United States Concerning the Dominican Republic-Central America-United States Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of United States Trade Representative is announcing the effective date of modifications to the Harmonized Tariff Schedule of the United States (HTSUS) concerning the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR).

DATES: This notice is applicable on November 1, 2020.

FOR FURTHER INFORMATION CONTACT: Senior Associate General Counsel Joseph Johnson at (202) 395–2464 or *Joseph_M._Johnson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act) (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTSUS based on the recommendations of the U.S. International Trade Commission (ITC) under section 1205 of the 1988 Act (19 U.S.C. 3005) if the President determines that the modifications conform to U.S. obligations under the International Convention on the Harmonized Commodity Description and Coding System (Convention) and do not run counter to the national economic interest of the United States. The ITC has recommended modifications to the HTSUS pursuant to section 1205 of the 1988 Act to conform the HTSUS to amendments made to the Convention.

Proclamation 7987 of February 28, 2006, implemented the CAFTA–DR with respect to the United States and, pursuant to section 201 of the CAFTA–DR Implementation Act (19 U.S.C. 4031), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3 (including the schedule of United States duty reductions with respect to originating goods), 3.27, and 3.28 of the CAFTA–DR.

The United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (CAFTA–DR countries) are parties to the Convention. Because changes to the Convention are reflected in slight differences of form between the national tariff schedules of the United States and the other CAFTA–DR countries, Annexes 4.1, 3.25, and 3.29 of the CAFTA–DR must be changed to ensure that the tariff and certain other treatment accorded under the CAFTA–DR to originating goods will continue to be provided under the tariff categories that were proclaimed in Proclamation 7987. The United States and the other CAFTA–DR countries have agreed to make these changes.

Section 201 of the CAFTA–DR Implementation Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3 (including the schedule of United States duty reductions with respect to originating goods), 3.27, and 3.28 of the CAFTA–DR.

In Proclamation 9555 of December 15, 2016, pursuant to section 201 of the CAFTA–DR Implementation Act and section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)), the President proclaimed certain modifications to the HTSUS (see Proclamation 9555, paragraph (11)), and further proclaimed that the modifications would become effective on the date to be announced by the U.S. Trade Representative in the **Federal Register**, after the applicable conditions set forth in the CAFTA–DR have been fulfilled. The modifications are effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after that date. See Proclamation 9555, paragraph (12). The modifications are set out in Annex V of Proclamation 9555.

In Proclamation 9687 of December 22, 2017, pursuant to section 201 of the CAFTA–DR Implementation Act and section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)), the President proclaimed certain modifications to the HTSUS (*see* Proclamation 9687, paragraph (6)), and further proclaimed that the modifications would become effective on the date to be announced by the U.S. Trade Representative in the **Federal Register**, after the applicable conditions set forth in the CAFTA–DR have been fulfilled. The modifications are effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after that date. *See* Proclamation 9687, paragraph (7). The modifications are set out in Annex II of Proclamation 9687.

B. Announcement of the Effective Date of Modifications to the HTSUS Pursuant to Proclamation 9555 and Proclamation 9687

The U.S. Trade Representative is announcing that the conditions referenced in paragraph (12) of Proclamation 9555 and paragraph (7) of Proclamation 9687 have been fulfilled and that the modifications set out in Annex V of Proclamation 9555 and Annex II of Proclamation 9687 will take effect on November 1, 2020, with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after that date.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–19507 Filed 9–2–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Termination of Previously Initiated Processes for the Development of Air Tour Management Plans and Environmental Assessments/ Environmental Impact Statements for Various National Park Units and Notice of Intent To Complete Air Tour Management Plans at 23 National Park Units

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Termination of Previously Initiated Processes for Air Tour Management Plans and Associated Environmental Documents and Notice of Intent to Complete Air Tour Management Plans at 23 National Park Units.

SUMMARY: The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS), announces that it is terminating previously initiated processes for the development of Air Tour Management Plans (ATMP) and Environmental Assessments (EA)/Environmental Impact Statements (EIS) for a number of National Park System units. The agencies had initiated and actively worked these processes at a number of parks from 2004 to 2011 but ceased all work by September 2012 due to a focus on other program priorities. Given the length of time since these processes were initiated and actively worked, termination of these processes will allow the agencies to start anew with the development of ATMPs and associated environmental documents at these and other parks.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Program Manager, AWP–1SP, Federal Aviation Administration, Western-Pacific Region, 777 S Aviation Boulevard, Suite 150, El Segundo, California 90245. Telephone: (424) 405–7017.

SUPPLEMENTARY INFORMATION: In the following **Federal Register** notices the FAA, in cooperation with the National Park Service (NPS), had provided notice of its intent to develop EA/EIS documents for the ATMPs at various National Park System units pursuant to the National Parks Air Tour Management Act of 2000 (NPATMA) (Pub. L. 106–181) and its implementing regulations contained in 14 CFR part 136, subpart B, National Parks Air Tour Management:

Haleakala National Park (68 FR 3301, Jan. 23, 2003; 69 FR 9420–9422, Feb. 27, 2004; and 71 FR 66575–66576, Nov. 15, 2006);

Hawaii Volcanoes National Park (68 FR 3301–3302, Jan. 23, 2003; 69 FR 9420–9422, Feb. 27, 2004; and 70 FR 44416–44417, Aug. 2, 2005);

Mount Rushmore National Memorial (69 FR 20660–20661, Apr. 16, 2004);

Badlands National Park (69 FR 20658–20659, Apr. 16, 2004);

Lake Mead National Recreation Area (69 FR 20659–20660, Apr. 16, 2004);

Death Valley National Park (75 FR 2922–2923, Jan. 19, 2010);

Mount Rainier National Park (75 FR 16899–16900, Apr. 2, 2010; 75 FR 18568–18569, Apr. 12, 2010); and

Golden Gate National Recreation Area/San Francisco Maritime National Historical Park/Point Reyes National Seashore (76 FR 45312, July 2011).

In 2004, the FAA and NPS began preparing environmental documentation to comply with NPATMA and the National Environmental Policy Act (NEPA) (Pub. L. 91–190), which requires Federal agencies to consider the environmental impacts associated with a major Federal action, such as completing an ATMP. The agencies were unable to complete any ATMPs due primarily to differences in their respective approaches to environmental analysis.

In 2012, the agencies ceased work on the development of ATMPs and associated environmental documentation at these parks and refocused efforts on implementation of various NPATMA amendment provisions included in the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). In particular, the agencies focused on the development of Voluntary Agreements (VAs), which do not require compliance with NEPA.

On February 14, 2019, Public Employees for Environmental Responsibility and the Hawaii Coalition Malama Pono filed a petition for writ of mandamus in the U.S. Court of Appeals for the District of Columbia Circuit seeking to have the FAA and the NPS complete air tour management plans or voluntary agreements at seven specified parks. On May 1, 2020, the Court granted the petition and ordered the

FAA and the NPS to file a proposed schedule within 120 days for bringing all 23 eligible parks into compliance with NPATMA within two years or to provide specific, concrete reasons why it would take longer.

The agencies intend to bring the 23 national park units referenced in the Court's order into compliance with NPATMA over the next two years through the development of ATMPs or, secondarily, voluntary agreements. The 23 national park units, listed below, consist of the ten aforementioned park units along with 13 other park units where the ATMP process was never initiated.

1. Arches National Park
2. Badlands National Park
3. Bandelier National Monument
4. Bryce Canyon National Park
5. Canyon de Chelly National Monument
6. Canyonlands National Park
7. Death Valley National Park
8. Everglades National Park
9. Glacier National Park
10. Glen Canyon National Recreation Area
11. Golden Gate National Recreation Area
12. Great Smoky Mountains National Park
13. Haleakalā National Park
14. Hawai'i Volcanoes National Park
15. Lake Mead National Recreation Area
16. Mount Rainier National Park
17. Mount Rushmore National Memorial
18. Natural Bridges National Monument
19. National Parks of New York Harbor Management Unit
20. Olympic National Park
21. Point Reyes National Seashore
22. Rainbow Bridge National Monument
23. San Francisco Maritime National Historical Park

In accordance with NPATMA, for each ATMP the agencies develop, they will hold at least one public meeting, publish the proposed ATMP in the **Federal Register**, comply with NEPA, and invite Tribes to participate as cooperating agencies, as appropriate. The agencies intend to accomplish these requirements in a consolidated fashion to the extent practical. The agencies have been meeting regularly over the last year to resolve past disagreements over the environmental analysis and NEPA compliance and have successfully resolved key concerns. Both agencies will sign the ATMPs and environmental decision documents. All ATMPs that the agencies create will include adaptive management measures to ensure the continued effectiveness of each ATMP over time. For any voluntary agreement, the agencies will provide an opportunity for public review and, where applicable, tribal consultation.

Issued in El Segundo, California on August 31, 2020.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2020–19490 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0098]

Hours of Service of Drivers; Pilot Program To Allow Commercial Drivers To Pause Their 14-Hour Driving Window

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed pilot program; request for comments.

SUMMARY: FMCSA proposes a pilot program to allow temporary regulatory relief from the Agency's hours-of-service (HOS) requirement that all driving by drivers of property-carrying commercial motor vehicles (CMVs) be completed within 14 hours after coming on duty. During the pilot program, known as the Split Duty Period Pilot Program, participating CMV drivers would have the option to pause their 14-hour on-duty period (also called a driving window) with one off-duty period of no less than 30 minutes and no more than 3 hours. Participation would be limited to a certain number of commercial driver's license (CDL) holders who meet the criteria specified for participation. This pilot program seeks to gather statistically reliable evidence whether decisions concerning the timing of such flexibility can be aligned with employers', shippers', and receivers' scheduling preferences to optimize productivity while ensuring safety performance at a level equivalent to or greater than what would be achieved absent the regulatory relief.

DATES: Comments must be received on or before November 2, 2020. The implementation date of the Pilot Program would be announced in subsequent **Federal Register** notices.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID [FMCSA–2020–0098] using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *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, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and the docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: DOT posts comments submitted to the rulemaking docket, 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.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Nicole Michel, Research Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by email at *Nicole.michel@dot.gov,* or by telephone at 202–366–4354. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826. Further information will be posted at the website for the proposed pilot program: *https://www.fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. In this notice, FMCSA requests certain information, but comments need not be limited to those requests.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0098), 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, 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,* put the docket number, ''FMCSA–2020–0098'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box 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. FMCSA will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2020–0098'' in the ''Keyword'' box and click ''Search.'' Next, click the ''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 Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., *e.t.,* Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

The FMCSA has authority under 49 U.S.C. 31315(c) to conduct pilot programs. These programs are research studies where one or more exemptions are granted to allow for the testing of innovative alternatives to certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish in the **Federal Register** a detailed description of each pilot program, including the exemptions being considered, and provide such notice and an opportunity for public comment before the effective date of the program. The Agency is required to ensure that the safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. Pilot programs are limited to not more than 3 years from the starting date.

At the conclusion of each pilot program, FMCSA must submit a report to Congress concerning the findings, conclusions, and recommendations, including suggested amendments to laws and regulations that would enhance motor carrier, commercial motor vehicle (CMV), and driver safety, and improve compliance with the FMCSRs.

III. Background

HOS Rulemaking—Pause to the 14-Hour Window

On August 22, 2019, FMCSA published a Notice of Proposed Rulemaking (NPRM) concerning drivers' hours of service which proposed certain amendments to provide greater flexibility for drivers, without adversely affecting safety (84 FR 44190). As part of that rulemaking, FMCSA proposed that a single off-duty break of between 30 minutes and 3 consecutive hours may be excluded from the 14-hour driving window, provided the driver has at least 10 consecutive hours off-duty at the end of the work shift. The Agency explained that a single pause of up to 3 hours would provide significantly more flexibility than is allowed under the current rules. The pause would have allowed drivers to take an off-duty break without fear of exhausting their available hours under the 14-hour clock, which would also have allowed them to get additional rest or avoid traffic congestion.

FMCSA Decision To Exclude the Pause From the Final Rule

After reviewing the public comments to the NPRM, the Agency decided not to include the pause to the 14-hour driving window in the Final Rule, published on June 1, 2020 (85 FR 33396). FMCSA continues to believe that an opportunity for a single off-duty pause in the 14-hour driving window could provide flexibility for drivers without compromising safety, as explained in the NPRM. However, many commenters to the NPRM believed that drivers would be pressured by carriers, shippers, or receivers to use the break to cover detention time, which would not necessarily provide the driver an optimal environment for restorative rest. This suggests that the pause could have unintended consequences that were not adequately evaluated in the development of the NPRM.

In considering the initiation of a pilot program, the Agency continues to believe that an off-duty break of up to 3 consecutive hours during a work shift may enable drivers to avoid congestion. The subsequent driving time would then be more productive, as drivers may have a greater opportunity to travel at the posted speed limits rather than at lower speeds through heavy traffic and congestion. It may also reduce the pressure to drive above the posted speed limits because of concerns raised by the 14-hour clock. In addition, drivers could take a rest break to reduce the likelihood of experiencing fatigue while driving. Because drivers would continue to take 10 consecutive hours off-duty at the end of the work shift, exercising the pause option during the work shift would increase the drivers' off-duty time during the work week. This increased productivity, resulting from an ability to avoid congestion, would be accomplished without altering the maximum amount of on-duty time that could be accumulated before driving is prohibited, or increasing the maximum driving time allowed during a work shift.

FMCSA acknowledges that the potential benefits of increased flexibility could be undermined if the pause is used by carriers, shippers, or receivers for purposes other than the productivity and safety of drivers, especially to compensate for time wasted during the 14-hour driving window due to detention periods. Under such a scenario, the Agency believes that the off-duty period may not provide a meaningful opportunity for drivers to rest. The pilot program is designed, among other things, to discover the extent to which ''detention pauses''

occur and their effect on drivers, compared to pauses taken under other circumstances.

FMCSA believes a pilot program would provide an innovative, collaborative approach for evaluating concerns about the use of a pause to the 14-hour window. Through the pilot program the Agency could gather data and information concerning real-world actions and decisions among drivers, employers, and shippers and receivers to reach a common understanding of how to give drivers more opportunities for rest and increased efficiency.

With regard to safety impacts, the Agency notes that the additional break of up to 3 consecutive hours would be off-duty. This means the extension of the driving window would not result in drivers working additional hours; the maximum amount of on-duty time that could be accumulated before a driver would be prohibited from driving during a work shift would remain at 14 hours. Furthermore, drivers would still be required to have 10 consecutive hours off-duty at the end of their shift, and would continue to be subject to all of the cumulative limits that normally apply to them.

Applicable Regulations

Under 49 CFR 395.3(a)(2), a driver of a property-carrying CMV may drive only during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. The driver may not drive after the end of the 14-consecutive-hour period without first taking 10 consecutive hours off duty.

The Split Duty Period Pilot Program would offer participating drivers relief from these provisions by allowing one off-duty period of no less than 30 minutes and not more than 3 hours which would not count towards the 14-hour period (also referred to in this notice as the 14-hour on-duty window). Drivers would still be required to take 10 consecutive hours off duty before returning to duty.

Relevant Research

FMCSA will conduct additional research during the refinement of the pilot program design through a literature review of applicable studies regarding safety impacts of allowing a pause in duty status. The Agency believes that the proposal for this pilot program is supported by ''The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations'' (Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011)). That study showed that the Safety Critical Event (SCE) rate increased modestly with increasing work and driving hours, up to a 14-hour on-duty period. Blanco also found that breaks can be used to counteract the negative effects of time-on-task. The results from the break analyses indicated that significant safety benefits can be afforded when drivers take breaks from driving. This study data cannot be extrapolated to determine the potential impact of including up to a 3-hour pause in the 14-hour on-duty period, however. After completion of a thorough literature review, any additional relevant information will be included in subsequent **Federal Register** notices prior to initiation of the pilot program.

IV. Pilot Program Requirements

Specific requirements for pilot programs are found in subparts D and E of 49 CFR part 381. A pilot program is a study in which participants are given exemptions from one or more provisions of the FMCSRs for up to 3 years to gather data to evaluate alternatives or innovative approaches to regulations, while ensuring that an equivalent level of safety is maintained.

A pilot program must include a program plan that incorporates the following six elements:

(1) A scheduled duration of 3 years or less;

(2) A specific data collection and safety analysis plan that identifies a method of comparing the safety performance of motor carriers, CMVs, and drivers operating under the terms and conditions of the pilot program, with the safety performance of motor carriers, CMVs, and drivers that comply with the regulation;

(3) A reasonable number of participants necessary to yield statistically valid findings;

(4) A monitoring plan to ensure that participants comply with the terms and conditions of participation in the pilot program;

(5) Adequate safeguards to protect the health and safety of study participants and the general public; and

(6) A plan to inform the States and the public about the pilot program and to identify approved participants to enforcement personnel and the general public. (49 CFR 381.500).

At the conclusion of each pilot program, the FMCSA reports to Congress the findings and conclusions of the program and any recommendations it considers appropriate, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs (49 CFR 381.520).

V. Structure of the Pilot Program

This pilot program seeks to gather statistically reliable evidence on the question whether an optional off-duty period of between 30 minutes and three hours, pausing the 14-hour window, affects safety performance, and what effect scheduling preferences of employers, shippers, and receivers have on safety outcomes. Safety performance would be evaluated through a review of data and information concerning work schedules (including driving time), rest schedules, and driver on-road performance.

Currently, interstate drivers of property-carrying CMVs must complete all driving within 14 hours after coming on duty (49 CFR 395.3(a)(2)). The pilot program would give participating drivers a temporary exemption from this requirement, within parameters specified by the Agency. For study purposes, drivers would be allowed to pause their 14-hour on-duty window by no less than 30 minutes and not more than 3 hours.

FMCSA would recruit CDL drivers who operate a CMV as their primary means of employment. The study group would include drivers from small, medium, and large carriers, as well as independent owner-operators. To ensure that the study will be able to detect statistically significant differences in the safety performance between drivers utilizing a ''pause'' and drivers operating under current regulations, FMCSA is estimating the desired sample size in the final study design to be between 200 and 400 drivers over a period of up to 3 years. While the entire study will be limited to a maximum period of 3 years, individual driver participation may also be limited to a period of 6 months or 1 year, depending on final study design.

Participating carriers that meet the eligibility criteria, as described later in this notice, would be able to assist in recruiting study group drivers. Drivers would be enrolled in the study contingent upon approval from their carrier, as applicable. Owner-operators would need to be leased to a single carrier and obtain the carrier's approval in order to be eligible to participate, to facilitate granting of the exemption and to mitigate data collection privacy concerns. Drivers would need to participate in the study operating under current regulations for a baseline period of 30 days before receiving their exemption.

The pilot program would also collect driver identification details and data on

driver schedules, sleep, safety-critical events (SCEs), subjective sleepiness ratings, and behavioral alertness for at least 180 days per driver. The Agency requests comment on the data collection period per driver.

VI. Management of the Pilot Program

FMCSA has designated a project manager for the pilot program. FMCSA would develop the applications, agreements, and forms to be used by interested carriers and potential study group members. Participating carriers would be announced publicly.

Eligibility requirements and procedural matters are discussed in Sections VII and VIII of this notice.

VII. Eligibility Criteria To Participate

A. Motor Carriers

To qualify for participation in the pilot program, motor carriers must meet the following eligibility criteria:

1. Must have proper operating authority and registration;
2. Must have the minimum levels of financial responsibility, if applicable;
3. Must not be a high or moderate risk motor carrier as defined in the Agency's **Federal Register** notice of ADD;
4. Must not have a conditional or unsatisfactory safety rating;
5. Must not have any enforcement actions within the past 3 years;
6. Must not have a crash rate above the national average;
7. Must not have a driver Out of Service (OOS) rate above the national average; and
8. Must not have a vehicle OOS rate above the national average.

In addition, unpaid civil penalties may be grounds to be disapproved from participating in the pilot program.

In addition, motor carriers participating in the pilot program would be required to meet the following requirements:

- Grant permission for drivers to participate in the Split Duty Period Pilot Program;
- Agree to comply with all pilot program procedures;
- Grant permission for researchers to install a video-based onboard monitoring system (OBMS) and gather records of duty status (RODS) information for each participating driver throughout the study duration; and
- Grant permission for drivers participating in the study to operate under the 14-hour on-duty window exemption.

B. Study Group Drivers

A motor carrier may not approve a driver for participation in the pilot program if during the 2-year period immediately preceding the date of participation, the covered driver:

1. Had his or her license suspended, revoked, cancelled or has been disqualified for a conviction of one of the disqualifying offenses listed in to 49 CFR 383.51; or
2. Had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than parking violation) arising in connection with any traffic crash and have no record of a crash in which he/she was determined to be at fault.

In addition, drivers would be required to:

- Operate a CMV as their main source of employment;
- Have a valid CDL;
- Maintain a valid medical certificate from a healthcare professional on the Agency's National Registry of Certified Medical Examiners while participating in the pilot program;
- Have the employer's approval for participation in the study;
- Operate a property-carrying vehicle, not a passenger-carrying vehicle;
- Agree to the release of specific information to FMCSA for purposes of the pilot; and
- Agree to study procedures, including the use of actigraphs, RODS, and video-based OBMS.

VIII. Process To Apply To Participate

A. Motor Carriers

- Visit the pilot program website and complete an electronic application with screening questionnaire, which will request the following details, at a minimum: Name, job title, carrier information, company name, and carrier size. The carrier must grant permission for OBMS equipment to be temporarily installed in the vehicles of participating drivers, and for drivers to use the study-provided system for recording HOS during the data collection period.
- The carrier's representative must acknowledge that all driver data, to include OBMS video, driving data, sleep data, and performance data, must remain confidential and will not be shared with the company. The exception to this is RODS data for properly recording a driver's HOS.

B. Study Group Drivers

- Visit the pilot program website and complete an electronic application and screening questionnaire, which will request the following details, at a minimum: Name, contact information, Medical Certification expiration date, CDL status, typical operation type (solo, team, or slip seat), location of their home terminal, type of truck they regularly drive, and whether they currently use paper or electronic HOS logs.
- Participate in a phone call with a member of the research team to confirm interest and eligibility.
- Obtain carrier permission to participate (unless the individual is an independent owner operator).
- Provide written, informed consent after a briefing session on data collection techniques and methods.

IX. Data Collection Plan

Details of the data collection plan for this pilot program are subject to change based on comments to the docket and further review by analysts. Information to be collected from each participating carrier and driver before the pilot program begins (during the application phase) are discussed in Section VIII of this notice. Participating drivers will drive an instrumented vehicle (instrumented by the research team with a study-provided OBMS) for up to 90 days. During a pre-study briefing, participants will receive a study-provided smartphone (installed with a variety of data collection applications), as well as a wrist actigraphy device.[1] Participants whose vehicles are not already equipped with a compatible electronic logging device (ELD) will be provided with an approved ELD application (installed on study-provided equipment). At a minimum, FMCSA will gather the following data during the study:

- RODS data, to evaluate duty hours and timing, driving hours and timing, rest breaks, off-duty time, and restart breaks.
- OBMS data, to evaluate driving behaviors, SCEs (crashes, near-crashes, and other safety-related events), reaction time, fatigue, lane deviations, and traffic density (as discerned from viewpoints of the multiple cameras), road curvature, and speed variability.
- Roadside violation data (from carriers and drivers, as well as the Commercial Driver's License Information System (CDLIS)), including vehicle, duty status, hazardous materials, and cargo-related violations (contingent upon inspections).
- Wrist actigraphy data, to evaluate total sleep time, time of day sleep was taken, sleep latency, and intermittent wakefulness.

[1] Participants will wear wrist actigraphy devices (similar to commercially available smart fitness watches) throughout their time in the study. Actigraphy is a minimally obtrusive, validated approach to assessing sleep/wake patterns.

• Psychomotor Vigilance Test (PVT) [2] data, to evaluate drivers' behavioral alertness based on reaction times.

• Subjective sleepiness ratings, using the Karolinska Sleepiness Scale (KSS),[3] to measure drivers' perceptions of their fatigue levels.

• Sleep logs, in which drivers will document when they are going to sleep, when they wake up, and whether they are using the sleeper berth.

• Pause logs, in which drivers will document their reason for pausing their 14-hour on-duty window (*e.g.,* driver felt fatigued, driver encountered traffic, driver encountered detention delay) and their activities during their pause (*e.g.,* sleeping, exercising, eating, leisure).

Other information that may be needed will also be collected through the participating carrier. Every effort will be made to reduce the burden on the carrier in collecting and reporting this data.

X. Paperwork Reduction Act

The pilot program will require participating motor carriers to collect, maintain, and report to FMCSA certain information about their drivers who are participating in the pilot program. This will include identifying information and safety performance data for use in analyzing the drivers' safety history. The Agency will develop forms to promote uniformity in the data collected by the pilot carriers.

The Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) prohibits agencies from conducting information collection (IC) activities until they analyze the need for the collection of information and how the collected data will be managed. Agencies must also analyze whether technology could be used to reduce the burden imposed on those providing the data. The Agency must estimate the time burden required to respond to the IC requirements, such as the time required to complete a particular form. The Agency submits its IC analysis and burden estimate to the Office of Management and Budget (OMB) as a formal information collection request (ICR); the Agency cannot conduct the information collection until OMB approves the ICR.

Because certain aspects of this pilot program—such as the content of forms and reports—have not been finalized, the Agency is not publishing possible IC burden data at this time. A separate **Federal Register** Notice will be posted taking additional comments on the ICR, once developed.

X. Removal From the Program

FMCSA reserves the right to remove any motor carrier or driver from the pilot program for reasons related to, but not limited to, the failure to meet all program requirements or a determination of increased safety concerns. FMCSA reserves the right to terminate the pilot program at any time if there is evidence of increased safety risk by carriers and/or drivers participating in the pilot program.

XI. Request for Public Comments

Instructions for filing comments to the public docket are included earlier in this notice. FMCSA seeks information in the following areas, but responses need not be limited to these questions:

1. Are any additional safeguards needed to ensure that the pilot program provides a level of safety equivalent to that without the 14-hour on-duty window pause exemption?

2. Are the data collection efforts proposed for carriers and drivers so burdensome as to discourage participation?

3. Should team drivers be allowed to participate in the pilot program? Would there be additional considerations for team drivers?

4. What additional factors, such as gender, geographic location, age, operating types, or driver experience, should be considered when selecting participants to ensure a representative sample is achieved?

5. Is the estimated sample size of 200–400 drivers sufficient to gain statistically significant findings over a period of up to 3-years? Is a 6 to12-month period of participation by individual drivers sufficient to collect data?

6. Is a 180-day baseline period sufficient for comparison of driver performance between participating drivers in a control group operating under the current regulations against individuals operating with the exemption allowing the split duty option?

7. Would there need to be considerations for carriers currently utilizing OBMS or other safety systems that may involve coaching? For example, should a participating carrier be required to halt utilization of coaching techniques for drivers participating in the pilot program to ensure bias is minimized across the sample?

8. Should FMCSA consider metrics other than the following when developing the data collection plan: Crashes, safety critical events (*e.g.,* speeding, lane deviation, hard braking), fatigue levels, driver distraction, vehicle miles traveled?

9. What other potential data collection tools should FMCSA use for the pilot program in addition to video-based onboard monitoring systems, actigraphs, PVTs, sleep logs, and driver health/background information?

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–19511 Filed 9–2–20; 8:45 am]

BILLING CODE 4910–EX–P

[2] For this study, drivers will be required to complete daily iterations of a brief PVT, a 3-minute behavioral alertness test which measures drivers' alertness levels by timing their reactions to visual stimuli.

[3] The KSS is a 9-point Likert-type scale ranging from ''extremely alert'' to ''extremely sleepy'' and has been widely used in the literature as a subjective assessment of alertness.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2020–0049]

Information Collection Activities; Requests for Comments

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for public comment and submission to OMB for clearance of renewed approval of information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 11, 2020. The purpose of this Notice is to allow 30 days for public comment.

DATES: Comments to this notice must be received by October 5, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal identification

information, will be available for public view.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *bohdan.baczara@dot.gov.* When submitting comments or requesting information, please include the docket number and information collection title for reference.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0529.

Title: Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Type of Review: Clearance of a renewal of an information collection.

Form Numbers: DOT F 1385; DOT F 1380.

Respondents: The information will be used by transportation employers, Department representatives, and a variety of service agents.

Abstract: Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. This specific requirement is elaborated in 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This request for a renewal of the information collection for the program includes 43 burden items including the U.S. Department of Transportation Alcohol Testing Form (ATF) [DOT F 1380] and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form [DOT F 1385].

The ATF includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Data on each test conducted, including test results, is necessary to document that the tests were conducted and is used to take action, when required, to ensure safety in the workplace. The MIS form includes employer specific drug and alcohol testing information such as the reason for the test and the cumulative number of test results for the negative, positive, and refusal tests. No employee specific data is collected. The MIS data is used by each of the affected DOT Agencies (*i.e.,* Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their industry's annual random drug and/or alcohol testing rate.

Estimated Total Number of Respondents: 3,593,202.

Estimated Number of Responses: 11,841,478.

Frequency of Response: The information will be collected annually.

Estimated Total Number Burden Hours: 1,287,811.

PRA item	Number of respondents	Number of responses	Burden hours	Salary costs ($)
Exemptions from Regulation Provisions Requests [40.7(a)]	1	1	3	$104
Employer Stand-down Waiver Requests [40.21(b)]	0	0	0	0
Employee Testing Records from Previous Employers [40.25(a)]	584,628	3,538,179	471,757	16,379,410
Employee Release of Information [40.25(f)]	3,538,179	3,538,179	235,878	8,189,704
MIS Form Submission [40.26]	17,840	17,840	26,760	929,107
Collector (Qualification and Refresher) Training Documentation [(40.33(b) & (e)]	5,000	5,000	333	11,561
Collector Error Correction Training Documentation [40.33(f)]	12,000	19,625	1,308	45,425
Laboratory Reports to DOT Regarding Unlisted Adulterant [40.91(e)]	0	0	0	0
Semi-Annual Laboratory Reports to Employers [40.111(a)]	23	385,854	25,723	893,123
Semi-Annual Laboratory Reports to DOT [40.111(d)]	23	46	3	106
Medical Review Officer (MRO) (Qualifications and Continuing Education) Training Documentation [40.121(c) & (d)]	1,000	1,000	66	2,291
MRO Review of Negative Results Documentation [40.127(b)(2)(ii)]	5,000	381,055	25,403	873,000
MRO Failure to Contact Donor Documentation [40.131(c)(1)]	5,000	63,827	4,255	147,738
MRO Effort to Contact DER Documentation [40.131(c)(2)(iii)]	5,000	63,827	4,255	147,738
DER Successful Contact Employee Documentation [40.131(d)]	51,061	51,061	3,404	118,190
DER Failure to Contact Employee Documentation [40.131(d)(2)(i)]	12,765	12,765	851	29,547
MRO Verification of Positive Result Without Interview Documentation [40.133]	5,000	12,765	851	29,547
Adulterant/Substitution Evaluation Physician Statements [40.145(g)(2)(ii)(d)]	0	0	0	0
MRO Cancellation of Adulterant/Substitution for Legitimate Reason Reports [40.145(g)(5)]	0	0	0	0
Employee Admission of Adulterating/Substituting Specimen MRO Determination [40.159(c)]	40	40	3	104
Split Specimen Requests by MRO [40.171(c)]	5,000	7,206	480	16,680
Split Failure to Reconfirm for Drugs Reports by MRO [40.187(b)]	35	34	2	69
Split Failure to Reconfirm for Adulterant/Substitution Reports by MRO [40.187(c)]	5	5	1	34
Shy Bladder Physician Statements [40.193(f)]	773	773	64	2,238
MRO Statements Regarding Physical Evidence of Drug Use [40.195(b) & (c)]	0	0	0	0
Drug Test Correction Statements [40.205 (b)(1) & (2)]	25,000	154,732	20,630	716,308
Breath Alcohol Technician (BAT)/Screening Test Technician (STT) (Qualification and Refresher) Training Documentation [40.213(b)(c)&(e)]	2,000	2,000	133	4,617
BAT/STT Error Correction Training Documentation [40.213(f)]	168	168	11	390
Complete DOT Alcohol Testing Forms [40.225(a)]	10,000	3,378,454	450,460	15,639,989
Evidential Breath Testing Device Quality Assurance/Calibration Records [40.233(c)(4)]	10,000	10,000	666	23,123
Shy Lung Physician Statements [40.265(c)(2)]	168	168	11	390
Alcohol Test Correction Statements [40.271(b)(1)&(2)]	337	337	22	781

PRA item	Number of respondents	Number of responses	Burden hours	Salary costs ($)
Substance Abuse Professional (SAP) (Qualification and Continuing Education) Training Documentation [40.281(c)&(d)]	3,334	3,334	222	7,707
Employer SAP Lists to Employees [40.287]	10,000	115,713	7,714	267,837
SAP Reports to Employers [40.311(c),(d) & (e)]	10,000	94,456	6,297	218,634
Correction Notices to Service Agents [40.373(a)]	25	25	25	868
Notice of Proposed Exclusion (NOPE) to Service Agents [40.375(a)]	5	5	50	1,736
Service Agent Requests to Contest Public Interest Exclusions (PIE) [40.379(b)]	2	2	2	69
Service Agent Information to Argue PIE [40.379(b)(2)]	2	2	8	277
Service Agent Information to Contest PIE [40.381(a) & (b)]	2	2	8	277
Notices of PIE to Service Agents [40.399]	1	1	1	34
Notices of PIE to Employer and Public [40.401 (b) & (d)]	1	1	1	34
Service Agent PIE Notices to Employers [40.403 (a)]	1	300	150	5,208
Total New	3,593,202	11,841,478	1,287,811	44,703,995

Public Comments Invited: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Issued in Washington, DC, on August 28, 2020.

Bohdan Baczara,

Deputy Director, DOT, Office of Drug and Alcohol Policy and Compliance.

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2020–0001]

Proposed Information Collections; Comment Request (No. 80)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before November 2, 2020.

ADDRESSES: You may send comments on the information collections described in this document using one of the two methods described below—

- *Internet:* To submit comments electronically, use the comment form for this document posted on the ''*Regulations.gov*'' e-rulemaking website at *https://www.regulations.gov* within Docket No. TTB–2019–0001.
- *Mail:* Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB control number (if any) in your comment.

You may view copies of this document, the listed TTB forms, and all comments received at *https://www.regulations.gov* within Docket No. TTB–2019–0001. TTB has posted a link to that docket on its website at *https://www.ttb.gov/forms/comment-on-form.shtml.* You also may obtain paper copies of this document, the listed forms, and any comments received by contacting TTB's Paperwork Reduction Act Officer at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or *informationcollections@ttb.gov* (please do not submit comments to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this document will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

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 has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead

applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0009

Title: Application to Establish and Operate Wine Premises, and Wine Bond.

TTB Form Numbers: TTB F 5120.25 and F 5120.36.

Abstract: The Internal Revenue Code (IRC) at 26 U.S.C. 5351–5357 requires a person wishing to establish a bonded winery, bonded wine cellar, or taxpaid wine bottling house to make application and, in the case of a winery or wine cellar, file a bond in conformity with regulations issued by the Secretary of the Treasury (the Secretary). Under those IRC authorities, TTB regulations provide that respondents file TTB F 5120.25, Application to Establish and Operate Wine Premises, to apply for wine premises permits. Proprietors of established wine premises also use TTB F 5120.25 to report certain changes to previously submitted information. In addition, respondents use TTB F 5120.36, Wine Bond, to file a bond with TTB unless specifically exempted from the bond requirement by the IRC at 26 U.S.C. 5551(d). Respondents may obtain a surety bond or they may provide a collateral bond secured with cash, Treasury Bonds, or Treasury Notes. TTB uses the information collected on the application form to determine if the respondent is qualified under the IRC for a permit, while the information collected through the bond form is intended to ensure payment of any delinquent excise tax liabilities.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours for this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 7,350.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 7,350.
- *Average per-response Burden:* 0.75 hours.
- *Total Burden:* 5,513 hours.

OMB Control No. 1513–0015

Title: Brewer's Bond and Brewer's Bond Continuation Certificate; Brewer's Collateral Bond and Brewer's Collateral Bond Continuation Certificate.

TTB Form Numbers: TTB F 5130.22, 5130.23, 5130.25, and 5130.27.

Abstract: The IRC at 26 U.S.C. 5401(b) generally requires brewers to provide a bond at the time of filing a notice of the intent to operate, unless they are exempt from such bond requirement under 26 U.S.C. 5551(d), which exempts brewers eligible to pay excise taxes on an annual or quarterly basis. To meet the bond requirement, brewers may file a surety bond using TTB F 5130.22, Brewer's Bond, or, under 26 U.S.C. 7101, brewers may deposit cash or certain U.S. securities as collateral using TTB F 5130.25, Brewer's Collateral Bond. Also under the IRC at 26 U.S.C. 5401(b), such bonds expire every four years. Instead of filing a new bond, a brewer may furnish a continuation certificate to extend the term of a surety bond using TTB F 5130.23, Brewer's Bond Continuation Certificate, or a collateral bond using TTB F 5130.27, Brewer's Collateral Bond Continuation Certificate, TTB F 5130.27, as appropriate. The collected information is necessary to protect the revenue as the required bonds ensure payment of any delinquent excise tax liabilities.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 220.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 225.
- *Average per-response Burden:* 0.65 hours.
- *Total Burden:* 143 hours.

OMB Control No. 1513–0017

Title: Drawback on Beer Exported.

TTB Form Number: TTB F 5130.6.

Abstract: Under the IRC at 26 U.S.C. 5055, brewers may claim drawback (refund) of Federal excise taxes paid on beer produced in the United States when they export such beer or deliver it for use as supplies on vessels or aircraft, if the claimant provides proof of export as the Secretary requires by regulation. Under that authority, the TTB regulations require respondents to file such drawback claims using TTB F 5130.6, Drawback on Beer Exported. This form documents the beer's export to a foreign country, receipt by the U.S. Armed Forces for overseas delivery, use as supplies on vessels or aircraft, or its transfer to a foreign trade zone for subsequent export. The collected information is necessary to protect the revenue as it allows TTB to determine if beer is eligible for export drawback.

Current Actions: There are no program or estimated burden changes associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 100.
- *Average Responses per Respondent:* 24.
- *Number of Responses:* 2,400.
- *Average per-response Burden:* 1 hour.
- *Total Burden:* 2,400 hours.

OMB Control No. 1513–0025

Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

TTB Form Number: TTB F 5200.11.

Abstract: The IRC at 26 U.S.C. 5704 provides for, among other things, the release of imported or returned tobacco products and cigarette papers and tubes from customs custody, without payment of tax, for delivery to an export warehouse proprietor or a manufacturer of tobacco products or cigarette papers and tubes, in accordance with regulations issued by the Secretary. Under the TTB regulations, industry members use TTB F 5200.11 in cases where the industry member does not electronically file its import entries with U.S. Customs and Border Protection. Using that form, the industry member, TTB, and customs bonded warehouse proprietors or government officials, respectively, request, authorize, and document the release of tobacco products and cigarette papers and tubes from customs custody, without payment of tax, to a manufacturer or export warehouse proprietor authorized to receive such articles. The collected information is necessary to protect the revenue as it allows TTB to account for and detect diversion of untaxpaid articles. (TTB accounts for electronic filing of import entries under OMB Control No. 1513–0064.)

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 10.
- *Average Responses per Respondent:* 6.
- *Number of Responses:* 60.
- *Average per-response Burden:* 0.25 hours
- *Total Burden:* 15 hours.

OMB Control No. 1513–0032

Title: Inventory—Manufacturer of Tobacco Products or Processed Tobacco.

TTB Form Number: TTB F 5210.9.

Abstract: The IRC at 26 U.S.C. 5721 requires manufacturers of tobacco products and processed tobacco to complete an inventory at the commencement of business, the conclusion of business, and at any other time the Secretary by regulation prescribes. The IRC at 26 U.S.C. 5741 also requires those manufacturers to keep records, which they must make available for inspection in the manner the Secretary by regulation prescribes. Under these authorities, the TTB regulations require manufacturers of tobacco products and processed tobacco to provide inventories on TTB F 5210.9 at the commencement of business, the conclusion of business, when changes in business ownership or location occur, and at any other time directed to do so by the appropriate TTB officer. TTB F 5210.9 provides a uniform format for recording those inventories, which TTB uses to ensure that a manufacturer's Federal excise tax is correctly determined. The required records document the operations regulated under the IRC and provide the basis for determining the industry member's tax liability and conformance with IRC requirements

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 100.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 100.
- *Average per-response Burden:* 2 hours.
- *Total Burden:* 200 hours.

OMB Control No. 1513–0037

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

TTB Form Number: TTB F 5100.11.

Abstract: The IRC, at 26 U.S.C. 5066, 5214, and 5362, provides that persons may withdraw distilled spirits, denatured spirits, and wines from bonded premises without payment of Federal excise tax for export. These IRC sections also state that such withdrawals are subject to regulations prescribed by the Secretary. Under the TTB regulations, such export includes direct export to a foreign country, export to U.S. armed forces stationed overseas, transfer to a foreign trade zone or a customs bonded warehouse for subsequent export, or for use as supplies on vessels or aircraft. Under that IRC authority, the TTB regulations in 27 CFR part 28 require exporters use TTB F 5100.11 to report such removals. The collected information is necessary to protect the revenue as it allows TTB to account for and detect diversion of untaxpaid alcohol products.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 150.
- *Average Responses per Respondent:* 20.
- *Number of Responses:* 3,000.
- *Average per-response Burden:* 0.5 hours.
- *Total Burden:* 1,500 hours.

OMB Control No. 1513–0038

Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

TTB Form Number: TTB F 5100.16.

Abstract: Under the IRC at 26 U.S.C. 5005(c), when a proprietor of a distilled spirits plant (DSP) or an alcohol fuel plant (AFP, a type of DSP) desires to have spirits or denatured spirits transferred to its plant from another domestic plant, the proprietor must make an application to receive such spirits in bond. Under that IRC authority, the TTB regulations in 27 CFR part 19 require the receiving proprietor to file an application for the transfer on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond. TTB must approve the application before the transfer may occur. The collected information is necessary to protect the revenue as it allows TTB to ensure that the receiving plant has adequate bond coverage or, for certain small alcohol excise taxpayers, is exempt from such bond coverage.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 250.
- *Average Responses per Respondent:* 6.
- *Number of Responses:* 1,500.
- *Average per-response Burden:* 0.152 hour.
- *Total Burden:* 228 hours.

OMB Control No. 1513–0044

Title: Distilled Spirits Plants—Notices of Alternations and Changes in Production Status, and Alternating Premises Records.

TTB Form Number: None.

Abstract: Under the IRC at 26 U.S.C. 5178(a), a distilled spirits plant (DSP) is a delineated place on which proprietors can only conduct certain authorized activities. However, under section 5178(b), the Secretary may authorize other businesses on a DSP's premises under certain circumstances upon application. Further, under the IRC at 26 U.S.C. 5221, DSP proprietors must give written notification, in the form and manner prescribed by regulation, when they begin, suspend, or resume production of spirits. In addition, the IRC at 26 U.S.C. 5555 requires those liable for any tax imposed by chapter 51 of the IRC to keep such records, submit such returns and statements, and comply with such rules and regulations as the Secretary may prescribe. Under these authorities, TTB has issued regulations in 27 CFR part 19 requiring that DSP proprietors provide written notification regarding alternation of a DSP between proprietors or for customs purposes, and regarding changes to the production status of spirits. TTB also has issued regulations requiring that DSP proprietors keep records regarding alternations of their premises, including alternations with an adjacent bonded wine cellar, taxpaid wine bottling house, or brewery, and alternations as a manufacturer of eligible flavors or as general premises.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of

DSPs in the United States, TTB is increasing the number of annual respondents, responses, and burden hours reported for this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 2,200.
- *Average Responses per Respondent:* 5.
- *Number of Responses:* 11,000.
- *Average per-response Burden:* 0.5 hour.
- *Total Burden:* 5,500 hours.

OMB Control No. 1513–0048

Title: Registration of, and Miscellaneous Requests and Notices for, Distilled Spirits Plants; and Distilled Spirits Related Requests and Notices for Non-Distilled Spirits Plants.

TTB Form Number: TTB F 5110.41.

Abstract: The IRC, at 26 U.S.C. 5171 and 5172, provides that an applicant must register a distilled spirits plant (DSP) in conformity with regulations issued by the Secretary, while 26 U.S.C. 5201 requires DSP proprietors to operate their premises in conformity with such regulations. Under those IRC authorities, the TTB regulations in 27 CFR part 19 prescribe the use of TTB F 5110.41 to register a DSP or to make certain amendments to an existing DSP registration. Those regulations also require DSP proprietors to submit various notices or requests to vary their operations from the requirements of that part. In addition, those TTB regulations require non-DSP proprietors to submit applications or notices related to certain distilled spirits activities, such as establishment of an experimental DSP or use of spirits for research purposes. The required information is necessary to protect the revenue as it assists TTB in determining a person's eligibility to establish and operate a DSP, whether TTB should approve a variance from its regulatory requirements, and whether non-DSP entities are eligible to engage in certain activities involving distilled spirits.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of DSPs in the United States, TTB is increasing the number of annual respondents, responses, and burden hours reported for this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 3,520.
- *Average Responses per Respondent:* 1.088.
- *Number of Responses:* 3,830.
- *Average per-response Burden:* 2.573 hours.
- *Total Burden:* 9,855 hours.

OMB Control No. 1513–0050

Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

TTB Form Number: TTB F 5110.50.

Abstract: Under the IRC at 26 U.S.C. 7652, beverage distilled spirits and nonbeverage products containing spirits subject to tax manufactured in Puerto Rico and brought into the United States are subject to a tax equal to that imposed on domestically produced spirits under 26 U.S.C. 5001. Additionally, that section authorizes the Secretary to prescribe regulations regarding the mode and time for payment and collection of such taxes. Under that IRC authority, the TTB regulations allow respondents who ship such products from Puerto Rico to the United States to choose either (1) to pay the required tax prior to shipment or (2) to file a bond to defer payment of the tax until the submission of the respondent's next excise tax return and payment. The TTB regulations require respondents who elect to defer payment of tax to file a tax deferral bond on TTB F 5110.50. The required surety bond is necessary to protect the revenue as it ensures payment of the applicable excise tax.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 10.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 10.
- *Average per-response Burden:* 1 hour.
- *Total Burden:* 10 hours.

OMB Control No. 1513–0053

Title: Report of Wine Premises Operations.

TTB Form Number: TTB F 5120.17.

Abstract: The IRC at 26 U.S.C. 5367 authorizes regulations requiring the keeping of records and the filing of returns related to wine cellar and bottling house operations. Section 5555 of the IRC also generally requires any person liable for tax under chapter 51 of the IRC to keep records, provide statements, and make returns as prescribed by regulation. Under those authorities, the TTB wine regulations in 27 CFR part 24 require wine premises proprietors to file periodic operations reports on form TTB F 5120.17. TTB uses the collected information to determine excise tax liabilities and to ensure that respondents operate in accordance with applicable Federal law and regulations. TTB also uses this report to collect raw data on wine premises activity for its generalized monthly statistical report on wine operations, which TTB makes public on its website.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of wine premises in the United States, TTB is increasing the number of annual respondents, responses, and burden hours reported for this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 12,185.
- *Average Responses per Respondent:* 4.327.
- *Number of Responses:* 52,720.
- *Average per-response Burden:* 1.10 hours.
- *Total Burden:* 58,992 hours.

OMB Control No. 1513–0083

Title: Excise Tax Return.

TTB Form Number: TTB F 5000.24.

Abstract: Under the IRC at 26 U.S.C. 5061(a) and 5703(b), the Federal alcohol and tobacco excise tax is collected on the basis of a return. Such excise taxpayers, other than those in Puerto Rico, report their alcohol or tobacco excise tax liability using TTB F 5000.24, Excise Tax Return. Tobacco taxpayers and large alcohol producers file their returns and pay their excise taxes on a semi-monthly basis, while certain small alcohol producers file returns and pay taxes on a quarterly or annual basis, depending on certain circumstances. The collected information is necessary to protect the revenue as it allows TTB to establish a taxpayer's identity, the

amount and type of taxes due, and the amount of payments made.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of TTB-regulated taxpayers, TTB is increasing the number of annual respondents, responses, and burden hours reported for this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 18,870.
- *Average Responses per Respondent:* 6.2.
- *Number of Responses:* 117,000.
- *Average per-response Burden:* 0.75 hour.
- *Total Burden:* 87,750 hours.

OMB Control No. 1513–0092

Title: Marks on Wine Containers (TTB REC 5120/3).

TTB Recordkeeping Number: TTB REC 5120/3.

Abstract: The IRC at 26 U.S.C. 5041 imposes a Federal excise tax of varying rates on six classes of wine—three classes of still wines (based on alcohol content), two classes of effervescent wines, and one class of hard cider. Under the authority of the IRC at 26 U.S.C. 5357, 5368, 5388, and 5662, the TTB regulations in 27 CFR part 24, Wine, require wine premises proprietors to correctly identify wines kept on or removed from their premises by placing certain marks and labels on all production, storage, and consumer containers of wine. Because there are six excise tax classes of wine, and different classes of wine may be produced at the same facility, the required information is necessary to protect the revenue as it helps ensure the appropriate tax is collected. TTB notes, however, that the marking and labeling of wine containers is a usual and customary practice carried out by wine premises proprietors during the normal course of business, regardless of any regulatory requirement to do so, in order to track production and inventory and inform the public of the content of their products.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of wine premises in the United States, TTB is increasing the number of annual respondents and responses for this information collection. However, this collection's estimated burden hours remain zero as there is no burden associated with usual and customary business practices, per the Office of Management and Budget (OMB) regulations at 5 CFR 1320.3(b)(2).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 14,340.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 14,340.
- *Average per-response Burden and Total Burden:* None. (Per the OMB regulations regarding the Paperwork Reduction Act at 5 CFR 1320.3(b)(2), there is no burden associated with usual and customary business practices that respondents undertake during the normal course of business regardless of any regulatory requirements to do so.

OMB Control No. 1513–0113

Title: Special Tax ''Renewal'' Registration and Return/Special Tax Location Registration Listing.

TTB Form Number: TTB F 5630.5R.

Abstract: The IRC at 26 U.S.C. 5731 and 5732 requires manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors to pay an annual special (occupational) tax (SOT) for each such premises that they operate. In addition, the IRC at 26 U.S.C. 5732 requires such proprietors to pay SOT on the basis of a return under regulations issued by the Secretary. Form TTB F 5630.5R, which TTB sends out annually to tobacco industry members that have previously paid the special tax, meets this purpose. TTB's use of TTB F 5630.5R protects the revenue by facilitating the registration of premises subject to SOT and the timely payment of that tax by the businesses subject to it. The information collected on the form is essential to TTB's collecting, processing, and accounting for these special occupational taxes.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 220.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 215.
- *Average per-response Burden:* 0.25 hour.
- *Total Burden:* 55 hours.

OMB Control No. 1513–0115

Title: Usual and Customary Business Records Relating to Wine, TTB REC 5120/1.

TTB Recordkeeping Number: None.

Abstract: Under the authority of the IRC at 26 U.S.C. 5362, 5367, 5369, 5370, and 5555, the TTB regulations require wineries, taxpaid wine bottling houses, and vinegar plants to keep usual and customary business records. These records include purchase invoices, sales invoices, and internal records related to their production and processing, packaging, storing, and shipping operations. TTB routinely inspects these records to ensure proper payment of wine excise taxes, and, to ensure that proprietors product, package, store, ship, and transfer wine in compliance with statutory and regulatory requirements.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of wine premises in the United States, TTB is increasing the number of annual respondents and responses for this information collection. However, this collection's estimated burden hours remain zero as there is no burden associated with usual and customary business practices, per the Office of Management and Budget (OMB) regulations at 5 CFR 1320.3(b)(2).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 14,340.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 14,340.
- *Average per-response Burden and Total Burden:* None. (Per the OMB regulations regarding the Paperwork Reduction Act at 5 CFR 1320.3(b)(2), there is no burden associated with usual and customary business practices that

respondents undertake during the normal course of business regardless of any regulatory requirements to do so.

OMB Control No. 1513–0117

Title: Pay.gov User Agreement.

TTB Form Number: TTB F 5000.31.

Abstract: The Federal Government's *Pay.gov* system allows businesses and members of the public to pay various taxes and fees, and submit various reports and requests, electronically. The TTB portion of the *Pay.gov* system provides qualified alcohol and tobacco proprietors with a means to file tax returns and pay taxes, and submit operations and production reports, electronically rather than submitting paper checks and documents by postal mail or delivery service. TTB uses the *Pay.gov* User Agreement, TTB F 5000.31, to identify, validate, approve, and register qualified users of its portion of the *Pay.gov* system in order to prevent misuse of that system.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours reported for this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 2,000.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 2,000.
- *Average per-response Burden:* 5 minutes.
- *Total Burden:* 167 hours.

OMB Control No. 1513–0123

Title: Application, Permit, and Report—Wine and Beer (Puerto Rico); and Application, Permit, and Report—Distilled Spirits Products (Puerto Rico).

TTB Form Number: TTB F 5110.21 and F 5110.51.

Abstract: In general, under the IRC at 26 U.S.C. 7652(a)(1), merchandise manufactured in Puerto Rico and shipped to the United States for consumption or sale is subject to a tax equal to the internal revenue tax imposed in the United States upon like articles of merchandise of domestic manufacture. Under that authority, the TTB regulations require persons file an application and permit to compute the tax on, tax-pay, and withdraw certain alcohol products for shipment to the United States. To do so, the regulations prescribe the use of TTB F 5100.21 for beer or wine products, and TTB F 5110.51 for distilled spirits products. In cases where the respondent is eligible to defer the tax payment, TTB uses the required information to verify that the respondent's bond coverage is adequate to cover the taxes due. In cases where the respondent makes the shipment taxpaid, TTB uses the required information to ensure that the respondent has paid the correct amount of tax. If necessary, TTB also uses the collected information to enforce collection of any alcohol excise tax owed to the Federal government.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 35.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 35.
- *Average per-response Burden:* 1 hour.
- *Total Burden:* 35 hours.

OMB Control No. 1513–0125

Title: Distilled Spirits Bond.

TTB Form Number: TTB F 5110.56.

Abstract: The IRC at 26 U.S.C. 5173 and 5181 requires distilled spirits plants (DSPs) and alcohol fuel plants (AFPs) to furnish a bond, unless exempted from doing so under the IRC at 26 U.S.C. 5551(d) and 5181(c)(3). Proprietors of such plants use TTB F 5110.56 to file with TTB either a surety bond or a collateral bond using cash or U.S. securities. Using that same form, proprietors also may withdraw coverage for one or more plants, and DSP proprietors may provide operations coverage for adjacent wine cellars. The collected information is necessary to protect the revenue as the required bonds ensure payment of any delinquent excise tax liabilities.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours reported for this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 310.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 310.
- *Average per-response Burden:* 1 hour.
- *Total Burden:* 310 hours.

OMB Control No. 1513–0128

Title: Records to Support Tax Free and Tax Overpayment Sales of Firearms and Ammunition.

TTB Form Numbers: TTB F 5600.33, F 5600.34, F 5600.35, F 5600.36, and F 5600.37.

Abstract: The IRC at 26 U.S.C. 4181 imposes excise taxes on the sale of firearms and ammunition. However, under the IRC at 26 U.S.C. 4221(a), certain sales may be made tax-free, including those made for further manufacture, export, and those made to a State or local government or a nonprofit educational organization for its exclusive use. In cases of sales where the excise tax has already been paid, the tax is considered an overpayment subject to credit or refund under the IRC at 26 U.S.C. 6416(b)(2) and (b)(3). To protect the revenue, the TTB regulations in 27 CFR part 53 prescribe that a respondent otherwise subject to the firearms or ammunition excise tax must maintain records, including statements or certificates containing specified information, documenting the tax-free or tax-overpaid nature of such sales. Respondents may use commercial records or self-generated supporting statement or certificates, or, for certain transactions, respondents may use TTB-provided forms, which, when completed, document the required supporting information. Respondents maintain the required information at their business premises, and TTB may examine the records during tax audits.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, and Tribal governments; Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 7,000.
- *Average Responses per Respondent:* 10.
- *Number of Responses:* 70,000.
- *Average per-response Burden:* 0.75 hour.
- *Total Burden:* 52,500 hours.

Dated: August 31, 2020.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2020–19528 Filed 9–2–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On August 7, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked pursuant to the relevant sanctions authority listed below.

Individuals

1. LAM, Carrie (a.k.a. LAM CHENG, Carrie Yuet-ngor; a.k.a. LAM CHENG, Yuet-ngor (Chinese Simplified: 林郑月娥; Chinese Traditional: 林鄭月娥)), Victoria House, No. 15 Barker Road, The Peak, Hong Kong; DOB 13 May 1957; POB Hong Kong; nationality Hong Kong; Gender Female; Passport KJ0505670 (Hong Kong) issued 13 Apr 2016 expires 13 Apr 2026; National ID No. D3356664 (Hong Kong); Chief Executive of the Hong Kong Special Administrative Region (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(i) of Executive Order 13936 of July 14, 2020, "The President's Executive Order on Hong Kong Normalization," 85 FR 43413 (E.O. 13936) for being a foreign person who is or has been involved, directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or being or having been responsible for or involved in developing, adopting, or implementing, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

2. TANG, Chris (a.k.a. TANG, Ping-keung (Chinese Traditional: 鄧炳強)), 1 Arsenal Street, Hong Kong; DOB 04 Jul 1965; POB Hong Kong; nationality Hong Kong; Gender Male; Passport KJ0638810 (Hong Kong) issued 14 Oct 2017 expires 14 Oct 2027; National ID No. D4118015 (Hong Kong); Commissioner of Police (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(i) of E.O. 13936 for being a foreign person who is or has been involved, directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or being or having been responsible for or involved in developing, adopting, or implementing, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

3. LO, Stephen (a.k.a. LO, Stephen Wai-chung; a.k.a. LO, Wai-chung (Chinese Traditional: 盧偉聰; Chinese Simplified: 卢伟聪)), Hong Kong; DOB 19 Nov 1961; POB Hong Kong; nationality Hong Kong; Gender Male; National ID No. E8586768 (Hong Kong) (individual) [HK-EO13936].

Designated pursuant to section 4(a)(iii)(A) of E.O. 13936 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in censorship or other activities with respect to Hong Kong that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Hong Kong, or that limit access to free and independent print, online, or broadcast media, as described in section 4(a)(ii)(C) of E.O. 13936.

4. LEE, John Ka-chiu (a.k.a. LEE, John; a.k.a. LEE, Ka Chiu (Chinese Traditional: 李家超); a.k.a. "LI, Jiachao"), Flat A, 5/F, Block 2, King's Park Villa, No. 1 King's Park Rise, Homantin, Kowloon, Hong Kong; DOB 07 Dec 1957; Gender Male; National ID No. G0286787 (Hong Kong); Secretary for Security (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(i) of E.O. 13936 for being a foreign person who is or has been involved, directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or being or having been responsible for or involved in developing, adopting, or implementing, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

5. CHENG, Teresa (a.k.a. CHENG, Teresa Yeuk-wah; a.k.a. CHENG, Yeuk Wah), House No. 4, Villa De Mer, 5 Lok Chui Street, Tuen Mun, Hong Kong; DOB 11 Nov 1958; POB Hong Kong; nationality Hong Kong; Gender Female; Passport KJ0221326 (Hong Kong) issued 28 Jan 2012 expires 28 Jan 2022; National ID No. G579067A (Hong Kong); Secretary for Justice (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(i) of E.O. 13936 for being a foreign person who is or has been involved, directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or being or having been responsible for or involved in developing, adopting, or implementing, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

6. TSANG, Erick (a.k.a. CENG, Guowei; a.k.a. TSANG, Erick Kwok-wai; a.k.a. TSANG, Kwok-wai (Chinese Traditional: 曾國衛; Chinese Simplified: 曾国卫); a.k.a. ZENG, Guowei), Flat 5F, Block 6, New Jade Gardens, Chaiwan, Hong Kong; DOB 01 Sep 1963; POB Hong Kong; nationality Hong Kong; Gender Male; National ID No. E9963190 (Hong Kong); Secretary for Constitutional and Mainland Affairs (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(i) of E.O. 13936 for being a foreign person who is or has been involved, directly or indirectly, in the coercing, arresting, detaining, or

imprisoning of individuals under the authority of, or being or having been responsible for or involved in developing, adopting, or implementing, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

7. CHAN, Eric (a.k.a. CHAN, Eric Kwok-ki; a.k.a. CHAN, Kwok-ki (Chinese Simplified: 陈国基; Chinese Traditional: 陳國基)), Flat F, 20 Floor, Block 2, Royal Ascot, Shatin, Hong Kong; DOB 05 Apr 1959; POB Hong Kong; nationality Hong Kong; Gender Male; National ID No. G142458A (Hong Kong); Secretary General, Committee for Safeguarding National Security of the Hong Kong Special Administrative Region (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(i) of E.O. 13936 for being a foreign person who is or has been involved, directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or being or having been responsible for or involved in developing, adopting, or implementing, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

8. LUO, Huining (Chinese Simplified: 骆惠宁; Chinese Traditional: 駱惠寧), Hong Kong; DOB 05 Oct 1954; POB Dangtu, China; nationality China; Gender Male; National ID No. 340103195410053558 (China); Director, Hong Kong Liaison Office (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(iii)(A) of E.O. 13936 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong, as described in section 4(a)(ii)(B) of E.O. 13936.

9. XIA, Baolong (Chinese Simplified: 夏宝龙; Chinese Traditional: 夏寶龍), China; DOB 01 Dec 1952 to 31 Dec 1952; POB Tianjin, China; Gender Male; Director, Hong Kong and Macao Affairs Office of the State Council (individual) [HK-EO13936].

   Designated pursuant to section 4(a)(iii)(A) of E.O. 13936 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong, as described in section 4(a)(ii)(B) of E.O. 13936.

10. ZHANG, Xiaoming (Chinese Simplified: 张晓明; Chinese Traditional: 張曉明), China; DOB 03 Sep 1963; POB Taizhou, China; nationality China; Gender Male; National ID

No. 11010819630903003X (China); Deputy Director, Hong Kong and Macao Affairs Office of the State Council (individual) [HK-EO13936].

Designated pursuant to section 4(a)(iii)(A) of E.O. 13936 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong, as described in section 4(a)(ii)(B) of E.O. 13936.

11. ZHENG, Yanxiong (Chinese Simplified: 郑雁雄; Chinese Traditional: 鄭雁雄), Apt 608, 50 Huali Road, Guangzhou, Guangdong 510623, China; DOB 25 Aug 1963; POB Shantou, China; nationality China; Gender Male; Passport SE0226769 (China) issued 10 Aug 2016 expires 10 Aug 2021; National ID No. 440111196308254212 (China); Director, Office for Safeguarding National Security in Hong Kong (individual) [HK-EO13936].

Designated pursuant to section 4(a)(iii)(A) of E.O. 13936 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong, as described in section 4(a)(ii)(B) of E.O. 13936.

Dated: August 7, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–19532 Filed 9–2–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Annual Return/Report of Employee Benefit Plan

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the Annual Return/Report of Employee Benefit Plan.

DATES: Written comments should be received on or before November 2, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Return/Report of Employee Benefit Plan.

OMB Number: 1545–1610.

Form Number: 5500 and Schedules.

Abstract: The Annual Return/Report of Employee Benefit Plan is an annual information return filed by employee benefit plans. The IRS uses this information for a variety of matters, including ascertainment whether a qualified retirement plan appears to conform to requirements under the Internal Revenue Code or whether the plan should be audited for compliance. Form 5500–EZ (OMB Number: 1545–0956) is an annual return filed by a one participant (owners/partners and their spouses) retirement plan or a foreign plan to satisfy certain annual reporting and filing requirements imposed by the Internal Revenue Code (Code). The IRS uses this data to determine if the plan appears to be operating properly as required under the Code or whether the plan should be audited.

Current Actions:

IRS PROPOSED CHANGES TO THE 2021 FORM 5500S AND INSTRUCTIONS PER SECURE ACT 201

Proposed changes	Apply to form/ schedule	Authority	Reasons for changes
Adding a new checkbox to Form 5500, 5500–SF, and Form 5500–EZ for an initial plan retroactively adopted as permitted by SECURE Act section 201. If this is a retroactively adopted plan permitted by SECURE Act section 201, check here ☐	Form 5500, Part I. 5500–SF, Part I 5500–EZ, Part I	SECURE Act 201. IRC 6058(a) ..... 401(b)	• Section 201 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), Public Law 116–94, amends IRC section 401(b) to allow an employer who adopts a retirement plan after the close of a taxable year but before the due date of filing its return for the taxable year (including extensions) to treat the plan as having been adopted as of the last day of the taxable year. • IRC Section 6058(a) requires every employer who maintains a retirement plan to file an annual return stating such information with respect to the qualification, financial condition, and operation of the plan as provided by the Secretary. • To implement the changes made by the SECURE Act, IRS proposes adding a new checkbox to Form 5500s for a plan sponsor if the annual return is being filed for an initial plan retroactively adopted pursuant to SECURE Act section 201. However, IRS requires an initial annual return only for a plan that has participants and plan assets as of the end of the initial plan year.
Revise Form 5500–EZ Part IB, Checkbox for an extension of time. B. Check box if filing under ☐ Form 5558 ☐ automatic extension ☐ special extension (enter description)	Form 5500–EZ, Part I.	IRC 6081 7508A	• A plan can get an extension of time to file a Form 5500 using the Form 5558, *Application for Extension of Time To File Certain Employee Plan Returns,* or using the employer's extension of time to file its federal income tax return if certain conditions are met; or using a special extension as the IRS may announce under certain circumstances, such as an extension for Presidentially declared disasters authorized in IRC 7508A. • Accordingly, there are three checkboxes for extension of time on Form 5500 and Form 5500–SF. There is only one extension of time checkbox on the current Form 5500–EZ. • Our proposal can mirror Part I of the Form 5500 and Form 5500–SF because Form 5500–EZ filers can no longer use Form 5500–SF beginning in the 2020 plan year. • The proposed change will streamline the plan sponsors' ability to identify the correct extension for which they are applying, and be consistent with Form 5500 and Form 5500–SF.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit organizations, individuals and households, not-for profit institutions, and farms.

Estimated Number of Respondents: 923,800.

Estimated Time Per Respondent: 1 hr., 34 mins.

Estimated Total Annual Burden Hours: 1,451,543.

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. Comments will be 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 has 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 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: August 27, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020–19449 Filed 9–2–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Agency Information Collection Activity under OMB Review: Application for DIC, Death Pension, and/or Accrued Benefits; Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child; Application for Dependency and Indemnity Compensation

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0004.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0004'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1310 through 1314 and 1532 through 1543.

Title: Application for DIC, Death Pension, and/or Accrued Benefits; Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child; Application for Dependency and Indemnity Compensation.

OMB Control Number: 2900–0004.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–534 is used to gather the necessary information to determine the eligibility of surviving spouses and children for dependency and indemnity compensation (DIC), death pension, accrued benefits, and death compensation. VA Form 21P–534a is an abbreviated application for DIC that is used only by surviving spouses and children of veterans who died while on active duty service. The VA Form 21P–534EZ is used for the Fully Developed Claims (FDC) program for pension claims. Without this information, determination of entitlement would not be possible. 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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 114 on June 14, 2020, pages 35997 and 35998.

Affected Public: Individuals or Households.

Estimated Annual Burden: 62,857 hours.

Estimated Average Burden Per Respondent: 37.184 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 101,426.

By direction of the Secretary:

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk (QPR), Department of Veterans Affairs.

[FR Doc. 2020–19450 Filed 9–2–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2, that the Veterans' Advisory Committee on Rehabilitation (VACOR) will meet virtually on Wednesday, September 16 from 12:00 p.m. to 1:30 p.m. EST. The virtual meeting sessions is open to the public.

The purpose of the Committee is to advise the Secretary of VA on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

On September 16, 2020, the Ad Hoc subcommittee will publicly brief the Aug 20, 2020 Day 2 virtual field visit for VACOR to consider in their recommendation discussions. Committee members will discuss recommendations to be included in the Committee's next annual comprehensive report.

Time will be allocated for receiving oral comments from the public. Members of the public may submit written comments for review by the Committee to Latrese Arnold, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW, Washington, DC 20420, or at *Latrese.Arnold@va.gov.* In the communication, writers must identify themselves and state the organization, association or person(s) they represent. For any members of the public that wish to attend virtually, they may use the WebEx link: *https://veteransaffairs.webex.com/veteransaffairs/e.php?MTID=ma11b82b1abd06bdad9e8a1341b53137e,* password: V9k7aaYTp*3, or join by phone at +14043971596,1999824330##

Dated: August 28, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–19469 Filed 9–2–20; 8:45 am]

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Part II

Securities and Exchange Commission

17 CFR Parts 240 and 276

Exemptions From the Proxy Rules for Proxy Voting Advice; Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–89372; File No. S7–22–19]

RIN 3235–AM50

Exemptions From the Proxy Rules for Proxy Voting Advice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to its rules governing proxy solicitations so that investors who use proxy voting advice receive more transparent, accurate, and complete information on which to make their voting decisions, without imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice. The amendments add conditions to the availability of certain existing exemptions from the information and filing requirements of the Federal proxy rules that are commonly used by proxy voting advice businesses. These conditions require compliance with disclosure and procedural requirements, including conflicts of interest disclosures by proxy voting advice businesses and two principles-based requirements. In addition, the amendments codify the Commission's interpretation that proxy voting advice generally constitutes a solicitation within the meaning of the Securities Exchange Act of 1934. Finally, the amendments clarify when the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the antifraud provision of the proxy rules, depending upon the particular facts and circumstances.

DATES: *Effective date:* The rules are effective November 2, 2020.

Compliance dates: See Section II.E.

FOR FURTHER INFORMATION CONTACT: Daniel S. Greenspan, Senior Counsel, Office of Rulemaking, at (202) 551–3430 or Valian Afshar, Special Counsel, Office of Mergers and Acquisitions, at (202) 551–3440, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 240.14a–1(l) (''Rule 14a–1(l)''), 17 CFR 240.14a–2 (''Rule 14a–2''), and 17 CFR 240.14a–9 (''Rule 14a–9'') under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act'').[1]

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I. Introduction

Annual and special meetings of publicly traded corporations, where shareholders are provided the opportunity to vote on various matters, are a key component of corporate governance. The applicable laws are set by the state in which the corporation is incorporated. For various reasons, including the widely dispersed nature of public share ownership, most shareholders do not attend these meetings in person. Rather, most shareholders of publicly traded companies exercise their right to vote on corporate matters through the use of proxies.[2] Congress vested in the Commission the broad authority to oversee the proxy solicitation process when it originally enacted the Securities Exchange Act of 1934 (the ''Exchange Act'').[3] As the securities markets have become increasingly more sophisticated and complex, and the intermediation of share ownership and participation of various market participants has grown in kind,[4] the Commission's interest in

[1] Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of the Exchange Act, we are referring to 15 U.S.C. 78a of the United States Code, at which the Exchange Act is codified, and when we refer to rules under the Exchange Act, or any paragraph of these rules, we are referring to title 17, part 240 of the Code of Federal Regulations [17 CFR 240], in which these rules are published.

[2] *See Concept Release on the U.S. Proxy System,* Release No. 34–62495 (Jul. 14, 2010) [75 FR 42982 (July 22, 2010)] (''Concept Release''), at 42984.

[3] *See Regulation of Communications Among Shareholders,* Release No. 34–31326 (Oct. 16, 1992) [57 FR 48276 (Oct. 22, 1992)] (''Communications Among Shareholders Adopting Release''), at 48277 (''Underlying the adoption of Section 14(a) of the Exchange Act was a Congressional concern that the solicitation of proxy voting authority be conducted on a fair, honest and informed basis. Therefore, Congress granted the Commission the broad 'power to control the conditions under which proxies may be solicited'. . . .'').

[4] *See* Concept Release at 42983 (''This complexity stems, in large part, from the nature of share ownership in the United States, in which the vast majority of shares are held through securities intermediaries such as broker-dealers or banks. . . .'').

ensuring fair, honest, and informed markets, underpinned by a properly functioning proxy system, dictates that we regularly assess whether the system is serving investors as it should.[5]

In today's financial markets, which are characterized by significant intermediation and institutional investor participation,[6] proxy voting advice businesses[7] have come to play an important role in the proxy voting process by providing an array of voting services that can help investment advisers and institutional investor clients manage their substantive and procedural proxy voting needs.[8] Investment advisers and institutional investors often retain proxy voting advice businesses to assist them in making their voting determinations on behalf of their own clients and to handle other aspects of the voting process, which for certain investment advisers has become increasingly complex and demanding over time.[9] Investment advisers voting on behalf of clients (including retail investors) and institutional investors, by virtue of their holdings in many public companies, including as a result of indexing and other broad portfolio management strategies, must manage the logistics of voting in potentially hundreds, if not thousands, of shareholder meetings and on thousands of proposals that are presented at these meetings each year, with the significant portion of those voting decisions concentrated in a period of a few months.[10]

Proxy voting advice businesses typically provide investment advisers, institutional investors, and other clients with a variety of services that relate to the substance of voting decisions, such as: Providing research and analysis regarding the matters subject to a vote; promulgating their generally applicable benchmark voting policies (a ''benchmark policy'') or specialty voting policies (a ''specialty policy''), such as a socially responsible policy, a sustainability policy, or a Taft-Hartley labor policy,[11] that their clients can use; and making specific voting recommendations to their clients on matters subject to a shareholder vote, either based on the proxy voting advice business's benchmark or specialty policies or based on custom voting policies that are proprietary to a proxy voting advice business's clients (''custom policy'').[12] This advice is often an important factor in the clients' proxy voting decisions. Clients may use the proxy voting advice business's recommendations in a variety of ways, including as an alternative or supplement to their own internal resources in analyzing matters when deciding how to vote.[13]

Proxy voting advice businesses may also provide services that assist clients in handling the administrative tasks of the voting process, typically through an electronic platform that enables their clients to cast votes more efficiently.[14] In some cases, proxy voting advice businesses are given authority to execute votes on behalf of their clients in accordance with the clients' general guidance or specific instructions.[15]

Although estimates vary, each year proxy voting advice businesses provide voting advice to thousands of clients that exercise voting authority over a sizable number of shares.[16] Because proxies have become the predominant means by which shareholders of publicly traded companies exercise their right to vote on corporate matters,[17] and institutional investors hold a significant and increasing number of shares, proxy voting advice businesses have become uniquely situated in today's market to influence,[18] and in many cases directly execute, these investors' voting decisions.[19]

In recognition of the important and unique role that proxy voting advice businesses play in the proxy voting process[20] and in the voting decisions of investment advisers and institutional investors[21] who often vote on behalf of retail investors, the Commission proposed amendments to the Federal proxy rules in November 2019 to enhance the transparency, accuracy, and completeness of the information provided to clients of proxy voting advice businesses in connection with their voting decisions.[22]

Specifically, the Commission proposed amendments to codify its interpretation that proxy voting advice generally constitutes a solicitation within the meaning of Exchange Act Section 14(a) and therefore is subject to the Federal proxy rules. In addition, the Commission proposed to condition the

[5] *See, e.g., id.* at 43020 (''The U.S. proxy system is the fundamental infrastructure of shareholder suffrage since the corporate proxy is the principal means by which shareholders exercise their voting rights. The development of issuer, securities intermediary, and shareholder practices over the years, spurred in part by technological advances, has made the system complex and, as a result, less transparent to shareholders and to issuers. It is our intention that this system operate with the reliability, accuracy, transparency, and integrity that shareholders and issuers should rightfully expect.'').

[6] *See Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice,* Release No. 34–87457 (Nov. 5, 2019) [84 FR 66518 (Dec. 4, 2019)] (''Proposing Release'') at 66519.

[7] For purposes of this release, we refer to firms that advise investment advisers and institutional investors on their voting determinations, and any person who markets and sells such advice, as ''proxy voting advice businesses.'' Unless otherwise indicated, the term ''proxy voting advice'' as used in this release refers to the voting recommendations provided by proxy voting advice businesses on specific matters presented at a registrant's shareholder meeting, or for which written consents or authorizations from shareholders are sought in lieu of a meeting, and the analysis and research underlying the voting recommendations that are delivered to the proxy voting advice business's clients through any means, such as in a standalone written report or multiple reports, an integrated electronic voting platform established by the proxy voting advice businesses, or any combination thereof. The reference to ''proxy voting advice,'' as used in this release, is not intended to encompass (1) administrative or ministerial services, (2) data or research that is not used by a proxy voting advice business to formulate its voting recommendations, or (3) the identity of any of the proxy voting advice business's clients that receive such advice. To the extent any data or research underlies a proxy voting advice business's voting recommendations but is not delivered to its clients (such as internal work product), such data or research also would not constitute that business's proxy voting advice. Further, we recognize that, in formulating its voting recommendations, a proxy voting advice business may use data and research that was prepared by another party, such as market intelligence and database providers. For the avoidance of doubt, the fact that a third party's data and research is used by the proxy voting advice business would not, by itself, cause such third party to be a proxy voting advice business. However, if a proxy voting advice business uses a third party's data and research in formulating its voting recommendations and delivers such data and research to its clients, then the data and research would constitute part of the proxy voting advice business's proxy voting advice.

[8] *See* Proposing Release at 66520, n.17.

[9] *Id.* at 66519, n.9.

[10] *Id.* at n.8.

[11] For example, the various benchmark and specialty policies of one proxy voting advice business, Institutional Shareholder Services (ISS), are set forth on the following web page: *https://www.issgovernance.com/policy-gateway/voting-policies/.* The various benchmark and specialty policies of another proxy voting advice business, Egan-Jones, are set forth on the following web page: *https://www.ejproxy.com/methodologies/.*

[12] *See* Proposing Release at 66519. As discussed *infra* Section II.C.3.c.i., we are excluding from the requirements of new Rule 14a–2(b)(9)(ii) proxy voting advice to the extent that such advice is based on custom policies. Custom policies would not include the proxy voting advice businesses' benchmark or specialty policies, even if those benchmark or specialty policies were to be adopted by proxy voting advice businesses' clients. *See infra* note 394 for a discussion of how a proxy voting advice business may satisfy the requirements of new Rule 14a–2(b)(9)(ii) in situations in which a client's custom policy is identical to the benchmark or specialty policies.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 66520, n.18.

[17] *Id.* at 66518, n.2.

[18] *See, e.g.,* letter from Council of Inst. Investors (Nov. 14, 2019) (''CII I'') (noting that proxy voting advice businesses' ''recommendations and related analysis'' may be ''market-moving'').

[19] *See also infra* note 36 for a discussion of the increased institutional investor holdings in the U.S. markets.

[20] *Id.* at 66520.

[21] *Id.*

[22] *See generally* Proposing Release.

availability of certain existing exemptions from the information and filing requirements of the Federal proxy rules commonly used by proxy voting advice businesses upon compliance with additional disclosure and procedural requirements. Finally, the Commission proposed to amend Exchange Act Rule 14a–9, the antifraud provision of the Federal proxy rules, to clarify that, depending upon the particular facts and circumstances at issue, the failure to disclose certain information in proxy voting advice may be considered materially misleading within the meaning of the rule.

We received many comment letters in response to the Proposing Release.[23] After considering the public comments, we are adopting the proposed rules with certain modifications as described, and for the reasons set forth, below. Consistent with the proposal, we are adhering to—and adopting an amendment to Rule 14a–1(l) to codify—our longstanding view that proxy voting advice generally constitutes a ''solicitation'' under Section 14(a).[24] Absent an applicable exemption, a person providing such proxy voting advice would be subject to the Federal proxy rules' information and filing requirements, including the obligation to file and furnish definitive proxy statements. For reasons previously stated in the Proposing Release, we believe that proxy voting advice businesses should be eligible to rely on an exemption from such information and filing requirements for their proxy voting advice, but only to the extent that such exemption is appropriately tailored to their unique role in the proxy process and facilitates the transparency, accuracy, and completeness of the information available to those making voting decisions. As such, under the new rules that we are adopting, persons furnishing proxy voting advice constituting a solicitation as defined in new 17 CFR 240.14a–1(l)(1)(iii)(A) (''Rule 14a–1(l)(1)(iii)(A)'') will be eligible to rely on the exemptions in 17 CFR 240.14a–2(b)(1) (''Rule 14a–2(b)(1)'') and 17 CFR 240.14a–2(b)(3) (''Rule 14a–2(b)(3)'')[25] only upon satisfaction of the conditions of new 17 CFR 240.14a–2(b)(9) (''Rule 14a–2(b)(9)'').

As described in more detail below, we have modified these conditions in a number of respects in response to comments received to provide appropriate flexibility to proxy voting advice businesses to meet the principles that underlie the objectives of the rule, and to avoid unnecessary potential disruptions to their ability to provide their clients with timely voting advice. In addition, consistent with the amendments to 17 CFR 240.14a–2(b) (''Rule 14a–2(b)''), we are amending Rule 14a–1(l) to make clarifying changes to the definition of solicitation as it relates to proxy voting advice and amending Rule 14a–9 to add to the list of examples provided in the Note to that rule. We are adopting these amendments to Rule 14a–1(l) and Rule 14a–9 substantially in the form proposed, with certain modifications as described in the discussion that follows.

We recognize that for some shareholders, the services provided by proxy voting advice businesses can be an important component of the larger proxy voting process and, as such, help facilitate the participation of shareholders in corporate governance through the exercise of their voting rights.[26] We are also mindful that the efficacy and effectiveness of the proxy voting system depend on the ability of shareholders to obtain transparent, accurate, and materially complete information from an array of relevant parties before making their proxy voting decisions. To enable shareholders to make informed voting decisions, Congress and the Commission have placed varying obligations on participants in the proxy voting process, including through Commission rulemakings pursuant to the broad authority granted by Congress to regulate proxy solicitation.[27]

For example, registrants and others who engage in a proxy solicitation generally must furnish shareholders with a definitive proxy statement containing numerous specified disclosures.[28] They must also generally file all of their additional soliciting materials with the Commission, which ensures that all shareholders and interested parties have access to their soliciting statements and have an ability to consider such statements as part of their voting decisions and, in certain situations such as in a proxy contest, respond to them.[29] The Commission, however, has long recognized that these general requirements applicable to registrants and others engaged in a proxy solicitation may not be necessary under certain circumstances and, throughout the years, has tailored the application of these requirements as needed. For example, shareholders who beneficially own more than $5 million of securities and who do not seek proxy voting authority are exempt from the requirement to file a definitive proxy statement when they engage in a solicitation, but they still must publicly file with the Commission any written soliciting materials sent to security holders and are subject to the antifraud provisions of Rule 14a–9 with respect to the content of those soliciting materials.[30] Parties conducting certain other solicitation activities, including the furnishing of proxy voting advice, have relied on other exemptions from the requirement to file proxy statements.[31] Still other activity has

[23] *See generally* letters submitted in connection with the Proposing Release, *available at https://www.sec.gov/comments/s7-22-19/s72219.htm.* Unless otherwise specified, all references in this release to comment letters are to those relating to the Proposing Release. In addition, the SEC's Investment Advisory Committee adopted recommendations asking the Commission to: prioritize improvements to the proxy system (end-to-end vote confirmations, reconciliations, and universal proxies); improve conflict-of-interest disclosure generally; enhance the discussion about the value of proxy advisors and shareholder proposals; and expand the economic cost-benefit analysis. *See* U.S. Securities & Exchange Commission Investor Advisory Committee, Recommendation of the SEC Investor Advisory Committee Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals (Jan. 24, 2020) (''IAC Recommendation''), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf.* These recommendations were not unanimously approved by the members of the Investor Advisory Committee; *see* letters from Stephen Holmes (Jan. 27, 2020) (''S. Holmes''); Paul G. Mahoney and J.W. Verret (Jan. 30, 2020) (''P. Mahoney and J.W. Verret''); Heidi Stam (Jan. 27, 2020). We address the substance of the IAC Recommendation, together with related public comments, in the discussion that follows. Finally, the 2019 Small Business Forum Report included a recommendation that the Commission provide ''for effective oversight of proxy advisory firms under Rule 14a–2(b), with a focus on conflicts of interest, accuracy, transparency, and issuer-specific decision making.'' This recommendation was tied for first place in the priority ranking assigned by the participants of the breakout group session. *See* Final Report of the 2019 SEC Government-Business Forum on Small Business Capital Formation (December 2019) (''2019 Small Business Forum''), *available at https://www.sec.gov/files/small-business-forum-report-2019.pdf.*

[24] *See infra* Section II.A.3.

[25] Proxy voting advice businesses have typically relied upon the exemptions in Rule 14a–2(b)(1) and (b)(3) to provide advice without complying with the filing and information requirements of the proxy rules. *See* Proposing Release at 66525 and n.68.

[26] *See* Proposing Release at 66525.

[27] *See infra* notes 55–60 and accompanying text for a discussion of the multifaceted nature of the Federal securities laws' security holder voting and ownership disclosure regulatory framework.

[28] 17 CFR 240.14a–3; 17 CFR 240.14a–101.

[29] 17 CFR 240.14a–6(b).

[30] 17 CFR 240.14a–2(b)(1); 17 CFR 240.14a–6(g).

[31] 17 CFR 240.14a–2(b). Rules 14a–2(a) and (b) set forth a number of activities that fall within the definition of a solicitation but for which the requirement to file a definitive proxy statement does not apply. This includes, for example, the delivery of registrants' proxy materials by securities intermediaries to their clients and the securities intermediaries' request for voting instructions from their clients (Rule 14a–1(a)(1)), solicitations by or on behalf of a person who does not seek proxy authority (Rule 14a–2(b)(1)), solicitations of no more than ten persons (Rule 14a–2(b)(2)), the

been entirely exempt from the proxy rules, including Rule 14a–9.[32]

The Commission has periodically adjusted the proxy rules in response to market developments, including to provide shareholders with additional sources of information.[33] In calibrating the rules and exemptions, the Commission has generally sought to avoid unnecessary burdens that may deter the expression of views on matters presented for a vote while ensuring that shareholders have transparent, accurate, and materially complete information upon which to make their voting decisions.[34] In this regard, the Commission has been guided by the ''fundamental conclusion that the interests of shareholders are best served by more, and not less, discussion of matters presented for a vote.'' [35] This same principle guides us again as we update the Commission's rules in light of current market practices and circumstances.

As explained in the Proposing Release, proxy voting advice businesses have become an increasingly important and prominent part of the proxy voting process as institutional investors, who own a majority of the outstanding shares in today's market,[36] often retain proxy voting advice businesses to assist them in making their voting determinations and voting their shares on behalf of clients. In recent years, registrants, investors, and others have expressed concerns about the role of proxy voting advice businesses. These concerns include the accuracy and soundness of the information, and the transparency of the methodologies, used to formulate proxy voting advice businesses' recommendations. Concerns have also focused on potential conflicts of interest that may affect the recommendations made by the proxy voting advice businesses.[37] In addition, questions have been raised about whether registrants have an adequate opportunity to review and respond to proxy voting advice before votes, informed by such advice, are cast and whether shareholders have an adequate opportunity to review the proxy voting advice, including in the context of any response from the registrant or others, before casting their votes.[38] These concerns and changing market conditions, as discussed above, prompted the Commission to consider amendments to the exemptions commonly used by proxy voting advice businesses, which had been crafted before proxy voting advice businesses played the significant role that they now do in the proxy voting process and in the voting decisions of investment advisers and institutional investors.[39] A number of the comment letters we received in response to the Proposing Release continue to express these concerns.[40]

In updating our rules to facilitate better informed proxy voting, we do not believe that it is necessary to subject proxy voting advice businesses to the Federal proxy rules' information and filing requirements applicable to registrants and certain others, such as the filing and furnishing of definitive proxy statements, as long as they satisfy certain requirements tailored to their role in the proxy process. In particular, we believe that concerns raised regarding the increase in intermediation and complexity in the market and the increased dependence on proxy voting advice can be addressed, and the goal of ensuring that shareholders receive more transparent, accurate, and complete information can be furthered, without the full set of disclosures that would be required with a definitive proxy statement. We also recognize that a requirement to publicly file proxy voting advice with the Commission and disseminate proxy materials to the shareholders of every registrant covered by the advice could result in the addition of significant substantive and procedural changes in the current operations of proxy voting advice businesses and could adversely impact their business models. For example, such a requirement would effectively allow investment advisers, institutional investors, and other investors who do not subscribe to the services of proxy voting advice businesses to obtain certain proxy voting advice services free of charge.

For these reasons, we believe that as a general matter these businesses should continue to be eligible for the benefits of conditional, tailored exemptions from the information and filing requirements of the Federal proxy rules generally applicable to registrants and others. In light of the significant role proxy voting advice plays in the voting decisions of institutional investors and others, however, we also believe that the exemptions need to be fashioned both to elicit adequate disclosure and to enable proxy voting advice businesses' clients to have reasonable and timely access to transparent, accurate, and complete information material to matters presented for a vote—thereby ensuring that the continued use of the exemptions facilitates informed voting decisions and does not undermine the purposes of the Federal proxy rules.

Some commenters argued that the Investment Advisers Act of 1940 (the ''Advisers Act'') is the proper regulatory regime for proxy voting advice businesses, and that the Advisers Act and an investment adviser's fiduciary duty already address the stated

furnishing of proxy voting advice by advisors to their clients under certain circumstances (Rule 14a–2(b)(3)), the publication or distribution by a broker or a dealer of research reports under specified conditions (Rule 14a–2(b)(5)), and the solicitations through electronic shareholder forums by persons who do not seek proxy voting authority (Rule 14a–2(b)(6)).

[32] 17 CFR 240.14a–2(a).

[33] For example, the Commission has recalibrated the exemptions ''to provide shareholders with additional sources of information, opinions and views'' to inform their voting decisions, and to remove impediments that it determined ''unduly hindered free discussion'' among registrants, shareholders, and other interested parties. Communications Among Shareholders Adopting Release; *see also* Concept Release (''The Commission has actively monitored the proxy process since the 1930s and has made changes when the process was not functioning in a manner that adequately protected the interests of investors.'').

[34] *See* Communications Among Shareholders Adopting Release (noting concerns about ''secret'' solicitations, as well as concerns about the burden on shareholders).

[35] *Id.*

[36] *See, e.g.,* A. De La Cruz et al., OECD, Owners of the World's Listed Companies 22 (2019), *available at https://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.pdf* (''In the United States, institutional investors hold around 72% of the domestic stock market value.'').

[37] *See* Proposing Release at 66525.

[38] *See id.* at 66529.

[39] See *id.* at 66519–21.

[40] *See, e.g.,* letters from Mark A. Bloomfield, President and CEO, American Council for Capital Formation (Jan. 27, 2020) (''ACCF''); Kyle Isakower, Senior Vice Pres. of Reg. & Energy Policy, American Council for Capital Formation (July 7, 2020) (''ACCF II''); Cameron Arterton, Vice President, Biotechnology Innovation Organization (Feb. 3, 2020) (''BIO''); Business Roundtable (Feb. 3, 2020) (''BRT''); Tom Quaadman, Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness (Jan. 31, 2020) (''CCMC''); Henry D. Eickelberg, Chief Operating Officer, Center on Executive Compensation (Feb. 3, 2020) (''CEC''); Corporate Governance Coalition for Investor Value (Feb. 3, 2020) (''CGC''); Neil A. Hanson, Vice President, Investor Relations and Secretary, Exxon Mobil Corporation (Feb. 3, 2020) (''Exxon Mobil''); Rick E. Hansen, Assistant General Counsel and Corporate Secretary, General Motors Company (Feb. 25, 2020) (''GM''); Clifton A. Pemble, President and CEO, Garmin International, Inc. (Jan. 27, 2020) (''Garmin''); Brian S. Roman, Global General Counsel (Feb. 3, 2020) (''Mylan''); Chris Netram, Vice President, Tax & Domestic Economic Policy, National Association of Manufacturers (Feb. 3, 2020) (''NAM''); Tony M. Edwards, Senior Executive Vice President, and Victoria P. Rostow, Senior Vice President & Deputy General Counsel (Feb. 3, 2020) (''Nareit''); John A. Zecca, Executive Vice President, Chief Legal and Regulatory Officer, Nasdaq, Inc. (Feb. 3, 2020) (''Nasdaq''); Gary A. LaBranche, President & CEO, National Investor Relations Institute (Feb. 3, 2020) (''NIRI''); Darla Stuckey, President and CEO, Society for Corporate Governance (Feb. 3, 2020) (''SCG'') .

objectives of the proposed rules.[41] We disagree. The Advisers Act and Section 14(a) serve distinct, though overlapping, regulatory purposes. The Advisers Act is a principles-based regulatory framework, at the center of which is a federal fiduciary duty to clients that is based on equitable common law principles.[42] Section 14(a) grants the Commission broad power to adopt rules to control the conditions under which proxies may be solicited in order to address a Congressional concern that the solicitation of proxy voting authority be conducted on a fair, honest, and informed basis.[43]

As a preliminary matter, we note that proxy voting advice businesses differ as to whether they believe they fall within the definition of an investment adviser under the Advisers Act and should be registered as investment advisers. The Commission has stated previously that when proxy voting advice businesses provide certain services, they meet the definition of investment adviser under the Advisers Act and thus are subject to regulation under the Act.[44] Specifically, a person is an ''investment adviser'' if the person, for compensation, engages in the business of providing advice to others as to the value of securities, whether to invest in, purchase, or sell securities, or issues reports or analyses concerning securities.[45] Proxy voting advice businesses provide analyses of shareholder proposals, director candidacies, or corporate actions and provide advice concerning particular votes in a manner designed to assist their institutional clients to achieve their investment goals with respect to the voting of securities they hold.[46] In other words, proxy voting advice businesses, for compensation, engage in the business of issuing reports or analyses concerning securities and providing advice to others as to the value of securities and would therefore meet the definition of an investment adviser unless an exclusion applies.[47]

One such exclusion from the definition of an investment adviser under the Advisers Act is the ''publisher's exclusion.'' Specifically, Section 202(a)(11)(D) of the Advisers Act excludes from the definition of an investment adviser a ''publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation.'' [48] At least one large proxy voting advice business has taken the position that if it was deemed to be an investment adviser, it could rely on the exclusion for publishers contained in Section 202(a)(11)(D) of the Advisers Act.[49]

Regardless of the applicability of the Advisers Act, however, we believe the concerns motivating the rules we are adopting are squarely subject to, and appropriately addressed through, regulation under Section 14(a).[50] As we noted in the Proposing Release, proxy voting advice businesses provide voting advice to clients that exercise voting authority over a sizable number of shares that are voted annually, and these businesses are uniquely situated in today's market to influence investors' voting decisions.[51] This advice also implicates interests beyond those of the clients who utilize it when voting. Because these clients vote shares they hold on behalf of thousands of retail investors, this advice affects the interests of these underlying investors. Further, in light of proxy voting advice businesses' clients' ability to affect the outcome of the vote on a particular matter through their voting power, the proxy voting advice guiding the clients' votes potentially affects the interests of all shareholders [52] of the registrant, the registrant, and the proxy system in general.[53]

In the areas of proxy voting, proxy solicitation, and related activities, the Advisers Act, Section 14(a), and various other statutes and Commission rules do not operate independently from each other and are not mutually exclusive. Rather, depending on the activity and status of the person involved, more than one statutory provision and related rules may apply, with the various provisions complementing each other. For example, Section 13(d) of the Exchange Act and the related rules [54] are designed to ensure that market participants are informed when any shareholder (or group of shareholders) acquires more than five percent of a class of equity securities registered under Exchange Act Section 12.[55] Section 13(d) and the related rules generally require these holders to disclose publicly their ownership and other information mandated by the Commission, such as any plans that the holders may have to change the board of directors or management or to engage in

[41] *See, e.g.,* letter from Gary Retelny, CEO, Institutional Shareholder Services, Inc. (Jan. 31, 2020) (''ISS'').

[42] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA–5248 at 6 (June 5, 2019), 84 FR 33669, 33670 (July 12, 2019) (''Standard of Conduct for Investment Advisers''); *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963) (noting that the Advisers Act ''reflects a congressional recognition 'of the delicate fiduciary nature of an investment advisory relationship,' as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested'').

[43] *See* Communications Among Shareholders Adopting Release at 48277; Proposing Release at n.3.

[44] *See* Concept Release at 43010.

[45] Advisers Act Section 202(a)(11) [15 U.S.C. 80b–2(a)(11)]. Sections 202(a)(11)(A) through (G) of the Advisers Act address exclusions to the definition of the term ''investment adviser.'' [15 U.S.C. 80b–2(a)(11)(A) through (G)].

[46] See Concept Release at 43010.

[47] *Id.*

[48] *Lowe* v. *SEC,* 472 U.S. 181 (1985). The U.S. Supreme Court has interpreted the ''publisher's exclusion'' to include publications that offer impersonal investment advice to the general public on a regular basis. To qualify for the section 202(a)(11)(D) exclusion, the publication must be: (1) Of a general and impersonal nature, in that the advice provided is not adapted to any specific portfolio or any client's particular needs; (2) ''bona fide'' or genuine, in that it contains disinterested commentary and analysis as opposed to promotional material; and (3) of general and regular circulation, in that it is not timed to specific market activity or to events affecting, or having the ability to affect, the securities industry.

[49] *See* letter from Katherine Rabin, CEO, Glass Lewis & Co., LLC (Nov. 14, 2018), *available at https://www.glasslewis.com/wp-content/uploads/2018/11/GL-SEC-Roundtable-Statement-111418.pdf.* The Government Accountability Office in its Report about proxy advisory firms to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate in 2016 also took note of the differences in registration status of proxy advisory firms. The Report observed that one large proxy voting advice business is not registered with the SEC as an investment adviser, while another is, and a third is registered as a nationally recognized statistical rating organization. *See* Report to the Chairman, Subcommittee on Economic Policy, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Corporate Shareholder Meetings, Proxy Advisory Firms' Role in Voting and Corporate Governance Practices from the U.S. Government Accountability Office (Nov. 2016), *available at https://www.gao.gov/assets/690/681050.pdf.*

[50] Whether an entity meets the definition of an investment adviser or is eligible for an exclusion does not impact the analysis of whether it is engaged in ''solicitation'' for purposes of Section 14(a). Relatedly, the retention of a proxy voting advice business does not relieve an investment adviser of its obligations under the Advisers Act to its clients. *See* Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA–5325, pp. 5–6 (Aug. 21, 2019) [84 FR 47420, 42421 (Sept. 10, 2019)] (''Commission Guidance on Proxy Voting Responsibilities''), Question No. 2 at 12, 84 FR 47423 (discussing steps that an investment adviser that has assumed the authority to vote proxies on behalf of clients could take to demonstrate that it is making voting determinations in a client's best interest); *see also Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers,* Release No. IA–5547 (July 22, 2020) (''Supplemental Proxy Voting Guidance'').

[51] *See* Proposing Release at 66520.

[52] *See supra* note 18.

[53] *Cf. J. I. Case Co.* v. *Borak,* 377 U.S. 426, 432 (1964) (''The injury which a stockholder suffers from corporate action pursuant to a deceptive proxy solicitation ordinarily flows from the damage done the corporation, rather than from the damage inflicted directly upon the stockholder. The damage suffered results not from the deceit practiced on him alone but rather from the deceit practiced on the stockholders as a group.'').

[54] 17 CFR 240.13d–1 through 13d–102 (''Rules 13d–1 through 13d–102'').

[55] 15 U.S.C. 78m(d).

extraordinary transactions (such as mergers or material asset sales), for so long as the holdings exceed the five percent threshold as well as any material changes to these disclosures.[56] These mandated disclosures, which are provided in Schedule 13D, along with the short-form Schedule 13G adopted pursuant to Exchange Act Section 13(g),[57] have proven important to investor protection by providing public notice of significant accumulations of securities by a person that may affect the control of the company and, ultimately, the interests of all security holders in the company, including in the context of proxy voting.

Yet, the obligation for a shareholder to file Schedules 13D or 13G does not obviate the shareholder's obligation to comply with Section 14(a) and the Federal proxy rules to the extent that the shareholder engages in activities that constitute a proxy solicitation. For example, a dissident shareholder seeking to solicit proxy authority to elect its own director nominees to a registrant's board in a contested election must still file and furnish a definitive proxy statement even though the dissident shareholder may have previously disclosed in its Schedule 13D the plan to change the board of directors. This is the result of Congress establishing these two separate statutory provisions with different purposes, with Section 13(d) focused on providing notice about concentration of voting power and the use of that power, including to change or influence the control of the issuer, and Section 14(a) focused on providing information needed for informed shareholder voting, and the fact that a shareholder may engage in an activity that triggers obligations under both provisions.

The two statutory obligations often complement each other. For example, Exchange Act Rule 13d–1 provides certain shareholders, including many classes of institutional shareholders, with a tailored, conditional exemption from the general requirements of Section 13(d) if the shareholder has acquired the securities ''in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the issuer.'' [58] In various circumstances where shareholders are voting by proxy, and solicitation activity is ongoing—for example, the election of directors or the approval of an extraordinary corporate transaction—the information required to be disclosed publicly by Section 13(d) may be material to a voting decision and, accordingly, important to the regulation of the proxy voting process. Similarly, the Commission—noting that Section 13(d) already sets forth the circumstances for when public disclosures of such plans, proposals, or agreements are needed—adopted the Rule 14a–2(b)(1) exemption despite concerns from some commenters that proxy filings are needed for disclosure of a shareholder's plans or proposals regarding the registrant or shareholders' voting agreements on a particular matter.[59] At the same time, the exemption is not available for solicitations by any person who, while not seeking proxy authority, is nevertheless required to file a Schedule 13D or has disclosed in the Schedule 13D an intent (or reserved the right) to engage in a change of control transaction or a contested director election, given the heightened need for the proxy disclosures from a person contemplating such transformative transactions or contests.

Other statutes that often play an important and complementary role in furthering all aspects of the Commission's mission in the context of proxy voting and proxy solicitation include Sections 5, 11, and 12 of the Securities Act of 1933 (the ''Securities Act''), in particular in circumstances where the vote being solicited is in connection with a significant transaction, such as a merger, in which new securities may be issued to the shareholders who are voting on the transaction. In such a situation, both the registration and prospectus requirements of Securities Act Section 5 and the proxy solicitation requirements of Exchange Act Section 14(a) apply, with public companies often filing a joint proxy statement/prospectus to fulfill both statutory obligations.

This framework—complementary and overlapping statutes and rules that are based on principles, facts and circumstances, and each participant's actions as well as status—applies similarly in other key areas of the Commission's mandate, including the offer and sale of securities in both the public and private markets, securities trading, and the provision of investment advice to retail and institutional investors. Moreover, this framework is consistent with Congressional intent as reflected in the enactment of the Securities Act, the Exchange Act, the Advisers Act, and various other key statutes, including Section 14(a), and has proven to be an effective and efficient means to regulate an important, multi-faceted and ever-evolving aspect of commerce. Accordingly, given the importance of a properly functioning proxy system to investors and the capital markets, even if other provisions of the federal securities laws may apply to certain of their activities, it is appropriate for voting advice furnished by proxy voting advice businesses to be subject to the rules under Section 14(a), which are designed specifically to enhance the transparency and integrity of the proxy voting process, with the ultimate aim of facilitating informed voting decisions.[60]

II. Discussion of Final Amendments

A. Codification of the Commission's Interpretation of ''Solicitation'' Under Rule 14a–1(l) and Section 14(a)

Exchange Act Section 14(a)[61] makes it unlawful for any person to ''solicit'' any proxy with respect to any security registered under Exchange Act Section 12 in contravention of such rules and regulations prescribed by the Commission.[62] The purpose of Section 14(a) is to prevent ''deceptive or inadequate disclosure'' from being made to shareholders in a proxy solicitation.[63]

[56] 17 CFR 240.13d–101.

[57] 15 U.S.C. 78m(g).

[58] 17 CFR 240.13d–1(b)(1)(i).

[59] *See* Communications Among Shareholders Adopting Release at 48278 (''When and under what circumstances a large shareholder, or group of shareholders acting together, must reveal to the SEC, the company, other shareholders, and the market its plans and proposals regarding the company has been addressed by Congress, but not through the provisions governing proxy solicitations. Section 13(d) of the Exchange Act, as implemented by the Commission in its regulations adopted thereunder, sets forth the circumstances when public disclosure of plans and proposals by significant shareholders, as well as agreements among shareholders to act together with respect to voting matters, must be disclosed to the market.''). *See also* Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854 (Jan. 16, 1998)] (stating the Commission's views on when a significant shareholder's proxy soliciting activities and communications could be viewed as having the purpose or effect of changing or influencing control of the company and thereby triggering the obligation to file a Schedule 13D). Under Section 13(d) and Section 13(g), a ''group'' is formed when two or more persons act together for the purpose of acquiring, holding, voting or disposing of the securities. Congress created the ''group'' concept to prevent persons who seek to pool their voting or other interests in the securities of an issuer from evading the Section 13(d) or 13(g) obligations because no one person owns more than five percent of the securities. Use of a proxy voting advice business by investors as a vehicle for the purpose of coordinating their voting decisions regarding an issuer's securities without complying with the filing obligations of Section 13(d) or 13(g) would raise compliance concerns under the beneficial ownership reporting requirements.

[60] *See* Proposing Release at 66520.

[61] 15 U.S.C. 78n(a).

[62] Registrants only reporting pursuant to Exchange Act Section 15(d) are not subject to the federal proxy rules, while foreign private issuers are exempt from the requirements of Section 14(a). 17 CFR 240.3a12–3(b).

[63] *Borak,* 377 U.S. at 432; s*ee* S. Rep. No. 1455, 73d Cong., 2d Sess., 74 (1934) (''In order that the

Continued

Section 14(a) grants the Commission broad authority to establish rules and regulations to govern proxy solicitations ''as necessary or appropriate in the public interest or for the protection of investors.'' [64]

The Exchange Act does not define what constitutes a ''solicitation'' for purposes of Section 14(a) and the Commission's proxy rules. Accordingly, the Commission has exercised its rulemaking authority over the years to define what communications are solicitations and to prescribe rules and regulations when necessary and appropriate in the public interest and to protect investors in the proxy voting process.[65] The Commission first promulgated rules in 1935 to define a solicitation to include any request for a proxy, consent, or authorization or the furnishing of a proxy, consent, or authorization to security holders.[66] Since then, the Commission has amended the definition as needed to respond to new and changing market practices that have raised the concerns underlying Section 14(a).[67]

In particular, the Commission expanded the definition of a solicitation in 1956 to include not only requests for proxies, but also any ''communication to security holders under circumstances reasonably calculated to result in the procurement, execution, or revocation of a proxy.'' [68] This expanded definition was prompted by recognition that some market participants were distributing written communications designed to affect shareholders' voting decisions well in advance of any formal request for a proxy that would have triggered the filing and information requirements of the federal proxy rules.[69]

Since 1956, the Commission has recognized that its definition of a solicitation was broad and applicable regardless of whether persons communicating with shareholders were seeking proxy authority for themselves.[70] In light of the breadth of this definition, the Commission adopted an exemption from the information and filing requirements of the Federal proxy rules for communications by persons not seeking proxy authority, but continued to include such communications within the definition of a ''solicitation.'' [71] The Commission also adopted another exemption from the information and filing requirements for proxy voting advice given by advisors to their clients under certain circumstances, but likewise continued to include such advice within the definition of ''solicitation,'' subject to an exception discussed below.[72] By adopting these tailored exemptions, the Commission removed certain filing and other requirements that were considered unnecessary for such solicitations in order to facilitate shareholder access to more sources of information when voting, though the antifraud provisions of the proxy rules continued to apply.

The Commission has previously observed that the definition of a solicitation for purposes of Section 14(a) may result in proxy voting advice businesses being subject to the Federal proxy rules because they provide recommendations that are reasonably calculated to result in the procurement, withholding, or revocation of a proxy and thus, as a general matter, the furnishing of proxy voting advice constitutes a solicitation.[73] In 2019, the Commission issued an interpretative release regarding the application of the Federal proxy rules to proxy voting advice.[74] As the Commission explained in that release, the determination of whether a communication is a solicitation for purposes of Section 14(a) depends upon both the specific nature, content, and timing of the communication and the circumstances under which the communication is transmitted.[75] The Commission noted several factors that indicate proxy voting advice businesses generally engage in solicitations when they provide proxy voting advice to their clients, including:

- The proxy voting advice generally describes the specific proposals that will be presented at the registrant's upcoming meeting and presents a ''vote recommendation'' for each proposal that indicates how the client should vote;
- Proxy voting advice businesses market their expertise in researching and analyzing matters that are subject to a proxy vote for the purpose of assisting their clients in making voting decisions;
- Many clients of proxy voting advice businesses retain and pay a fee to these firms to provide detailed analyses of various issues, including advice regarding how the clients should vote through their proxies on the proposals to be considered at the registrant's upcoming meeting or on matters for which shareholder approval is sought; and
- Proxy voting advice businesses typically provide their recommendations shortly before a shareholder meeting or authorization vote,[76] enhancing the likelihood that their recommendations will influence their clients' voting determinations.[77]

The Commission observed that where these or other significant factors (or a significant subset of these or other factors) are present,[78] the proxy voting advice businesses' voting advice

stockholder may have adequate knowledge as to the manner in which his interests are being served, it is essential that he be enlightened not only as to the financial condition of the corporation, but also as to the major questions of policy, which are decided at stockholders' meetings.''); Communications Among Shareholders Adopting Release at 48277.

[64] 15 U.S.C. 78n(a); *see Borak,* 377 U.S. at 432 (noting the ''broad remedial purposes'' evidenced by the language of Section 14(a)).

[65] *See* 15 U.S.C. 78n(a); 78c(b); 78w.

[66] *See Order Execution Obligations,* Release No. 34–378 (Sept. 24, 1935) 1935 WL 29270.

[67] The Commission revised the definition in 1938 to include any request for a proxy, regardless of whether the request is accompanied by or included in a written form of proxy. *See* Release No. 34–1823 (Aug. 11, 1938) [3 FR 1991 (Aug. 13, 1938)], at 1992. It subsequently revised the definition in 1942 to include ''any request to revoke or not execute a proxy.'' *See* Release No. 34–3347 (Dec. 18, 1942) [7 FR 10653 (Dec. 22, 1942)], at 10656. Courts have also taken a broad view of solicitation. *See infra* notes 141–146 and accompanying text.

[68] 17 CFR 240.14a–1(l)(1)(iii); *see Adoption of Amendments to Proxy Rules,* Release No. 34–5276 (Jan. 17, 1956) [21 FR 577 (Jan. 26, 1956)], at 577; *see also Broker-Dealer Participation in Proxy Solicitations,* Release No. 34–7208 (Jan. 7, 1964) [29 FR 341 (Jan. 15, 1964)] (''Broker-Dealer Release''), at 341 (''Section 14 and the proxy rules apply to any person—not just management, or the opposition. This coverage is necessary in order to assure that all materials specifically directed to stockholders and which are related to, and influence their voting will meet the standards of the rules.'').

[69] *See generally* Communications Among Shareholders Adopting Release.

[70] *Id.* at 48276 (adopting Exchange Act Rule 14a–2(b)(1)).

[71] *See id.*

[72] *See Shareholder Communications, Shareholder Participation in Corporate Electoral Process and Corporate Governance Generally,* Release No. 34–16356 (Nov. 21, 1979) [44 FR 68764 (Nov. 29, 1979)] (''1979 Adopting Release''), at 68766.

[73] *See* Concept Release at 43009. *See also* Proposing Release at 66522; Broker-Dealer Release at 341.

[74] *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice,* Release No. 34–86721 (Aug. 21, 2019) [84 FR 47416 (Sept. 10, 2019)] (''Commission Interpretation on Proxy Voting Advice'').

[75] *See* Commission Interpretation on Proxy Voting Advice at 47417. *See also* Proposing Release at 66522; Concept Release at 43009 n.244.

[76] *See, e.g.,* letter from Maria Ghazal, Senior Vice President and Counsel, Business Roundtable (June 3, 2019) at 9 (''[R]ecent survey results support the contention that a spike in voting follows adverse voting recommendations by ISS during the three-business day period immediately after the release of the recommendation.''); Transcript of Roundtable on the Proxy Process, at 242 (Nov. 15, 2018), *available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf;* Frank Placenti, *Are Proxy Advisors Really A Problem?,* American Council for Capital Formation 3 (Oct. 2018), *available at http://accfcorpgov.org/wp-content/uploads/2018/10/ACCF_ProxyProblemReport_FINAL.pdf.*

[77] Commission Interpretation on Proxy Voting Advice at 47418. *See also* Proposing Release at 66522.

[78] Such other factors may include the fact that many proxy voting advice businesses' recommendations are typically distributed broadly.

generally would constitute a solicitation subject to the Commission's proxy rules because such advice would be ''a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' [79] Furthermore, the Commission explained that such advice generally would be a solicitation even if the proxy voting advice business is providing recommendations based on the client's own custom policies, and even if the client chooses not to follow the advice.[80] In addition, the fact that proxy voting advice businesses may provide additional services, such as consulting services to investment advisers and issuers and general market commentary, does not diminish their role in the proxy solicitation process.

1. Proposed Amendments

In the Proposing Release, the Commission proposed to amend 17 CFR 240.14a–1(l)(1)(iii) (''Rule 14a–1(l)(1)(iii)'') to add paragraph (A) to make clear that the terms ''solicit'' and ''solicitation'' include any proxy voting advice that makes a recommendation to a shareholder as to its vote, consent, or authorization on a specific matter for which shareholder approval is solicited, and that is furnished by a person who markets its expertise as a provider of such advice, separately from other forms of investment advice, and sells such advice for a fee.[81] The proposed amendment would codify the long-held Commission view that the furnishing of proxy voting advice generally constitutes a solicitation governed by the federal proxy rules.

In connection with the proposed amendment to Rule 14a–1(l)(1)(iii), the Commission recognized that the major proxy voting advice businesses may use more than one voting policy or set of guidelines in formulating their voting recommendations on a particular matter to be voted at a shareholder meeting (or for which written consents or authorizations are sought in lieu of a meeting). For example, a proxy voting advice business may offer differing voting recommendations on a matter based on the application of its benchmark policy or various specialty policies. Under the proposal, the voting recommendations formulated under the benchmark policy and each of the specialty policies would be considered to be a separate communication of proxy voting advice under proposed Rule 14a–1(l)(1)(iii)(A). In addition to voting recommendations formulated pursuant to a proxy voting advice business's benchmark and specialty policies, the Commission also proposed to include voting recommendations formulated pursuant to a proxy voting advice business's client's own custom policies within the scope of the term ''solicitation,'' consistent with its prior interpretation.[82]

Lastly, the Commission proposed to amend Rule 14a–1(l)(2), which currently lists activities and communications that do not constitute a solicitation, to add paragraph (v) to make clear that the terms ''solicit'' and ''solicitation'' exclude any proxy voting advice furnished by a person who furnishes such advice only in response to an unprompted request.[83] Doing so would codify the Commission's historical view that such a communication should not be regarded as a solicitation subject to the proxy rules.[84]

2. Comments Received

Commenters expressed a mix of views on the Commission's proposed amendments to the definitions of ''solicit'' and ''solicitation'' in 17 CFR 240.14a–1(l)(1) (''Rule 14a–1(l)(1)''). A number of commenters supported codifying the Commission's interpretation of those definitions as proposed.[85] Some of these commenters described the proposed amendments as consistent with the Commission's existing interpretation of the term ''solicitation'' [86] and noted that the advice provided by proxy voting advice businesses is the kind of information that Congress intended Section 14(a) to address.[87] Two commenters agreed with the Commission's position that the definition of ''solicitation'' should not be limited to a request to obtain proxy authority or to obtain shareholder support for a preferred outcome.[88] Those two commenters also agreed with the Commission's view that each voting recommendation formulated pursuant to a benchmark policy or a specialty policy should be considered a separate ''solicitation.'' [89] Other commenters added that the analysis of what constitutes a ''solicitation'' should not turn on whether the proxy voting advice business's voting recommendations are based on an investor's custom policy or the proxy voting advice business's benchmark policy.[90] Finally, a few commenters that supported the proposed amendments recommended that the Commission include in the definition of ''solicitation'' any reports and ratings by environmental, social, and governance ratings firms or environmental and sustainability rating firms.[91]

Other commenters opposed codifying the Commission's interpretation of ''solicit'' and ''solicitation.'' [92] Some

[79] *See* Commission Interpretation on Proxy Voting Advice at 47418. *See also* Proposing Release at 66522.

[80] *See* Commission Interpretation on Proxy Voting Advice at 47418. *See also* Proposing Release at 66522.

[81] Proposing Release at 66522, 66557.

[82] Proposing Release at 66522.

[83] *Id.* at 66523, 66557.

[84] Commission Interpretation on Proxy Voting Advice at 47419 (''We view these services provided by proxy advisory firms as distinct from advice prompted by unsolicited inquiries from clients to their financial advisors or brokers on how they should vote their proxies, which remains outside the definition of solicitation.''); 1979 Adopting Release at 68766. *See also* Broker-Dealer Release at 341 (setting forth the opinion of the SEC's General Counsel that a broker is not engaging in a ''solicitation'' if it is merely responding to his customer's request for advice and ''not actively initiating the communication'').

[85] *See* letters from BIO; BRT; CCMC; CEC; CGC; Michael McCormick, Executive Vice President, General Counsel Secretary, Ecolab Inc. (Feb. 3, 2020) (''Ecolab''); Exxon Mobil; Dennis E. Nixon, President, International Bancshares Corporation (Jan. 23, 2020) (''IBC''); NAM; Nareit; Nasdaq; David Dixon, President, and David L. Dragics, Advocacy Ambassador, NIRI Capital Area Chapter (Feb. 6, 2020) (''NIRI-Capital''); Phil Gramm (Feb. 3, 2020) (''P. Gramm''); Niels Holch, Executive Director, Shareholder Communications Coalition (Feb. 3, 2020) (''SCC I''); SCG; Stakeholders Empowerment Service (Jan. 31, 2020) (''SES'').

[86] *See* letters from BRT; CCMC; NAM; Nasdaq; NIRI-Capital.

[87] *See* letters from BRT; CCMC; Exxon Mobil; NAM; Nareit; SCC I.

[88] *See* letters from NAM; SCG.

[89] *See* letters from NAM; SCG.

[90] *See* letters from Exxon Mobil; NAM; SCG.

[91] *See* letters from Exxon Mobil; Garmin; NAM.

[92] *See* letters from Anat Admati, George G.C. Parker Professor of Finance and Economics, Stanford Graduate School of Business, et al. (Jan. 15, 2020) (''62 Professors''); Brandon Rees, Deputy Director, Corporations at Capital Markets, AFL–CIO (Feb. 3, 2020) (''AFL–CIO II''); Robert Arnold and Matthew Aquiline, Trustees, Bricklayers & Trowel Trades International Pension Fund (Jan. 31, 2020) (''Bricklayers''); Marcie Frost, Chief Executive Officer, CalPERS (Feb. 3, 2020) (''CalPERS''); Aeisha Mastagni, Portfolio Manager, California State Teachers' Retirement System (Feb. 3, 2020) (''CalSTRS''); Marcia Moffat, Board Chair, Canadian Coalition for Good Governance (Feb. 3, 2020) (''Canadian Governance Coalition''); James Allen, Head, and Matt Orsagh, Senior Director, Capital Markets Policy, CFA Institute (Feb. 3, 2020) (''CFA Institute I''); Kenneth A. Bertsch, Executive Director, and Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (Jan. 30, 2020) (''CII IV''); Rob Collins, Council for Investor Rights and Corporate Accountability (Feb. 3, 2020) (''CIRCA''); Ron Baker, Executive Director, Colorado Public Employees' Retirement Association (Feb. 3, 2020) (''Colorado Retirement''); Duane Roberts, Director of Equities, Dana Investment Advisors (Dec. 5, 2019) (''Dana''); Richard B. Zabel, General Counsel and Chief Legal Officer, Elliott Management Corporation (Jan. 31, 2020) (''Elliott I''); Hans-Christoph Hirt, Executive Director and Head, Hermes Equity Ownership Services Limited (Feb. 3, 2020) (''Hermes''); ISS, Josh Zinner, CEO, Interfait Center on Corporate Responsibility (Feb. 3, 2020) (''Interfaith Center II''); Kevin Cameron, Executive Chair, Glass Lewis (Feb. 3, 2020) (''Glass Lewis II''); Jonathan Grabel, Chief Investment Officer, LACERA (Feb. 3, 2020) (''LA Retirement''),

Continued

commenters asserted that the Commission does not have the authority to regulate proxy voting advice businesses under Section 14(a)[93] or other provisions of the Exchange Act.[94] Some described the proposal as inconsistent with the Commission's historical treatment of Section 14(a).[95] Some commenters added that proxy voting advice differs from proxy solicitation and should not be treated as such under the proxy rules.[96] Specifically, these commenters asserted that proxy solicitation differs from proxy advice in that proxy solicitors play an advocacy role on behalf of an interested party, whereas proxy voting advice businesses are independent third parties, hired by shareholders to provide objective advice that the recipients are not required to follow.[97] One commenter also asserted that the proposal incorrectly equates proxy voting advice with the right to vote on another's behalf and in a manner that would benefit a particular party.[98] Two other commenters, which were identified as proxy voting advice businesses in the Proposing Release,[99] asserted that even if the Commission amends the definition of ''solicitation'' as proposed, their activities will not constitute ''solicitations'' under the revised definition because they vote on behalf of their clients rather than providing them with research reports and voting recommendations.[100]

In addition, some commenters stated that the proposed codification of ''solicitation'' would increase proxy voting advice businesses' costs[101] or interfere with their ability to provide services to their clients.[102] Specifically, these commenters asserted that the proposed amendments would increase litigation risks facing proxy voting advice businesses[103] and interfere with the relationship between investors and proxy voting advice businesses in a way that would increase costs and complexity and bias voting recommendations in favor of corporate management.[104] Two commenters further expressed concern that treating proxy advice as a solicitation could have a chilling effect on shareholder communication.[105]

Some commenters asserted that the Commission has not provided reliable evidence that existing communications between proxy voting advice businesses and their institutional investor clients present a significant risk to investor protection to justify the proposed amendment.[106] Several commenters expressed concern that the Commission disregarded the findings and views of its 2018 Roundtable on the Proxy Process, the Office of Investor Advocate, and the Investor Advisory Committee and called into question the legitimacy of other comment letters.[107] One commenter requested that the Commission clarify the benefits of treating proxy advice as a solicitation.[108] Two commenters also expressed concern that the proposal would overlap with regulations that proxy voting advice businesses are already subject to, including as ''investment advisers'' under the Advisers Act and as fiduciaries under the Employee Retirement Income Security Act of 1974.[109]

Finally, some commenters that generally opposed the proposal recommended that, if the Commission ultimately decides to amend Rule 14a–1(l), it should make the following revisions to narrow the scope of the proposals:[110]

- Clarify whether ''proxy voting advice'' under Rule 14a–1(l)(1)(iii)(A) would include data and research that may inform a proxy analysis or be described in a proxy research report but that is marketed separately to investors;[111]
- Exclude advice based on investors' custom policies from the definition of ''solicitation'';[112]
- Modify the proposal to recognize the difference between proxy voting advice businesses and proxy voting agent businesses, the latter of which ''vote solely on behalf of clients, in accordance with such clients' preset voting guidelines, based upon third-party research'' and should not be subject to regulation as a proxy voting advice business;[113] and
- Clarify that the reference to ''other forms of investment advice'' in Proposed Rule 14a–1(l)(1)(iii)(A) is not intended to exclude only advice from an ''investment adviser'' and thereby sweep into the scope of the term ''solicitation'' communications made in the normal course of business by other professionals (*e.g.,* management-consulting firms, lawyers, accountants, broker-dealers, etc.).[114]

With respect to the proposed amendment to Rule 14a–1(l)(2), some commenters supported the proposal to exclude from the definition of a ''solicitation'' any proxy voting advice furnished by a person only in response to an unprompted request.[115] Another

Sarah Wilson, CEO, Minerva Analytics (Jan. 2, 2020) (''Minerva I''); Thomas P. DiNapoli, New York State Comptroller (Feb. 3, 2020) (''New York Comptroller II''); Karen Carraher, Executive Director, and Patti Brammer, Corporate Governance Officer, Ohio Public Employees Retirement System (Feb. 3, 2020) (''Ohio Public Retirement''); PIRC, on behalf of Local Authority Pension Fund Form (LAPFF) (Feb. 3, 2020) (''PIRC''); Fiona Reynolds, Chief Executive Officer, Principles for Responsible Investment (Feb. 3, 2020) (''PRI II''); Konstantinos Sergakis, Professor of Capital Markets Law and Corporate Governance, University of Glasgow (Dec. 26, 2019) (''Prof. Sergakis''); Craig M. Rosenberg, President, ProxyVote Plus, LLC (Feb. 3, 2020) (''ProxyVote II''); Hank Kim, Executive Director & Counsel, National Conference of Public Employee Retirement Systems (Feb. 3, 2020) (''Public Retirement Systems''); Maureen O'Brien, Vice President, Corporate Governance Director, Segal Margo Advisors (Feb. 3, 2020) (''Segal Marco II''); Andrew E. Oster, CFP, AIF, President & CCO, Triton Wealth Advisors LLC (Feb. 22, 2020) (''Triton''); Nell Minow, Vice Chair, ValueEdge (Jan. 31, 2020) (''ValueEdge I''); Theresa Whitmarsh, Executive Director, Washington State Investment Board (Jan. 22, 2020) (''Washington State Investment'').

[93] *See* letters from AFL–CIO II; CII IV; Elliott I; Glass Lewis II; ISS; Richard A. Kirby and Beth-ann Roth, RK Invest Law, PBC (Feb. 3, 2020) (''RK Invest Law''); ProxyVote II.

[94] *See* letter from ISS.

[95] *See* letters from CalPERS; CII IV; Elliott I; Glass Lewis II; ISS; ProxyVote II.

[96] *See* letters from Bricklayers; CalPERS; CII IV; CIRCA; Elliott I; Glass Lewis II; ISS; New York Comptroller II; Segal Marco II.

[97] *See* letters from Bricklayers; CII IV; CIRCA; Glass Lewis II; ISS; New York Comptroller II; Segal Marco II.

[98] *See* letter from CalPERS.

[99] *See* Proposing Release at 66542, n.190.

[100] *See* letters from ProxyVote II; Segal Marco II. Similarly, another commenter noted that it executes votes directly on behalf of—but does not provide voting recommendations to—its clients. *See* letter from Mary Beth Gallagher, Executive Director, Investor Advocates for Social Justice (Feb. 3, 2020) (''IASJ''). *See also* letters from Sean P. Bannon, Chief Financial Officer, Felician Sisters of North America (Feb. 3, 2020) (''Felician Sisters II''); Toni Palamar, Province Business Administrator, Sisters of the Good Shepherd (Feb. 3, 2020) (''Good Shepherd''); Interfaith Center II; Patricia A. Daly, Corporate Responsibility Representative, Sisters of St. Dominic of Caldwell (Feb. 3, 2020) (''St. Dominic of Caldwell'').

[101] *See* letters from 62 Professors; CalSTRS; Elliott I; Interfaith Center II; New York Comptroller II; Public Retirement Systems; Washington State Investment.

[102] *See* letters from CalSTRS; CIRCA; Elliott I; Interfaith Center II; New York Comptroller II; Ohio Public Retirement; Prof. Sergakis; Public Retirement Systems.

[103] *See* letters from CIRCA; Elliott I; New York Comptroller II; Ohio Public Retirement; PRI II.

[104] *See* letters from New York Comptroller II; PRI II.

[105] *See* letters from CalPERS; Washington State Investment.

[106] *See* letters from CII IV; Elliott I.

[107] *See* letters from CII IV; Elliott I; Glass Lewis II; ISS.

[108] *See* letter from CalPERS.

[109] *See* letters from ISS; ProxyVote II.

[110] *See* letters from CII IV; ISS; New York Comptroller II; PRI II; ProxyVote II; Segal Marco II.

[111] *See* letter from ISS. The commenter further opined that the inclusion of such data and research in the scope of ''proxy voting advice'' would be ''highly inappropriate.'' *Id.*

[112] *See* letters from ISS; New York Comptroller II; Matthew DiGuiseppe, Head of Asset Stewardship, Americas, and Benjamin Colton, Head of Asset Stewardship, Asia Pacific, State Street Global Advisors (Feb. 3, 2020) (''State Street'').

[113] *See* letter from Segal Marco II.

[114] *See* letter from Hermes.

[115] *See* letters from Andrew Cave, Head of Governance and Sustainability, Baillie Gifford & Co

commenter, however, opposed the proposal, asserting that it would be unworkable because investment advisers and broker-dealers may be hesitant to announce a willingness to provide voting advice out of concern that the Commission would determine they had ''invited and encouraged'' their clients to ask for advice.[116] This commenter added that the proposed amendment would be counterproductive to investor protection goals because the Commission would be regulating experts with proxy advice-related skills and resources (*i.e.,* proxy voting advice businesses), but would not regulate parties with no relevant expertise who engage in the same activities (*i.e.,* any person that furnishes proxy voting advice in response to an unprompted request).[117] Finally, one commenter recommended that the Commission narrow the proposed exclusion to cover only proxy voting advice provided pursuant to an unprompted request ''and not for compensation.'' [118]

3. Final Amendments

We are adopting the amendments to Rule 14a–1(l)(1)(iii) and 17 CFR 240.14a–1(l)(2) (''Rule 14a–1(l)(2)'') as proposed, with some minor changes to the proposed amendment to Rule 14a–1(l)(1)(iii).

With respect to Rule 14a–1(l)(1)(iii), consistent with the Proposing Release, we are adding paragraph (A) [119] to make clear that the terms ''solicit'' and ''solicitation'' include any proxy voting advice [120] that makes a recommendation to a shareholder as to its vote, consent, or authorization on a specific matter for which shareholder approval is solicited, and that is furnished by a person who markets its expertise as a provider of such advice, separately from other forms of investment advice, and sells such advice for a fee.

As noted above, the determination of whether a communication is a solicitation ultimately depends on the specific nature, content, and timing of the communication and the circumstances under which the communication is transmitted.[121] A number of factors illuminate that determination, and, as set forth above, application of those factors indicate that the advice that proxy voting advice businesses provide to their clients generally constitutes a ''solicitation.'' [122] This amendment, therefore, codifies the Commission's interpretation that proxy voting advice generally constitutes a ''solicitation'' under Rule 14a–1(l).[123] As we noted in the Proposing Release, we believe the furnishing of proxy voting advice by a person who has decided to offer such advice, separately from other forms of investment advice, to shareholders for a fee, with the expectation that its advice will be part of the shareholders' voting decision-making process, is conducting the type of activity that raises the concerns about inadequate or materially misleading disclosures that Section 14(a) and the Commission's proxy rules are intended to address.[124] We also believe that the regulatory framework of Section 14(a) and the Commission's proxy rules, with their focus on the information received by shareholders as part of the voting process, are well-suited to enhancing the quality and availability of the information that clients of proxy voting advice businesses are likely to consider as part of their voting determinations.[125]

In addition, we are aware of at least two proxy voting advice businesses, ISS and Egan-Jones, that use more than one proprietary voting policy or set of guidelines—oftentimes, a benchmark policy and one or more specialty policies—in formulating proxy voting advice as to a particular matter to be voted on at a shareholder meeting (or for which written consents or authorizations are sought in lieu of a meeting).[126] Consistent with the Proposing Release, we view the proxy voting advice formulated pursuant to each separate policy or set of guidelines as distinct solicitations under Rule 14a–1(l)(1)(iii)(A). Similarly, as discussed in more detail below,[127] proxy voting advice formulated pursuant to a custom policy constitutes a distinct solicitation under the final rule as well.

We recognize that some commenters opposed our amendments to Rule 14a–

(Feb. 3, 2020) (''Baillie Gifford''); BRT; CCMC; Exxon Mobil; IBC.

[116] *See* letter from ISS.

[117] *Id.*

[118] *See* letter from Exxon Mobil.

[119] The amendment is intended to make clear that proxy voting advice provided under the specified circumstances constitutes a solicitation under current Rule 14a–1(l)(1)(iii). It is not intended to amend, limit, or otherwise affect the scope of Rule 14a–1(l)(1)(iii).

[120] As noted above, one commenter requested clarification as to whether the term ''proxy voting advice'' would include data and research that may inform a proxy analysis or be described in a proxy research report but that is marketed separately to investors. *See supra* note 111 and accompanying text. We have clarified the scope of that term. *Compare supra* note 7, *with* Proposing Release at 66519 & n.11.

[121] *See supra* note 75 and accompanying text.

[122] *See supra* notes 75–79 and accompanying text; *see also infra* note 144.

[123] As noted above, some commenters expressed concern that the amendments are not supported by the relevant evidence and that the Commission may have disregarded the findings and views of more reliable observers, and called into question the legitimacy of other comments. *See supra* notes 106–107 and accompanying text. Very shortly after learning of the concerns raised about these comment letters, the Chairman referred the matter to the SEC's Office of Inspector General to investigate. That investigation is ongoing. We have now learned that some of the commenters who submitted certain of the letters appear to have signed declarations provided to Members of Congress regarding the authenticity of those letters. Our decision to adopt the amendments to Rule 14a–1(l), is not predicated upon the input we received with respect to the quality of the services provided by proxy voting advice businesses or the independence thereof. Rather, these amendments largely codify the Commission's longstanding interpretations of the scope of the terms ''solicit'' and ''solicitation,'' which, as discussed below, are based on an assessment of the text, structure, history, and purpose of Section 14(a) of the Exchange Act, as well as judicial precedent. *See infra* notes 132–156 and accompanying text. Moreover, although certain members of the Commission may have cited some of the letters described above during the Commission's open meeting at which the amendments discussed herein were proposed, neither the Commission's interpretations of the scope of the terms ''solicit'' and ''solicitation,'' nor our decision to adopt the other amendments herein, rest on those letters or their validity. Further, as discussed below, the Commission's interpretations of the scope of the terms ''solicit'' and ''solicitation'' are longstanding and far predate the cited comment letters. *See infra* notes 150–154 and accompanying text.

[124] We understand that investment advisers may discuss their views on proxy voting with clients or prospective clients as part of their portfolio management services or other common investment advisory services. Such discussions could be unprompted or prompted (such as in the case of a client or prospective client that has asked the adviser for its views on a particular transaction). For example, a mutual fund board may request that a prospective subadviser discuss its views on proxy voting, including votes on particular types of transactions such as mergers or corporate governance. As noted in the Proposing Release, the amendment is not intended to include these types of communications as solicitations for purposes of Section 14(a). In response to certain comments we received, we also are clarifying the amendment is not intended to include communications made in the normal course of business by other professionals to their clients that may relate to proxy voting. Instead, the amendment is intended to apply to entities that market their proxy voting advice as a service that is separate from other forms of investment advice to clients or prospective clients and sell such advice for a fee.

[125] We understand that a proxy voting advice business might, if applicable requirements are met, be registered as an investment adviser and subject to additional regulation under the Advisers Act, including 17 CFR part 275. However it is not unusual for a registrant under one provision of the securities laws to be subject to other provisions of the securities laws when engaging in conduct that falls within the other provisions. Given the focus of Section 14(a) and the Commission's proxy rules on protecting investors who receive communications regarding their proxy votes, it is appropriate that proxy voting advice businesses be subject to applicable rules under Section 14(a) when they provide proxy voting advice. *See supra* notes 41–60 and accompanying text for a discussion of why we believe Section 14(a), together with the Commission's proxy rules, is an appropriate regulatory regime for such communications by proxy voting advice businesses, regardless of whether they are registered under the Advisers Act.

[126] *See supra* note 11 and accompanying text.

[127] *See infra* notes 165–169 and accompanying text.

1(l)(1). As noted above, some commenters stated that the Commission is not authorized to regulate proxy voting advice as a ''solicitation'' under the Exchange Act.[128] One commenter specifically asserted that the amendments would be contrary to (1) the legislative history of Section 14(a), (2) the case law that has construed the terms ''solicit'' and ''solicitation'' under Section 14(a) and Rule 14a–1(l), and (3) the plain meaning of the term ''solicit.''[129] According to some opposing commenters, the scope of Section 14(a) is limited to soliciting activities by management, other corporate insiders, dissident shareholders seeking to take control of a company, or parties otherwise having an interest in the outcome of a shareholder vote. These commenters asserted, therefore, that as a matter of statutory interpretation, Section 14(a) cannot extend to communications or activities by persons who do not have an interest in the outcome of the matter being voted upon at the shareholder meeting or who do not seek proxy authority for themselves.[130] These commenters further assert that, as a matter of fact, proxy voting advice businesses satisfy both of these criteria (*i.e.,* no interest in the outcome of a vote and no request for authority to vote).[131]

We reject this narrow interpretation of Section 14(a). The Commission's longstanding view that a ''solicitation'' includes any communication reasonably calculated to result in the procurement, withholding, or revocation of a proxy—and that this encompasses the furnishing of proxy voting advice—accords with the text, history, and structure of Section 14(a) of the Exchange Act, as well as judicial precedent and our own rules.

The structure of Section 14(a) grants the Commission broad authority. It authorizes the Commission to prescribe rules and regulations to govern proxy solicitations ''as necessary or appropriate in the public interest or for the protection of investors,'' and it makes it unlawful for any person to ''solicit any proxy'' with respect to any security registered under Section 12 of the Exchange Act in contravention of such rules and regulations.[132] Furthermore, rather than defining what constitutes a proxy solicitation, the Exchange Act leaves those terms undefined, while at the same time specifically empowering the Commission to define such terms consistent with the Act's ''provisions and purposes''[133] and, more broadly, to make rules and regulations, including rules that classify ''transactions, statements, applications, reports, and other materials.''[134]

In light of that context, the phrase ''solicit any proxy'' is not as narrow or mechanical as some commenters have claimed. Citing a dictionary definition, one commenter suggested that the ordinary meaning of the term ''solicit'' is ''to endeavor to obtain.''[135] Under this definition, what matters is the subjective intent of the person engaging in the solicitation, and thus no person would be soliciting a proxy unless they intend to obtain proxy authority. Some commenters likewise claimed that no person would be soliciting a proxy unless they intend to obtain a shareholder's support for a preferred outcome.[136] However, dictionaries at the time Section 14(a) was enacted indicate that the term ''solicit'' had other meanings that did not depend on the interest or subjective intent of the person engaging in the solicitation. The term ''solicit'' also meant ''[t]o move to action.''[137] Under this definition, what matters is not the subjective intent to obtain a proxy, but rather the effect on a recipient's proxy vote. A person solicits a proxy by influencing a shareholder to act. As between these two meanings, we view the latter as more consistent with Section 14(a)'s provisions and purposes, as any inducement that may move a shareholder to vote a proxy in a certain way implicates the Commission's charge to ensure that necessary and appropriate regulations are in place for the protection of investors. That is why the Commission has recognized since 1956 that persons who do not seek proxy authority themselves nevertheless engage in solicitation when they communicate with shareholders in a manner reasonably calculated to ''result'' in a proxy vote.

The context and history of Section 14(a) accord with this conclusion. Congress considered different versions of the Exchange Act that set forth the applicable proxy standards with more specificity in the analog to Section 14(a) and rejected them in favor of the broad authority granted to the Commission in Section 14(a), as enacted.[138] While Congress may have been motivated to enact Section 14(a) in 1934 due to the particular abuses by corporate insiders or dissident shareholders that occurred during that time, nothing in either the text or legislative history of Section 14(a) indicates that Congress intended to limit its scope to solicitations conducted by those parties. Rather, where Congress intended to exempt certain classes of market participants, transactions, or activities from the statutory provisions of the Securities Act and the Exchange Act (as enacted in 1933 and 1934, respectively) or limit the Commission's rulemaking authority with regard to those market participants, transactions or activities, it generally did so by expressly including language in the relevant statutory provision.[139]

[128] *See supra* notes 93–94 and accompanying text.

[129] *See* letter from ISS.

[130] *See, e.g., supra* notes 96–97 and accompanying text.

[131] *Id.*

[132] *See* S. Rep. No. 73–792, 2d Sess., at 12 (1934) (''The committee recommends that the solicitation and issuance of proxies be left to regulation by the Commission.''); H.R. Rep. No. 1383, 73d Cong., 2d Sess., 14 (1934) (explaining the intention to give the Commission the ''power to control the conditions under which proxies may be solicited'').

[133] 15 U.S.C. 78c(b).

[134] 15 U.S.C. 78w(a)(1).

[135] *See* letter from ISS.

[136] *See, e.g., supra* notes 96–97 and accompanying text. In arguing that the plain meaning of ''solicit'' supports its view, one commenter relied on the dictionary definition ''to endeavor to obtain,'' even though the commenter elsewhere acknowledged that Section 14(a) has long been understood to encompass communications that do not seek to obtain a proxy—and thus would not meet that narrow definition. *See* letter from ISS.

[137] *See* Webster's New International Dictionary (2d ed. 1934) (providing multiple definitions of the term ''solicit,'' including ''[t]o move to action'' or ''[t]o urge'' or ''insist upon'').

[138] *See* Louis Loss et. al., Securities Regulation, § 6.C.2 (6th ed. 2018) (''In § 14(a) of the Exchange Act, Congress, abandoning the more specific standards of the original bills, left the solicitation of proxies to the SEC under broad public interest standards.'') (citing S. 2693, H.R. 7852, 73d Cong., 2d Sess. § 13(a) (1934)).

[139] *See, e.g.,* Securities Exchange Act of 1934, Public Law 73–291, 48 Stat. 881, § 3(a)(4) (1934) (''Exchange Act (as enacted in 1934)'') (stating that the definition of the term ''broker'' ''does not include a bank''); Exchange Act (as enacted in 1934) § 3(a)(5) (stating that the definition of the term ''dealer'' ''does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business''); Exchange Act (as enacted in 1934) § 3(a)(10) (defining the term ''security'' but expressly stating that the term ''shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited''); Exchange Act (as enacted in 1934) § 15(l) (restricting broker-dealers' over-the-counter market activity, but expressly exempting from these restrictions certain exempt securities, commercial paper, and other instruments); Exchange Act (as enacted in 1934) § 24(a) (limiting the Commission's authority to require the ''revealing of trade secrets or processes in any application, report, or document filed with the Commission under this title''); Securities Act of 1933, Public Law 73–22, 48 Stat. 74, § 2(a)(10) (1933) (''Securities Act (as enacted in 1933)'') (defining the term ''prospectus'' and expressly excluding certain written communications from this definition); Securities Act (as enacted in 1933) § 2(a)(11) (carving out from the statutory definition of ''underwriter'' any ''person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission''); Securities

Indeed, Section 14(a) itself excludes any ''exempted security'' from its scope, but otherwise facially applies to ''any person'' without carving out any class of market participants.[140]

Nor does the case law construing Section 14(a) mandate that a party must have an ''interest'' in the outcome of a shareholder vote in order for a solicitation to occur, as certain commenters contended.[141] Courts have articulated a broad definition of the term ''solicit'' such that the proxy rules ''apply not only to direct requests to furnish, revoke, or withhold proxies, but also to communications which may indirectly accomplish such a result *or* constitute a step in the chain of communications ultimately designed to accomplish such a result.'' [142] Moreover, relying on the ''subjective intent of the person furnishing the communication'' to determine whether a particular communication constitutes a solicitation ''is at odds with the plain and unambiguous meaning of the regulation.'' [143] Instead, the phrase ''reasonably calculated to result in the procurement, withholding or revocation of a proxy'' in Rule 14a–1(l)(1)(iii) requires an objective inquiry that focuses ''on the *manner* in which the communicator attempted to influence a shareholder's proxy decision from the perspective of the shareholder who received the material.'' [144] Courts also have broadly understood a ''solicitation'' to encompass ''communications which may indirectly [result in a proxy being furnished, revoked or withheld],'' [145] an interpretation that does not, by its terms, require inquiry into the speakers' interest or subjective intention. To inject a subjective element into the test of whether a communication is a ''solicitation'' under Rule 14a–1(l)(1)(iii) as argued by one commenter (*i.e.,* determining whether the speaker is ''completely indifferent to the outcome of the matter as to which shareholder approval was sought'' [146]) runs counter to this case law.

Relying on its broad rulemaking authority, the Commission has since 1956 defined a solicitation to include any ''communication to security holders under circumstances reasonably calculated to result in the procurement, execution, or revocation of a proxy.'' [147] This definition advances Section 14(a)'s overarching purpose of ensuring that communications to shareholders about their proxy voting decisions contain materially complete and accurate information.[148] It would be inconsistent with that goal if a person whose business is to offer and sell voting advice broadly to large numbers of shareholders, with the expectation that their advice will factor into shareholders' voting decisions, were beyond the reach of Section 14(a). The fact that shareholders may retain providers of proxy voting advice to advance their own interests does not obviate these concerns.

As described above, some commenters also asserted that the proposed amendment to Rule 14a–1(l)(1)(iii) conflicts with well-established practice in the proxy voting advice business industry and the Commission's historical treatment thereof.[149] As an initial matter, and as noted in the Interpretive Release and the Proposing Release, the amendment to Rule 14a–1(l)(1)(iii) is in accordance with, and represents a codification of, the Commission's longstanding view that proxy voting advice generally constitutes a ''solicitation.'' This view was originally set forth in a 1964 release [150] and reiterated by the Commission in 1979 [151] and 2010.[152] The cited releases did not limit the scope of the term ''solicitation'' so as to

Act (as enacted in 1933) § 2(a)(3) (carving out from the statutory definition of the terms ''sale'', ''sell'', ''offer to sell'', and ''offer for sale'' ''preliminary negotiations or agreements between an issuer and any underwriter'').

[140] *See* 15 U.S.C. 78n(a).

[141] *See, e.g.,* letter from ISS. Although we do not believe that Section 14(a) requires that a party have an interest in the outcome of a vote, we also do not accept commenters' assertion that, as a matter of fact, proxy voting advice businesses necessarily do not have an interest in the outcome of matters being voted upon at shareholder meetings or do not seek proxy authority for themselves. While this may be true in many instances, we do not think this is always the case. *See* U.S. Gov't Accountability Office, GAO–17–47, Report to the Chairman, Subcommittee on Economic Policy, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Corporate Shareholder Meetings: Proxy Advisory Firms' Role in Voting and Corporate Governance Practices, 18 (2016), *available at https://www.gao.gov/assets/690/681050.pdf* (''2016 GAO Report'') (''Officials from one proxy advisory firm with whom we spoke stated that they agree that proxy advisory firms have influence on corporate governance practices. . . . They noted that such influence is good and ultimately they want to have a positive influence on their clients because they view that as part of their responsibility—to promote good governance.''); Kevin E. McManus, *CEO Compensation was a Joke Before Covid–19, Now It is Just Obnoxious,* Egan-Jones Proxy Services (June 11, 2020), *available at https://www.ejproxy.com/weekly-wreck/36/ceo-compensation-was-joke-covid-19-now-it-just-obnoxious/* (criticizing executive compensation at certain registrants and making policy-based recommendations to regulate executive compensation). *See also infra* Section II.B.1. (noting examples of circumstances where the interests of a proxy voting advice business may diverge materially from the interests of the clients who utilize their advice, including a proxy voting advice business providing advice on a matter in which its affiliates or one of its clients has a material interest, such as a business transaction or a shareholder proposal put forward by or actively supported by that client).

[142] *Long Island Lighting Co.* v. *Barbash,* 779 F.2d 793, 796 (2d Cir. 1985) (emphasis added); *see also Capital Real Estate Inv'rs Tax Exempt Fund Ltd. P'ship* v. *Schwartzberg,* 917 F.Supp. 1050, 1059 (S.D.N.Y. 1996).

[143] *Gas Natural Inc.* v. *Osbourne,* 624 Fed. Appx. 944, 950 (6th Cir. 2015) (unpublished).

[144] *Id.* (citing Broker-Dealer Release at 342 (noting that communications from broker-dealers to shareholders ''may constitute a solicitation requiring compliance with the proxy rules'' depending ''upon the content of the material, upon the conditions under which it is transmitted, and upon surrounding circumstances'')). *See also Long Island Lighting Co.,* 779 F.2d at 796 (''Determination of the purpose of the communication depends upon the nature of the communication and the circumstances under which it was distributed.''); *Sargent* v. *Genesco, Inc.,* 492 F.2d 750, 767 (5th Cir. 1974) (''Whether or not a particular communication is a solicitation within the meaning of 14(a) is a question of fact dependent upon the nature of the communication and the circumstances under which it is transmitted.''); *Dyer* v. *SEC,* 291 F.2d 774, 777–78 (8th Cir. 1961) (indicating that the determination of whether a communication constitutes a solicitation depends on the ''nature and circumstances'' of a communication and whether it can be rationally inferred that the speaker ''knew or could be expected to foresee that the things which he said might on their implication and innuendo affect the action of a stockholder in his granting of proxy authority,'' regardless of ''whatever [the speaker] may have had in his mind''); *Schwartzberg,* 929 F.Supp. at 113–14 (noting that if a statement ''presents the transaction in a manner objectively likely to predispose security holders toward or against it . . . it must comply with the proxy rules''). Among the factors relevant to the objective inquiry into whether a communication constitutes a ''solicitation'' are (1) ''the contents of the communication,'' (2) ''the conditions under which the communication is distributed,'' and (3) ''[t]he timing of the communication in relation to the relevant surrounding circumstances.'' *Gas Natural Inc.,* 624 Fed. Appx. at 950. As described above, the proxy voting advice that proxy voting advice businesses send their clients generally constitutes ''solicitations'' under each of those three factors. *See supra* notes 75–79 and accompanying text.

[145] *Long Island Lighting Co.,* 779 F.2d at 796.

[146] *See* letter from ISS.

[147] 17 CFR 240.14a–1(l)(1)(iii).

[148] *Borak,* 377 U.S. at 432; *see also* S. Rep. No. 1455, 73d Cong., 2d Sess., 74 (1934) (''In order that the stockholder may have adequate knowledge as to the manner in which his interests are being served, it is essential that he be enlightened not only as to the financial condition of the corporation, but also as to the major questions of policy, which are decided at stockholders' meetings.''); H.R. Rep. No. 1383, 73d Cong., 2d Sess., 14 (1934) (explaining the need for ''adequate disclosure'' and ''explanation''); Communications Among Shareholders Adopting Release at 48277.

[149] *See supra* note 95 and accompanying text.

[150] *See* Broker-Dealer Release at 341 (''Material distributed during a period while proxy solicitation is in progress, which comments upon the issues to be voted on or which suggests how the stockholder should vote, would constitute soliciting material.'').

[151] *See* 1979 Adopting Release at 68766; Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally, Release No. 34–16104 (Aug. 13, 1979) [44 FR 48938 (Aug. 20, 1979)], at 48941 n.25.

[152] Concept Release at 43009 (''As a general matter, the furnishing of proxy voting advice constitutes a 'solicitation' subject to the information and filing requirements in the proxy rules.'').

exclude proxy voting advice provided by ''disinterested persons.'' Instead, the Commission articulated its view that proxy voting advice generally constitutes a ''solicitation,'' without reference to a particular class of market participants that must be providing such advice.[153] Any suggestion otherwise requires reading into the releases an additional qualification that the Commission did not articulate.[154]

We further note that these commenters' position is inconsistent with the treatment of other disinterested parties under the current proxy regulatory scheme. Shareholders today exercise their voting rights through an intricate proxy process involving numerous intermediaries, such as broker-dealers, that each play an important role. Most shareholders own their securities in ''street name,'' with their broker-dealers and banks generally holding the securities in their name on behalf of their customers and possessing the legal authority to vote those shares. Under the current proxy process and rules, these broker-dealers and banks must forward a company's proxy materials to their customers and seek voting instructions (often called ''voting instruction forms'') from the customers on whose behalf they hold those shares. These activities are currently treated as solicitations under the proxy rules, with the Commission generally exempting them from the informational and filing requirements, despite the fact that the broker-dealers and banks have no interest in the outcome of the matters being presented for a vote and no involvement in the preparation of the materials being sent to the customers.[155] Those who have considered the issue, including at least one court, have recognized that the forwarding of a company's proxy materials and requests for voting instructions by broker-dealers constitute a form of soliciting activity subject to the Commission's rules.[156]

In addition, market observers, including proxy voting advice businesses themselves, have long recognized that the provision of proxy voting advice may constitute a ''solicitation'' subject to the proxy rules.[157] Notably, one proxy voting advice business that now argues that the Commission lacks authority to regulate proxy voting advice as a ''solicitation'' submitted a letter to the Division of Corporation Finance in 1988 requesting no-action relief from the Commission's proxy filing rules.[158] The proxy voting advice business did not request relief on the basis that its proxy voting advice should not be considered a ''solicitation.'' Instead, the letter appears to implicitly assume that such advice could be a ''solicitation'' by requesting relief from the proxy filing rules under the predecessor exemption to current Rule 14a–2(b)(3) on the basis that its proxy voting advice was provided to persons with whom it had a business relationship.[159] Further, as recently as 2016, the CEO of another proxy voting advice business testified that ''[p]roxy advisory firms also are subject to the Securities and Exchange Commission's proxy solicitation rules under the [Exchange Act].'' [160] The CEO further testified that ''proxy voting advisors operating today . . . are generally deemed by the SEC as qualifying for the exemptions based on rules 14a–2(b)(1) and 14a–2(b)(3).'' [161] These statements suggest that the proxy voting advice business industry has understood for over 30 years that its proxy voting advice constitutes a ''solicitation'' under Rule 14a–1(l), or at least that the Commission may consider their proxy voting advice to constitute a ''solicitation.''

Some commenters also asserted that our amendments to Rule 14a–1(l)(1)(iii) will increase proxy voting advice businesses' costs or interfere with their

[153] Although the Commission's view was originally articulated in the context of an opinion by its General Counsel regarding participation by broker-dealer firms in proxy solicitations, nothing in the language of that release indicates that its position could not also be extended to other independent, disinterested parties engaged in the same activity. *See* Broker-Dealer Release.

[154] The commenters also cite the 1979 and 1992 releases as evidence that the Commission intended to narrow the scope of the term ''solicitation'' so as to avoid including communications by disinterested fiduciaries. *See, e.g.,* letter from ISS (citing Communications Among Shareholders Adopting Release; 1979 Adopting Release). However, those releases reinforced the Commission's view of the breadth of the term by creating additional exemptions from the proxy filing rules. *See* Communications Among Shareholders Adopting Release at 48278 (creating an exemption from the proxy filing rules for solicitations by persons not seeking proxy authority who do not have a substantial interest in the matter subject to a vote); 1979 Adopting Release at 68766–67 (creating an exemption from the proxy filing rules for voting advice provided to persons with whom a financial advisor has a business relationship). In other words, the Commission recognized that certain classes of market participants were conducting activities that constituted ''solicitations,'' but sought to grant them relief from the proxy filing rules by adopting applicable exemptions. Had the Commission interpreted the term ''solicitation'' as not applying to those market participants' activities, no such exemption from the proxy filing rules would have been necessary in the first place. Also, had the Commission intended to narrow the scope of the term ''solicitation'' to avoid its application to those classes of market participants, it would have amended the definition thereof in Rule 14a–1(l) appropriately. In fact, in the 1992 release, the Commission acknowledged that even though it considered (but did not ultimately adopt) proposed amendments exempting from the proxy filing rules all communications by '''disinterested' persons who are not seeking proxy authority,'' such communications under that proposal would still have constituted ''solicitations'' and ''remained subject to antifraud standards.'' Communications Among Shareholders Adopting Release at 48278.

[155] *See* 17 CFR 240.14a–2(a)(1); *see also* Jill E. Fisch, *Standing Voting Instructions: Empowering the Excluded Retail Investor,* 120 Minn. L. Rev. 11, 40–41 (2017) (noting that broker-dealers' requests for voting instructions from their customers ''fall[] within the SEC's definition of a proxy solicitation'' and that Rule 14a–2(a)(1) ''exempts the broker from the filing requirements and the obligation to furnish a proxy statement'').

[156] *See, e.g., Walsh & Levine* v. *The Peoria & E. R. Co.,* 222 F.Supp. 516, 518–19 (S.D.N.Y. 1963) (''[I]f brokers transmit some but not all proxy solicitations to those for whose benefit they hold in street name, they are acting in contravention of the Commission rules if they fail to fulfill the duties required of active proxy solicitors.''); Broker-Dealer Release at 342 (''[I]t is quite clear . . . that the transmission to customers of proxy material furnished by the issuer or any other person who is soliciting a proxy, is clearly itself the solicitation of a proxy, since the material is transmitted under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.''); Fisch, *supra* note 155 at 40; Council of Institutional Investors, *Client Directed Voting: Selected Issues and Design Perspectives* (August 2010) (''Rule 14a–(l) under the Exchange Act defines solicitation to include the 'furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy,' subject to certain exceptions. Communications sent by brokers to encourage participation in a [client directed voting] model would appear to fall within this definition absent an exemption, and the SEC staff agrees with this conclusion. As such, brokers would have to comply with the proxy solicitation rules, including principally the disclosure and SEC filing requirements applicable to proxy materials.'').

[157] *See, e.g.,* Sagiv Edelman, *Proxy Advisory Firms: A Guide for Regulatory Reform,* 62 Emory L.J. 1369, 1378 (2013) (''Due to the expansive definition of solicitation, proxy advisory firms would be subject to federal proxy rules if not for the exemption found in Exchange Act Rule 14a–2(b)(3).''); Douglas G. Smith, *A Comparative Analysis of the Proxy Machinery in Germany, Japan, and the United States: Implications for the Political Theory of American Corporate Finance,* 58 U. Pitt. L. Rev. 145, 201 n.284 (1996) (''Furnishing of proxy voting advice by an investment advisor is exempt [from the proxy filing rules] under certain circumstances.''); John C. Coffee, Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor,* 91 Colum. L. Rev. 1277, 1358 (1991) (''The legal issue is whether the provision of proxy advice amounts to a proxy 'solicitation' under SEC Rule 14a–1. Clearly, the definition of solicitation reaches this far . . . .''); Bernard S. Black, *Shareholder Passivity Reexamined,* 89 Mich. L. Rev. 520, 530 (1990) (''Nor are the Proxy Rules limited to communications by the contestants. A third party who proffers voting advice is 'soliciting' votes.''). *See also infra* notes 158–161 and accompanying text.

[158] Institutional Shareholder Services, Inc., 1991 SEC No-Act. LEXIS 17 (Dec. 15, 1988).

[159] *See id.*

[160] Katherine H. Rabin, Chief Executive Officer, Glass, Lewis & Co., Statement to the U.S. House of Representatives Committee on Financial Services: Markup of H.R. 5983, the ''Financial CHOICE Act of 2016,'' at 3 (September 13, 2016), *available at https://www.glasslewis.com/wp-content/uploads/2016/09/2016_0912_Glass-Lewis-Statement-re-H.R.-5983_final.pdf.*

[161] *Id.*

ability to provide services to their clients. Specifically, commenters indicated that the amendments could increase litigation risks for proxy voting advice businesses or have a chilling effect on shareholder communications.[162] Although we acknowledge that compliance with the new conditions we are adopting to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3) may increase the resources that proxy voting advice businesses apply to ensuring compliance with applicable law and regulation,[163] we disagree that our amendments to Rule 14a–1(l)(1)(iii), taken in isolation, will have a material impact on the operation of a proxy voting advice business.[164] To the contrary, the fact that both the Commission and the market generally, including proxy voting advice businesses, have long recognized that proxy voting advice generally constitutes a ''solicitation'' indicates that any impact from codifying this aspect of the definition of a solicitation likely is already reflected in the manner in which proxy voting advice businesses' provide their services and the pricing thereof.

Finally, in the Interpretive Release, we stated our view that proxy voting advice based on a proxy voting advice business's application of custom policies generally should be considered a ''solicitation'' under Rule 14a–1(l).[165] We continue to hold that view for the reasons stated in the Interpretive Release. As a result, such proxy voting advice is subject to Rule 14a–9, and persons who provide such advice in reliance on the exemptions in either Rule 14a–2(b)(1) or (b)(3) must comply with the conflicts of interest disclosure requirements set forth in new 17 CFR 240.14a–2(b)(9)(i) (''Rule 14a–2(b)(9)(i)'').[166] Some commenters recommended that we amend Rule 14a–1(l) to exclude from the definitions of ''solicit'' and ''solicitation'' proxy voting advice that is based on investors' custom policies.[167] These commenters' concerns, however, focused largely on subjecting investors' custom policies, and the proxy voting advice that is based thereon, to the proposed review and response mechanism outlined in the Proposing Release.[168] As discussed in more detail below, new 17 CFR 240.14a(b)(9)(v) (''Rule 14a–2(b)(9)(v)'') excludes from the notice requirement of new 17 CFR 240.14a–2(b)(9)(ii) (''Rule 14a–2(b)(9)(ii)'') proxy voting advice to the extent such advice is based on custom policies.[169] As such, notwithstanding the fact that we are not excluding from the definitions of ''solicit'' and ''solicitation'' proxy voting advice that is based on custom policies, we believe that we have appropriately taken into account the substance of these commenters' concerns.

As noted above, one commenter asserted that proxy voting *agent* businesses should not be subject to the same regulations as proxy voting advice businesses.[170] The commenter's position that its services differ from a proxy voting advice business's and should not be considered a ''solicitation'' appears to be based, in part, on the fact that it only votes its clients' shares in accordance with its clients' custom policies.[171] As with any other person, including any proxy voting advice business, to the extent a business is providing proxy voting advice to a client—regardless of whether such advice is based on its proprietary benchmark or specialty policies or its client's custom policies—such advice will constitute a ''solicitation'' under Rule 14a–1(l)(1)(iii)(A). However, the commenter and another commenter—both of which are investment advisers and were identified as proxy voting advice businesses in the Proposing Release—also asserted that their activities do not constitute ''solicitations'' because they vote their clients' shares on behalf of their clients rather than providing them with voting recommendations.[172] We agree that to the extent a business that provides proxy voting services is not providing any voting recommendations and is instead exercising delegated voting authority on behalf of its clients, such services generally will not constitute ''proxy voting advice''—and, therefore, not be a ''solicitation''—under Rule 14a–1(l)(1)(iii)(A).[173]

With respect to Rule 14a–1(l)(2), we are also amending this provision as proposed to add paragraph (v) to make clear that the terms ''solicit'' and ''solicitation'' do not include any proxy voting advice provided by a person who furnishes such advice only in response to an unprompted request. This amendment codifies the Commission's historical view that such a communication should not be regarded as a solicitation subject to the proxy rules.[174] As we explained in the Proposing Release, we believe that a proxy voting advice business providing voting advice to a client where the client's request for the advice has been invited and encouraged by such business's marketing, offering, and selling, such advice should be distinguished from advice provided by a person only in response to an unprompted request from its client. In our view, the information and filing requirements of the proxy rules (including the filing and furnishing of a proxy statement with information about the registrant and proxy cards with means for casting votes) or compliance with the new conditions we are adopting to the exemptions described below, are appropriate for a person who chooses to actively market and sell its proxy voting advice as that person's actions are reasonably designed to result in the procurement, withholding, or revocation of a proxy. Those requirements, however, are ill-suited for a person who receives an unprompted request from a client for its views on an upcoming matter to be presented for shareholder approval. For example, a person who does not sell voting advice as a business and who provides such advice only in response to an unprompted request from its client is unlikely to anticipate the need to establish the internal processes necessary to comply with the new conditions we are adopting to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3).

We also believe, based on our understanding of the dynamics of the proxy voting advice market as it currently operates, that a person that provides proxy voting advice only in

[162] *See supra* notes 101–105 and accompanying text.

[163] *See infra* Section IV.

[164] To the extent that some proxy voting advice businesses did not previously understand their proxy voting advice to constitute a solicitation and thus subject to Rule 14a–9 liability, it is possible that the codification of the Commission's longstanding view could have some economic effects. See *infra* Section IV.B.

[165] Commission Interpretation on Proxy Voting Advice at 47418. For a description of the services that one major proxy voting advice business offers in connection with its clients' custom policies, *see* ISS, Custom Pol'y & Res., *available at https://www.issgovernance.com/solutions/governance-advisory-services/custom-policy-research/(last visited Jun. 19 2020).*

[166] *See infra* Section II.D. for a discussion of the amendments we are adopting to Rule 14a–9 and Section II.B *infra* for a discussion of new Rule 14a–2(b)(9)(i).

[167] *See supra* note 112 and accompanying text.

[168] *See, e.g.,* letter from ISS (expressing concern about disclosing ''clients' proprietary custom voting policies and the recommendations based thereon'' and doubt as to the ''investor protection to be gained by allowing issuers to vet the methodologies and assumptions institutional investors choose to implement for their own portfolios'').

[169] *See infra* Section II.C.3.c.i.

[170] *See supra* note 113 and accompanying text.

[171] *See* letter from Segal Marco II.

[172] *See supra* notes 99–100 and accompanying text.

[173] Separately, we note that the Commission has provided guidance to investment advisers which discusses how the fiduciary duty and rule 206(4)–6 under the Advisers Act relate to an investment adviser's exercise of voting authority. *See infra* note 400.

[174] *See supra* note 84.

response to unprompted requests and does not market its expertise in such services is less likely to present an investor protection or market integrity concern. For example, we believe such one-off advice to individual clients lacks the system-wide significance of advice provided by proxy voting advice businesses who, as described above, have come to occupy a unique and important position in that process.[175] Although one commenter recommended that 17 CFR 240.14a–1(l)(2)(v) (''Rule 14a–1(l)(2)(v)'') be narrowed to exclude only proxy voting advice furnished pursuant to an unprompted request if such advice is also provided ''not for compensation,'' [176] we consider that amendment unnecessary. In our view, any compensation that may be received for such unprompted proxy voting advice does not present the same investor protection or regulatory concerns because such persons are less likely to engage in widespread marketing of their expertise in providing proxy voting advice.

As noted above, one commenter opposed the amendment to Rule 14a–1(l)(2) on the basis that investment advisers and broker-dealers may avoid announcing their willingness to provide voting advice on Forms ADV and CRS out of concern that they would fall outside the scope of new Rule 14a–1(l)(2)(v) and be deemed to be prompting a request for proxy voting advice.[177] We believe, however, that the text of new Rule 14a–1(l)(1)(iii)(A) is sufficiently precise to avoid this concern. Where an investment adviser or broker-dealer is describing the services it provides to its clients or customers, which may include proxy voting advice, we believe that such investment adviser or broker-dealer should not be deemed to be ''market[ing] its expertise as a provider of such proxy voting advice, separately from other forms of investment advice, and sell[ing] such proxy voting advice for a fee.'' [178] This same commenter also expressed concern that the amendment to Rule 14a–1(l)(2) could be counterproductive from an investor protection standpoint as the proxy rules would apply to experts with proxy advice-related skills and resources but not to individuals with less relevant expertise who engage in the same activities.[179] We disagree. As we noted in the Proposing Release,[180] we believe that those persons providing voting advice in response to unprompted requests likely will be furnishing such advice to a client with whom there is an existing business relationship. As noted above, proxy voting advice provided under these circumstances does not present the same investor protection or regulatory concerns as proxy voting advice businesses engaged in widespread marketing and sale of proxy voting advice to large numbers of investment advisers and institutional investors who are often voting on behalf of other investors.[181]

B. Amendments to Rule 14a–2(b): Conflicts of Interest

1. Proposed Amendments

Over the years, many observers have noted that some proxy voting advice businesses engage in activities or have relationships that could reasonably be expected to affect the objectivity or reliability of their advice.[182] Examples of circumstances where the interests of a proxy voting advice business may diverge materially from the interests of the clients who utilize their advice include:

- A proxy voting advice business providing voting advice to its clients on proposals to be considered at the annual meeting of a registrant while the proxy voting advice business also earns fees (or is seeking to earn fees) from that registrant for providing advice on corporate governance and compensation policies; [183]
- A proxy voting advice business providing voting advice on a matter in which its affiliates or one or more of its clients has a material interest, such as a business transaction or a shareholder proposal put forward by or actively supported by that client or group of clients;
- A proxy voting advice business providing ratings to institutional investors of registrants' corporate governance practices while at the same time consulting for, or seeking to consult with, registrants that are the subject of the ratings for a fee to help increase their corporate governance scores;
- A proxy voting advice business providing voting advice with respect to a registrant's shareholder meeting while affiliates of the proxy voting advice business hold a significant ownership interest in the registrant, sit on the registrant's board of directors, or have relationships with a shareholder presenting a proposal covered by the proxy voting advice; and
- A proxy voting advice business providing voting advice on a matter on which it or its affiliates have provided advice to a registrant, a proponent, or other party regarding how to structure or present the matter or the business terms to be offered in such matter.

These and similar types of circumstances create a risk that the proxy voting advice business's voting advice could be influenced by the business's own interests, which may call into question the objectivity and independence of its advice.[184] The clients of the proxy voting advice business would generally need to be informed of such activities and relationships in order to be in a position to reasonably assess the impact and materiality of any actual or potential conflicts of interest with respect to the proxy voting advice they receive.[185] If they do not have access to sufficiently detailed disclosure about the full extent and nature of any conflicts that are relevant to the voting advice, and any measures taken to mitigate such conflicts, these clients may not have sufficient information to reasonably understand and adequately assess these potential conflicts and remedial measures when they evaluate the voting advice and make their voting determinations.[186] A range of proxy voting advice business clients may find it important to have sufficient information to support their understanding and assessment, including, for example, investment advisers that undertake proxy voting duties on a client's behalf.[187]

In light of these concerns, the Commission proposed amendments to further ensure that sufficient information about material conflicts of interest would be provided consistently across proxy voting advice businesses and in a manner readily accessible to the clients of the proxy voting advice businesses. Accordingly, the proposed amendments included a requirement that persons who provide proxy voting advice,[188] in order to rely on the

[175] *See supra* notes 6–10 and accompanying text.

[176] *See* letter from Exxon Mobil.

[177] *See* letter from ISS.

[178] 17 CFR 240.14a–1(l)(1)(iii)(A); *see also supra* notes 124–125.

[179] *See supra* note 117 and accompanying text.

[180] *See* Proposing Release at 66523.

[181] *See supra* text accompanying note 176.

[182] *See* Proposing Release at 66525 n.73.

[183] *See id.* at n.74.

[184] *See id.* at n.75.

[185] *See id.* at n.72.

[186] *See id.* at 66526 n.78 and *infra* note 193.

[187] Commission Guidance on Proxy Voting Responsibilities at 47425 (''[A]n investment adviser's decision regarding whether to retain a proxy advisory firm should also include a reasonable review of the proxy advisory firm's policies and procedures regarding how it identifies and addresses conflicts of interest.'').

[188] Consistent with the Commission's proposed amendments to the definition of solicitation under the proxy rules, the requirement would apply only to proxy voting advice falling within the scope of

exemptions contained in Rule 14a–2(b)(1) and (b)(3), must include in such advice (and in any electronic medium used to deliver the advice) the following disclosures specifically tailored to proxy voting advice businesses and the nature of their conflicts of interest:

- Any material interests, direct or indirect, of the proxy voting advice business (or its affiliates [189]) in the matter or parties concerning which it is providing the advice;
- Any material transaction or relationship between the proxy voting advice business (or its affiliates) and (i) the registrant (or any of the registrant's affiliates [190]), (ii) another soliciting person (or its affiliates), or (iii) a shareholder proponent (or its affiliates), in connection with the matter covered by the proxy voting advice;
- Any other information regarding the interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and
- Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.[191]

In the Proposing Release, the Commission stated that the disclosures provided under these provisions should be sufficiently detailed so that clients of proxy voting advice businesses could understand the nature and scope of the interest, transaction, or relationship to appropriately assess the objectivity and reliability of the proxy voting advice they receive.[192] This might include, for example, the identities of the parties or affiliates involved in the interest, transaction, or relationship triggering the proposed disclosure requirement and, when necessary for the client to adequately assess the potential effects of the conflict of interest, the approximate dollar amount involved in the interest, transaction, or relationship. Boilerplate language, including language stating that ''such relationships or interests may or may not exist,'' would be insufficient for purposes of satisfying this condition to the exemptions.

2. Comments Received

Many commenters agreed with the general principle that providing clients of proxy voting advice businesses with adequate conflicts of interest disclosure helps to ensure transparency and fairness in the voting process and is vital to the clients' ability to make informed voting decisions.[193] Some commenters expressed the view that proxy voting advice businesses currently do not satisfactorily mitigate the risk that conflicts of interest may impair their objectivity and, consequently, that their ability to provide impartial voting advice is often undermined by the prevalence of conflicts.[194]

Some commenters opposed the proposed amendments,[195] asserting that additional conflict disclosure requirements were not justified [196] and, therefore, would impose unnecessary additional costs and burdens on proxy voting advice businesses and their clients.[197] These commenters challenged, among other things, the claims that proxy voting advice businesses' conflicts of interest disclosures were materially deficient,[198] and contended that the businesses' existing policies and procedures (such as their disclosure practices and maintenance of internal firewalls to guard against conflicts) adequately addressed the risk of conflicts.[199] In support of this view, commenters noted that the predominant opinion among the

amended Rule 14a–1(l)(1)(iii)(A). *See supra* Section II.A., ''Codification of Commission's Interpretation of Solicitation.''

[189] The term ''affiliate,'' as used in proposed Rule 14a–2(b)(9)(i), would have the meaning specified in Exchange Act Rule 12b–2.

[190] The Commission recognized that proxy voting advice businesses may not necessarily have access to the information needed to determine whether an entity is an affiliate of a registrant, another soliciting person, or the shareholder proponent. Therefore, as proposed, proxy voting advice businesses would only be required to use publicly-available information to determine whether an entity is an affiliate of registrants, other soliciting persons, or shareholder proponents.

[191] This would include a description of the material features of the policies and procedures that are necessary to understand and evaluate them. Examples include the types of transactions or relationships covered by the policies and procedures and the persons responsible for administering these policies and procedures.

[192] Proposing Release at 66526.

[193] *See* letters from commenters generally opposed to the proposals, *e.g.,* CalSTRS (''We agree that conflict of interest disclosure is important for a well-functioning and unbiased proxy voting system. Investors should be informed when there may be potential conflicts of interest that could affect proxy advisor recommendations. Investors need confidence that the research being considered when voting is unbiased and fact based . . . .''); CFA Institute I; CII IV; ISS; and the IAC Recommendation. *See also* letters from commenters generally supporting the proposals, *e.g.,* ACCF (''Investors need to be fully informed of the biases and conflicts inherent in [the] powerful vote recommendations [of proxy voting advice businesses].''); BRT (''. . . conflicts of interest that may arise for proxy advisors should be disclosed in order for their clients to assess for themselves the effect and materiality of any actual or potential conflicts of interest with respect to a voting recommendation . . . We agree with the Commission's assessment that institutional investors and investment advisers who rely on proxy advisors for voting guidance cannot identify potential risks if they do not have access to sufficiently detailed disclosure about the full extent and nature of any conflicts that are relevant to the voting advice they receive.''); Exxon Mobil Corp., (Feb. 3, 2020) (''ExxonMobil''); Tao Li, Ph.D., Assistant Professor of Finance, University of Florida (Jan. 30, 2020) (''Prof. Li'') (''. . . it remains imperative that market participants are aware of any potential conflicts of interest within the industry and whether those conflicts are impeding the role of proxy advisors as independent providers of information and recommendations.''); NAM; Nareit; Nasdaq; SCG; CCMC.

[194] *See, e.g.,* letters from ACCF (citing its May 2018 research paper: ''The Conflicted Role of Proxy Advisors''); BIO; BRT; CEC; CCMC; ExxonMobil; Jason Ward, Managing Partner, Amrop Industrial Search LLC (Feb. 3, 2020) (''J. Ward''); NAM; Nareit; Nasdaq; SCG. To substantiate their claims that conflicts of interest are pervasive in proxy voting advice, several commenters pointed to the results of various opinion surveys of selected companies and individuals reflecting significant concerns about conflicts of interest. *See, e.g.,* letters from CCMC; Ashley Baker, Director of Public Policy, The Committee for Justice, (Feb. 3, 2020) (''Committee for Justice''); J. Ward; Nareit; Nasdaq; P. Mahoney and J.W. Verret; SCG; Seven Corners Capital Management, LLC (Apr. 8, 2020) (''Seven Corners'').

[195] *See, e.g.,* letters from CalPERS; Canadian Governance Coalition; CII IV; JoAnn Hanson, President and CEO, Church Investment Group (Jan. 29, 2020) (''Church Investment Group''); Colorado PERA; Henry Beck, Maine State Treasurer, et al., Democratic Treasurers Association (Jan. 30, 2020) (''DTA''); Holly A. Testa, Director, Shareowner Engagement, First Affirmative Financial Network (Jan. 3, 2020) (''First Affirmative''); Jeffery W. Perkins, Executive Director, Friends Fiduciary Corporation (Feb. 2, 2020) (''Friends''); Glass Lewis II; ISS; Interfaith Center II; J. Coates, Professor of Law and Economics, Harvard Law School, and Barbara Roper, Consumer Federation of America (Jan. 30, 2020) (''Prof. Coates''); New York Comptroller II; PIAC II; Public Retirement Systems; ValueEdge I.

[196] *See, e.g.,* letters from Colorado PERA (''PERA utilizes research reports from Glass Lewis and ISS to assist with its evaluation of items on a proxy ballot. PERA has analyzed each firm's disclosures and management of conflicts of interest. We concluded that the potential conflicts are harmless to the independence of the research, would not sway an investor's opinion, and the existing firewalls to prevent contamination of objectivity—where applicable to specific proxy advisors—are sufficient''); CalSTRS; Glass Lewis II; ISS.

[197] *See, e.g.,* letters from CalPERS; Canadian Governance Coalition; CII IV; Church Investment Group; DTA; First Affirmative; Friends; Glass Lewis II; ISS; Interfaith Center II; New York Comptroller II; Colorado PERA; PIAC II; Prof. Coates; Public Retirement Systems; ValueEdge I.

[198] *See, e.g.,* letters from CalPERS (''We see no evidence that conflicts of interest with proxy advisors have led to voting advice that conflicts with our voting policies . . . It is not clear to what extent the SEC has reviewed all of the disclosures that proxy voting advice businesses already provide.''); CalSTRS; CII IV; Glass Lewis II; ISS; New York Comptroller II; Colorado PERA; PIAC II; ValueEdge I.

[199] *See, e.g.,* letters from CalSTRS (stating that while it is generally supportive of conflict of interest disclosure, it does ''not believe the SEC needs to create a new regulatory structure to enforce such [conflict of interest] disclosure'' and its general belief ''that proxy advisors are currently providing adequate disclosures that meet the needs of investors, and any modifications to disclosures can be enforced through existing SEC authority.''); ISS; Glass Lewis II; CalPERS; New York Comptroller II.

businesses' own clients was that the measures taken to mitigate conflicts of interest were satisfactory.[200] Moreover, commenters argued that adding new disclosure requirements to the proxy rules was unnecessary in light of existing provisions in the Advisers Act and in Rule 14a–2(b) under the Exchange Act that already address conflicts of interest, as well as inappropriate because the Advisers Act generally governs the activities of investment advisers, including proxy voting advice businesses.[201] In addition, some commenters believed that the proposed conflicts disclosure requirements would likely compromise the internal firewalls designed by proxy voting advice businesses to mitigate their risk of conflicts,[202] and could have a detrimental effect on competition in an industry that is already cost-prohibitive for new entrants.[203]

Both those supporting and those opposing the proposed Rule 14a–2(b)(9)(i) recommended modifications to the proposed new disclosure requirements,[204] ranging from very specific suggestions intended to standardize the presentation of conflicts disclosures,[205] expand the breadth of required disclosure,[206] and capture certain detailed information,[207] to those that were less prescriptive and leaned toward a more principles-based approach,[208] with an emphasis on materiality.[209] Other commenters recommended certain substantive changes that would have widened the scope of the proposed amendments beyond conflicts disclosure.[210]

3. Final Amendments

We are adopting amendments to Rule 14a–2(b) to require that persons who provide proxy voting advice in reliance on the exemptions in either Rule 14a–2(b)(1) or (b)(3) must include in their voting advice to clients the conflicts of interest disclosure specified in new Rule 14a–2(b)(9)(i). The Commission is adopting these amendments substantially as proposed, but with certain modifications as discussed below, to clarify and streamline the rule in response to commenters' concerns and suggestions.

As adopted, Rule 14a–2(b)(9)(i) establishes a principles-based requirement, based on a standard of materiality, that will apply to all proxy voting advice that is provided in reliance on the exemptions in Rules 14a–2(b)(1) and (b)(3). Contrary to the views of some commenters, we do not see this requirement as imposing an entirely new regulatory regime or structure.[211] Rather, we view Rule 14a–2(b)(9)(i) as enhancing the existing conflicts of interest disclosures that proxy voting advice businesses currently provide in order to rely on the exemptions from the proxy rules' information and filing requirements. By articulating a standard for disclosure that focuses on information that would be material to assessing the objectivity of the proxy voting advice, the new rule is expected to result in disclosure that is more tailored and comprehensive than would be required under either Rule 14a–2(b)(1) or (b)(3).[212] Given the significant role played by proxy voting advice businesses in the voting process, we believe that the articulation of clear minimum disclosure standards is appropriate to better ensure transparency, accuracy, and completeness in the information provided, as well as the integrity of the proxy voting process. Rule 14a–2(b)(9)(i)

[200] *See, e.g.,* letters from ISS (''. . . the fact that the most vocal critics of ISS in this area [regarding conflicts of interest] are those who speak on behalf of corporate management, and not the investors who rely on ISS' research and vote recommendations, indicates that ISS is managing this potential conflict extremely well.''); CalPERS; CalSTRS; Glass Lewis II; New York Comptroller II.

[201] *See, e.g.,* letter from ISS (asserting that ''the proposal ignores the relevance of the Advisers Act regime and makes no attempt to explain why this framework is inadequate to address the Commission's purported concerns about proxy advice''). As noted above, it is not unusual for a registrant under one provision of the securities laws to be subject to other provisions of the securities laws when engaging in conduct that falls within the other provisions. *See supra* notes 41 through 60 and accompanying text for a discussion of why we believe it is appropriate that proxy voting advice businesses be subject to applicable rules under Section 14(a) when they provide proxy voting advice, regardless of whether they are registered under the Advisers Act.

[202] For example, according to ISS, it maintains a firewall between ISS Global Research, its core institutional business, and ISS Corporate Solutions, Inc. (''ICS''), a subsidiary which provides governance tools and services to corporate issuer clients. In its comment letter, ISS states that ''a key goal of the firewall is to keep the ISS Global Research team from knowing the identity of ICS' clients,'' which could be jeopardized by disclosure of the details of ICS' business and potentially result in vote recommendations that are biased in favor of corporate management. As part of its conflicts of interest policies, Glass Lewis blocks its research analysts from any access to the holdings, custom policies and/or voting activity of its two co-owners, the Ontario Teachers' Pension Plan Board and Alberta Investment Management Corp. *See e.g.,* letters from CII IV; Glass Lewis II; ISS. *See also* IAC Recommendation.

[203] *See, e.g.,* letters from CalPERS; CII IV; ISS; PERA (''This disclosure of . . . anything that may potentially be deemed a conflict of interest could result in advisors losing their competitive advantage.''); and the IAC Recommendation. *See also* letter from CFA Institute I (''We do not object to such increased transparency as long as these further disclosures do not compromise the competitiveness of a proxy adviser by forcing them to divulge trade secrets or other proprietary information, the disclosure of which would be deleterious to the specific adviser'').

[204] *See, e.g.,* letters from Lynette C. Fallon, EVP HR/Legal and General Counsel, Axcelis Technologies, Inc. (Jan. 20, 2020) (''Axcelis''); Baillie Gifford; BRT; CEC; CII IV; CIRCA; Exxon Mobil; Garmin; Glass Lewis II; ISS; Jonathan Chanis, New Tide Asset Management, LLC (Jan. 30, 2020) (''J. Chanis''); Mylan; Ann McGinnis, Co-President et al., Los Angeles Chapter, National Investor Relations Institute, Los Angeles Chapter (Feb. 3, 2020) (''NIRI–LA''); David Erickson, President, et. al., National Investor Relations Institute, Orange County Chapter (Feb. 4, 2020) (''NIRI–OC''); June M. Vecellio, President, and James B. Bragg, Advocacy Ambassador, National Investor Relations Institute, Connecticut/Westchester County Chapter (Feb. 6, 2020) (''NIRI–Westchester''); Nasdaq; Prof. Li; SCG; Seven Corners; SES; Linda Moore, President and CEO, TechNet, (Feb. 3, 2020) (''TechNet'').

[205] *See, e.g.,* letters from Nasdaq; NIRI–LA; NIRI–OC; NIRI–WC; TechNet (calling for conflicts of interest to be disclosed on the front page of proxy voting advice).

[206] *See, e.g.,* letters from ExxonMobil (supporting a requirement for specific disclosures about proxy voting advice businesses' specialty reports that are driven by goals other than maximizing shareholder value); SCG (recommending that proxy voting advice businesses be required to disclose ''any interest, transaction or relationship that may present a conflict of interest, and the dollar amount thereof'').

[207] *See, e.g.,* letters from ExxonMobil (recommending that required conflict disclosures cover details similar to the requirements of Item 404(a) of Regulation S–K and enumerating a list of specific items that should be addressed by disclosure); PIRC (suggesting that disclosure of specific amounts of compensation received from various clients could be helpful).

[208] *See, e.g.,* letters from Baillie Gifford (cautioning that requiring disclosure of policies and procedures would lead to boilerplate disclosure); CII IV (asserting that allowing proxy voting advice businesses to choose the vehicle by which they disclose conflicts of interest would mitigate the widespread distribution of information that could affect competitive or other concerns); CIRCA (stating that a principles-based approach ''would prevent proxy advisors from giving boilerplate disclosures . . . without creating unprecedented and excessive burdens.''); ISS (stating that ''there is no reason to treat conflict disclosure by proxy advisers any differently from the way conflict disclosure by portfolio managers or any other type of investment adviser is treated.''); S. Holmes.

[209] *See, e.g.,* letter from Baillie Gifford.

[210] *See, e.g.,* letters from Garmin (recommending that the Commission require proxy voting advice businesses to separate their proxy advisory businesses from their consulting businesses); J. Chanis (recommending that the Commission prohibit proxy voting advice businesses from also providing consulting services to companies that are the subject of their proxy voting advice).

[211] *See, e.g.,* letters from CalSTRS ([W]e do not believe the SEC needs to create a new regulatory structure to enforce such disclosure.''); Glass Lewis II (''Accordingly, this issue [of conflicts of interest disclosure] does not present a basis for a wholesale new and burdensome regulatory regime . . . .'').

[212] The exemption in Rule 14a–2(b)(1) does not currently require conflicts of interest disclosure, while Rule 14a–2(b)(3)(ii) requires disclosure of ''any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests in such matter.'' 17 CFR 240.14a–2(b)(3)(ii). It should be noted that both exemptions were adopted by the Commission before proxy voting advice businesses played the significant role that they now do in the proxy voting process and in the voting decisions of investment advisers and institutional investors.

is intended to harmonize the conflicts of interest disclosure that proxy voting advice businesses provide to their clients, helping to ensure that sufficient information about material conflicts of interest is disclosed more consistently across proxy voting advice businesses and in a manner readily accessible to the clients of such businesses. As a consequence, we believe the rule will enable clients of proxy voting advice businesses to make more informed voting decisions, including with regard to how proxy voting advice businesses identify and address conflicts of interest on a business-specific and relative basis and help in Commission oversight of the proxy voting process.[213]

Although some proxy voting advice businesses and others have asserted that the businesses' existing practices and procedures adequately address conflicts of interest concerns,[214] we believe that the absence of a disclosure requirement specifically contemplating the conflicts of interest that can arise for proxy voting advice businesses in relation to proxy voting advice means that there has not been a sufficient standard against which clients may assess the quality of the conflicts disclosures they receive. Conditioning the exemptions in Rules 14a–2(b)(1) and (3) for proxy voting advice on the proxy voting advice business's adherence to a set of minimum, principles-based disclosure standards will make clear what constitutes basic information regarding conflicts of interest that all parties can expect when receiving voting advice and will bolster the completeness and consistency of such disclosure by making it a regulatory requirement. This should in turn foster greater confidence in the services proxy voting advice businesses offer to their clients and provide greater assurance to market participants that shareholders' interests are being properly considered through a well-functioning proxy system.[215]

To that end, Rule 14a–2(b)(9)(i) sets forth a concise framework that applies to any person providing proxy voting advice within the scope of proposed Rule 14a–1(l)(1)(iii)(A) who wishes to utilize the exemption in either Rule 14a–2(b)(1) or (b)(3). Such persons must include in their voting advice (or in any electronic medium used to deliver the advice) prominent disclosure of:

- Any information regarding an interest, transaction, or relationship [216] of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; [217] and
- Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.[218]

The rule, as adopted, reflects our intent to avoid an overly prescriptive disclosure requirement with specific monetary thresholds, in favor of a more principles-based rule that is sufficiently flexible to encompass a wide variety of circumstances that may not fall within pre-determined parameters but nevertheless could materially impact a client's assessment of the proxy voting advice business's objectivity. This approach also is consistent with the views of several commenters who favored a principles-based disclosure requirement that could more easily accommodate a variety of different facts and circumstances.[219] As such, Rule 14a–2(b)(9)(i) establishes a general standard for conflicts of interest disclosure, but allows the proxy voting advice business to apply its judgment and unique knowledge of the facts to determine the materiality of conflicts that might pose a risk to the objectivity of its advice.

The final rule also gives the proxy voting advice business flexibility to determine the precise level of detail needed about any identified conflicts of interest,[220] or whether a relationship or interest that has been terminated should nevertheless be disclosed.[221] In each particular case, the rule gives the proxy voting advice business the discretion to determine which situations merit disclosure and the specific details to provide to its clients about any conflicts of interest identified. The key determinant will be whether the information is material to an evaluation of the proxy voting advice business's objectivity.

A more prescriptive disclosure requirement, while relying less on the proxy voting advice business's judgment, risks being either under- or over-inclusive. For instance, there may be scenarios or relationships of which we are not aware or that, at this point in time, do not exist that present or would present material conflicts.[222]

[213] Currently, proxy voting advice businesses differ in how they disclose their conflicts of interest. For example, ISS discloses the details of its potential conflicts of interest, such as the identities of the parties and the amounts involved, through its ProxyExchange platform, while Glass Lewis states that its disclosures appear on the front cover of the report with its proxy voting advice. *See* ISS, FAQs Regarding Recent Guidance from the U.S. Securities and Exchange Commission Regarding Proxy Voting Responsibilities of Investment Advisers (2019) (''ISS FAQs''), *available at https://www.issgovernance.com/file/faq/ISS_Guidance_FAQ_Document.pdf. See also* Proposing Release at 66527, n. 90; letter from Glass Lewis II.

[214] *See supra* note 200 and Proposing Release at 66544 n.226.

[215] *See infra* Section IV.A.

[216] Such information may include disclosure about certain business practices in which the proxy voting advice business engages that might reasonably be expected to call into question its objectivity and the independence of its advice. For example, it may be appropriate in some circumstances under the rule for a proxy voting advice business to disclose its practice of selectively consulting with certain clients before issuing its benchmark voting recommendation on a specific matter (*e.g.,* a contested director election or merger). This may particularly be the case in situations in which the clients with whom the proxy voting advice business consults are not directly involved as a party to the specific matter but are expected to receive proxy voting advice on the matter. Such a practice could allow for those consulted clients' voting preferences to influence recommendations given to other clients that were not consulted and importantly, without the knowledge of those clients not consulted.

[217] Rule 14a–2(b)(9)(i)(A).

[218] Rule 14a–2(b)(9)(i)(B).

[219] *See, e.g.,* letters from Baillie Gifford; CII IV; CIRCA, Glass Lewis II; ISS (''Proxy advisers should be governed by a principles-based regulatory regime. For this reason, the Commission should not require such firms to disclose specific qualitative or quantitative information or impose prescriptive standards regarding the method of conflict disclosure.'').

[220] For example, the proxy voting advice business would have the discretion, on a case-by-case basis, to determine whether specific monetary amounts related to any potential and/or actual conflicts identified should be disclosed. *See* letter from CII IV (''We do not believe that proxy voting advice businesses should be required to disclose the specific amounts that they receive from the relationships or interests covered by the proposed conflicts of interest disclosures . . . there is no reliable evidence indicating that institutional investor clients believe that level of detail is necessary in all circumstances. To the extent that investors want this information, they are at liberty to seek it from the proxy advisory firm(s) they hire, and make it a condition for hiring a proxy advisor.''). We note, however, that Rule 14a–2(b)(9)(i) should not be interpreted to mean that disclosure of specific amounts would never be necessary. There may be situations, depending on the particular facts and circumstances, in which this information would be material to assessing the objectivity of the proxy voting advice and therefore should be disclosed. Similarly, the proxy voting advice business would have the discretion to determine whether the number of instances of substantive engagement it has had with existing clients as well as any other third parties providing substantive input to the proxy voting advice business as it develops its advice may have created a material conflict of interest that should be disclosed.

[221] *See, e.g.,* letter from Baillie Gifford (''A more principles-based requirement is preferable because whether a matter is material to the proxy advice will depend on the facts and circumstances. For example, in some situations it may be relevant that a proxy advisor had an historical relationship with a registrant, albeit that the relationship is no longer live, if the relationship were very significant in terms of duration or value. In other cases, less significant relationships will cease to be relevant as soon as they come to an end. It should be for the proxy advisors to make the assessment and for their clients to understand how the advisor makes this determination as part of regular due diligence.'').

[222] *See* discussion *supra* pp. 51–52.

Instead, by adopting a rule with materiality as its focus, we have opted for an approach that is more adaptable to varied circumstances. The concept of materiality is at the core of our disclosure framework and has served our markets and investors well. Therefore, we believe that requiring proxy voting advice businesses to base their conflicts of interest disclosures on assessments of materiality is a more effective way to ensure that their clients have sufficient information to weigh the voting advice they are given.

Substantively, Rule 14a–2(b)(9)(i) is consistent with the Commission's proposal, but we have modified the wording in an effort to further simplify the requirement. We agree with a commenter who suggested that the proposed regulatory text could be streamlined to both capture the full scope of conflicts-related disclosure and retain the focus on principles of materiality.[223] Therefore, consistent with the suggestions of these commenters, the rule condenses proposed subsections (A), (B), and (C) of paragraph (b)(9)(i) into a single subsection (A) that requires disclosure of ''any information regarding an interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship.'' [224]

We note that some commenters recommended ways to improve the proposal by including additional substantive requirements or specific parameters designed to more clearly indicate the disclosure obligations of proxy voting advice businesses under the rule.[225] For example, one commenter suggested that more guidance was needed regarding the timeframe for which the disclosure of conflicts should be provided.[226] As discussed above, however, we believe that a more principles-based approach will best serve to provide the clients of proxy voting advice businesses with adequate disclosure regarding conflicts while balancing the varied and unique circumstances of such businesses. We are therefore not persuaded that more prescriptive modifications are necessary or preferable to the rule, as adopted, which describes a general principle rather than delineating particular disclosure items.

Because our concern is with ensuring that proxy voting advice business clients have the ability to assess the objectivity, and ultimately the reliability, of proxy voting advice, we believe it would not serve the interests of those who depend on voting advice to place precise limits on what would be considered material information. For example, if a proxy voting advice business has been retained by a shareholder to provide voting advice regarding a registrant for which the business once provided consulting services, and if it has had no business relationship with the registrant for some years and is not seeking a business relationship with the registrant, it may be unlikely that the nature of its relationships with the registrant would be deemed material to an assessment of the business's ability to objectively advise its client. In that circumstance, the proxy voting advice business, which is in the best position to make such a judgment, would need to consider, based on the relevant facts and circumstances, whether that prior engagement is currently material and should be disclosed to clients.

Another benefit of the principles-based nature of Rule 14a–2(b)(9)(i) is that it will provide proxy voting advice businesses significant flexibility over the manner in which conflicts information is disclosed, so long as the basic requirements are met. The rule requires that prominent disclosure of material conflicts of interest be included in the voting advice to ensure that this information is readily accessible to clients and facilitates their ability to consider such disclosure together with the proxy voting advice at the time they make their voting decisions.[227] It does not, however, dictate the particular location or presentation of the disclosure in the advice or the manner of its conveyance as some commenters recommended.[228] Doing so would undermine our intent to give latitude to proxy voting businesses to fashion their disclosure as they judge best, in recognition of the varied circumstances in which they provide their services.

Along these lines, the final rule differs from the proposal regarding the conveyance of conflicts disclosure. As proposed, the rule would have required a proxy voting advice business to include conflicts of interest disclosure ''in its proxy voting advice *and* in any electronic medium used to deliver the advice,'' [229] to ensure that the information is prominently disclosed regardless of the means by which the advice is disseminated. However, some commenters were concerned that this was overly prescriptive and would interfere with proxy voting advice businesses' existing conflict management policies and procedures designed to safeguard information and prevent it from undermining the objectivity and independence of the businesses' voting advice.[230] These commenters pointed out that displaying conflict disclosures in every piece of proxy advice, including written proxy research reports, would compromise the ability of proxy voting advice businesses

[223] *See* letter from ISS.

[224] Rule 14a–2(b)(9)(i)(A), as adopted, substantially resembles proposed subsection (C) that was designed as a catch-all to elicit disclosure of any information not otherwise captured by the other provisions of the rule regarding an interest, transaction, or relationship that would be material to a reasonable investor's assessment of the objectivity of the proxy voting advice. In addition, we note that the final amendment does not retain the concept from proposed subsection (B) providing that required disclosures would be determined using publicly available information. Although this provision was intended to limit the scope of a proxy voting advice business's disclosure obligation, we agree with commenters that any interest, transaction or relationship of which a proxy voting advice business is not already aware logically could not bias the business's proxy advice. *See* letter from ISS (''If such a search [of publicly available information] uncovers a possible affiliation ISS was not otherwise aware of, there would be no benefit to offset the cost and delay because any such relationship could not have compromised the integrity of the proxy advice in the first place.'').

[225] *See, e.g.,* letters from CEC (recommending that the rule include examples of *per se* conflicts of interest and illustrations of compliant disclosures); Mylan (recommending that disclosure be required for ''every instance of substantive engagement'' between a proxy voting advice business and existing clients, as well as any other third party providing substantive input regarding the proxy voting advice business's recommendations); PIRC; Prof. Li; SCG (recommending that disclosure of the dollar amount of any interest, transaction, or relationship that may present a conflict of interest for the proxy voting advice business should be required and asking for clarification of what constitutes a ''material'' interest, transaction, or relationship (*e.g.,* revenue, terms of the contracts, etc.)).

[226] *See, e.g.,* letter from Prof. Li.

[227] A proxy voting advice business that only provides such disclosures upon request from the client would not be in compliance with the required disclosure in Rule 14a–2(b)(9)(i) and, therefore, would not satisfy the conditions of the exemptions in Rules 14a–2(b)(1) or (b)(3). We believe that imposing an affirmative duty on proxy voting advice businesses to provide the required disclosures of material conflicts of interest is consistent with obligations to disclose potential conflicts of interest in other contexts. *See* Proposing Release at 66527, n. 88.

[228] *See, e.g.,* letters from BRT; Exxon Mobil; Nasdaq; NIRI–LA; NIRI–OC; SCG; SES; TechNet.

[229] Proposed Rule 14a–2(b)(9)(i).

[230] *See, e.g.,* letters from Glass Lewis II (discussing the restrictions in place to prevent its analysts from accessing information about the interests and voting activities of Glass Lewis' owners); ISS (discussing the firewall that it maintains between its core institutional proxy advisory business and its subsidiary that provides governance tools and services to corporate issuer clients and stating that ''ISS has implemented a comprehensive and robust set of conflict controls . . . which would be compromised if conflict information were required to be publicly disclosed, or if disclosure were required to be displayed in or on a research report, instead of 'around' the report as is currently the case'').

to mitigate their risk of conflicts and expressed concern that the proposal would increase compliance costs for proxy voting advice businesses.[231]

We agree that proxy voting advice businesses should have the latitude to convey their conflict disclosures to clients in a manner that does not run afoul of the businesses' own mechanisms for mitigating the risk of biased advice, such as establishing internal firewalls to maintain the objectivity of the advice, so long as their conflict disclosures are readily accessible to their clients and provided as part of the proxy voting advice they receive. Accordingly, the rule we are adopting gives a proxy voting advice business the option to include the required disclosure either in its proxy voting advice *or* in an electronic medium used to deliver the proxy voting advice, such as a client voting platform, which allows the business to segregate the information, as necessary, to limit access exclusively to the parties for which it is intended.[232]

Similarly, 17 CFR 240.14a–2(b)(9)(i)(B) (''Rule 14a–2(b)(9)(i)(B)''),[233] which requires proxy voting advice businesses to disclose ''any policies and procedures used to identify, as well as the steps taken to address,'' any material conflicts of interest identified pursuant to subsection (A), does not specify the extent to or manner in which the required disclosure must be presented. As with the disclosures required by subsection (A), proxy voting advice businesses are given wide latitude to determine what information would best serve their clients' interests. Moreover, Rule 14a–2(b)(9)(i) is not intended to supplant or interfere with a business's course of practice and standard operating procedures if it is already providing disclosure to its clients sufficient to enable them to understand the business's processes and methodology for identifying and addressing material conflicts, as well as any measures taken in light of specific conflicts identified. In addition, by giving proxy voting advice businesses the flexibility to satisfy the principle-based requirement with their existing methods of disclosure, we believe the costs of implementation should not be unduly burdensome.[234] Similarly, while the adoption of Rule 14a–2(b)(9)(i) will create an expanded compliance obligation, we do not believe it will have a detrimental effect on competition as the flexibility afforded under the final rule should allow new businesses to adapt the required disclosures to their specific business models and thus avoid imposing a significant new barrier to entry for the proxy voting advice business market.[235]

Contrary to the concerns expressed by some commenters about certain implications of the proposed amendments,[236] we note that Rule 14a–2(b)(9)(i)(B) does not require proxy voting advice businesses to include detailed compliance manuals in their proxy advice[237] or duplicative disclosures in both their proxy voting advice and in the electronic medium used to deliver such advice regarding the businesses' policies and procedures describing how they identify and address conflicts.[238] Provided the disclosure is conveyed either in its proxy voting advice or in an electronic medium used to deliver the proxy voting advice (such as a client voting platform), such that its client is able to readily access the information as it reviews and considers the voting advice, a proxy voting advice business has the discretion under the rule to choose the solution it deems suitable for each particular client. This may include, for example, a proxy voting advice business providing an active hyperlink or ''click-through'' feature on its platform allowing clients to quickly refer from the voting advice to a more comprehensive description of the business's general policies and procedures governing conflicts of interest.[239]

More generally, we believe that increased transparency regarding a proxy voting advice business's conflicts of interest may prompt a more informed dialogue between such businesses and their clients. For example, as a result of the increased transparency of a proxy voting advice business's conflicts of interest, clients of the business, including investment advisers, would be in a better position to understand these conflicts and how they may affect the business's proxy voting advice and other services. If this information improves the ability of the proxy voting advice business's clients to identify the kinds of information and details that would be valuable to them in assessing the business's conflicts, this dialogue may also result in a proxy voting advice business enhancing its approach to disclosure of conflicts of interest in response. Such a dynamic regarding conflict disclosure among investors (those who ultimately bear the costs and benefits of voting), clients of proxy voting advice businesses, and proxy voting advice businesses, each of which have different incentives, may increase the benefits of the rule to the shareholder voting process more generally.

C. Amendments to Rule 14a–2(b): Notice of Proxy Voting Advice and Response

The ability of investors to make informed decisions, on the basis of disclosure of material information, is a bedrock tenet on which the federal securities laws were founded. This principle informs not only our consideration of this rulemaking, but also, more broadly, the proxy rules we administer[240] and, as a more general matter, the Commission's interest in the continued vitality, fairness, and efficiency of our capital markets.[241] Given the importance of the shareholder proxy in today's markets,[242] it is imperative that proxy solicitations be conducted on a fair, honest, and informed basis. Consistent with these

[231] *See id.*

[232] Rule 14a–2(b)(9)(i). This approach also accords with the views of commenters who requested that the Commission permit the proxy voting advice businesses flexibility over the manner in which they convey their proxy advice to clients. *See, e.g.,* CII IV: (' [W]e would not object to the SEC permitting the proxy voting advice businesses flexibility in the vehicle used to disseminate the disclosures to clients if the Commission believes such flexibility is appropriate to limit the competitive or other concerns that could accompany the widespread distribution of the information.'').

[233] Subsection (B) of Rule 14a–2(b)(9)(i) was proposed as subsection (D), but has been re-designated in the final rule and is otherwise adopted as proposed.

[234] *See supra* note 197.

[235] *See supra* note 203 and accompanying text.

[236] *See, e.g.,* letters from CII (''We believe such a provision is overly broad and may in fact detract from the more important conflict information currently provided by proxy advisors.''); Glass Lewis. *See also* IAC Recommendation.

[237] *See, e.g.,* IAC Recommendation.

[238] *See, e.g.,* letter from Glass Lewis (expressing concern that ''including a 'discussion' of Glass Lewis' conflict policies and procedures twice with each conflict disclosure,'' once in the proxy voting advice report and again in the electronic medium used to deliver such advice, ''would be wasteful and potentially obscure the important information investors expect and would want to focus on'').

[239] Such hyperlinked description of the proxy voting advice business's general policies and procedures governing conflicts of interest could, for example, be maintained on the business's publicly available website. *See id.* (''Glass Lewis has one set of policies and procedures that describes how it identifies and addresses conflicts, which it makes available on its website.'').

[240] *See, e.g., Regulation of Communications Among Shareholders,* Release No. 34–31326 (Oct. 16, 1992) [57 FR 48276 (Oct. 22, 1992)] (''Communications Among Shareholders Adopting Release''), at 48277 (''Underlying the adoption of section 14(a) of the Exchange Act was a Congressional concern that the solicitation of proxy voting authority be conducted on a fair, honest and informed basis. Therefore, Congress granted the Commission the broad 'power to control the conditions under which proxies may be solicited' . . . .'').

[241] *See supra* notes 2–5 and accompanying text.

[242] *Id.*

aims, and in light of the unique role played by proxy voting advice businesses in many investors' voting decisions,[243] it is important that clients of these businesses, when making their voting decisions, have access to transparent, accurate, and materially complete information. We believe proxy voting is improved by robust discussion among parties in advance of the voting decision, similar to the vigorous engagement that may occur if all parties attended an annual or special meeting in person.

As the Commission has noted, however, a number of commenters, particularly within the registrant community, have expressed concern about the current system for providing proxy voting advice under the Commission's rules, and the resulting effect on the mix of information available to shareholders, including the ability of shareholders to benefit from robust discussion. While proxy voting advice businesses can play an influential role in shareholders' proxy voting decisions, the present proxy rules exempt them from the requirement to publicly file their recommendations with the Commission, as registrants and certain other soliciting parties must do for their own solicitations. As a result, some commenters have expressed concern that registrants lack an adequate opportunity to engage with and respond to influential proxy voting advice before shareholders vote, potentially inhibiting the accuracy, transparency, and completeness of the information available to those making voting determinations.[244] They also highlight what they characterize as the limited ability to address any deficiencies in proxy voting advice such as factual errors, incompleteness, or methodological weaknesses that could materially affect the reliability of proxy voting advice businesses' voting recommendations and adversely impact voting outcomes.[245]

1. Proposed Amendments

With the foregoing background in mind, the Commission proposed review and response mechanisms for proxy voting advice, as discussed below, that would apply any time proxy voting advice businesses provide voting advice to their clients in reliance on either the Rule 14a–2(b)(1) or (b)(3) exemptions from the proxy rules. By conditioning the availability of these proposed exemptions in this way, the Commission intended to (1) facilitate dialogue between proxy voting advice businesses and registrants (and certain other soliciting persons, such as dissident shareholders engaged in a proxy contest) before the dissemination of proxy voting advice to clients of the proxy voting advice business, when most shareholder votes have yet to be cast, and (2) provide a means for registrants and certain other soliciting persons to timely communicate their views about the advice to shareholders, thereby assuring that the proxy voting advice businesses' clients could consider this information along with any other data and analysis they use to make their voting decisions. More generally, these actions were intended to enhance transparency, accuracy, and completeness.

a. Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

The Commission proposed new Rule 14a–2(b)(9)(ii) to require, as a condition to the exemptions in Rules 14a–2(b)(1) and (b)(3), that a proxy voting advice business provide registrants and certain other soliciting persons covered by its proxy voting advice a limited amount of time to review and provide feedback on the advice before it is disseminated to the business's clients, with the length of time provided depending on how far in advance of the shareholder meeting the registrant or other soliciting person has filed its definitive proxy statement.[246] This review and feedback period would be followed by a final notice of voting advice, which would include any revisions to such advice made by the proxy voting advice business as a result of the review and feedback period, thereby allowing the registrant and/or soliciting person time to determine whether to respond to the advice before it is delivered to clients of the proxy voting advice business.[247] By providing a standardized opportunity for registrants and certain other soliciting persons to review proxy voting advice before it is finalized and delivered to clients of proxy voting advice businesses, the Commission believed that these proposed amendments had the potential to greatly improve the overall mix of information available to the businesses' clients, who use proxy voting advice as an important, often critical, element in formulating their voting decisions.[248]

To address concerns that allowing registrants or other soliciting persons advance access to the proxy voting advice could result in premature release of the advice to unauthorized and unintended parties, the proposed rules specified that proxy voting advice businesses could require that registrants and other soliciting persons agree to keep the information confidential, and refrain from commenting publicly on it, as a condition of receiving the proxy voting advice.[249]

b. Response to Proxy Voting Advice by Registrants and Other Soliciting Persons

In addition to the review and feedback mechanism, the Commission proposed that registrants and certain other soliciting persons also be given the option to request that proxy voting advice businesses include in their proxy voting advice (and on any electronic medium used to distribute the advice) a hyperlink or other analogous electronic medium directing the recipient of the advice to a written statement prepared by the registrant (or other soliciting person, as applicable) that sets forth its views on the advice.[250] As proposed, registrants and other eligible soliciting persons would be able to exercise this right by notifying the proxy voting advice business no later than the expiration of the minimum two-business day period corresponding to the final notice of voting advice.[251] If so requested, the proxy voting advice business would then be required to include in its proxy voting advice the relevant hyperlink or analogous electronic medium directing the client to the registrant's or other soliciting person's respective statement regarding the voting advice.[252]

In addition to the other proposed amendments to Rule 14a–2, proposed 17 CFR 240.14a–2(b)(9)(iii) (''Rule 14a–2(b)(9)(iii)'') was intended to enable those who rely on proxy voting advice,

[243] *See* Proposing Release at 10.

[244] *See* Proposing Release at 41–2.

[245] *See* Proposing Release at 39, n. 94.

[246] *See* proposed Rule 14a–2(b)(9)(ii).

[247] *See* proposed Rule 14a–2(b)(9)(ii)(B). Under the proposed rules, this final notice would contain a copy of the proxy voting advice that the proxy voting advice business would deliver to its clients and be provided by the proxy voting advice business no later than two business days prior to delivery of the proxy voting advice to its client.

[248] *See* Proposing Release at 44.

[249] *See* Note 2 to paragraph (ii) of proposed Rule 14a–2(b)(9), providing that the terms of such agreement apply until the proxy voting advice business disseminates its proxy voting advice to one or more clients and could be no more restrictive than similar types of confidentiality agreements the proxy voting advice business uses with its clients.

[250] *See* proposed Rule 14a–2(b)(9)(iii). Consistent with the proposed review and feedback process, the proposed right to request inclusion of a statement would only have extended to registrants and certain other soliciting persons (*i.e.,* persons conducting non-exempt solicitations). *See id.* (''If requested by the registrant or any other person conducting a solicitation (other than a solicitation exempt under § 240.14a–2). . .'').

[251] *Id.*

[252] *Id.*

whether for their own interests or on behalf of shareholders who have entrusted them with proxy voting authority, to have information available to them to effectively assess the recommendations provided by proxy voting advice businesses and thereby make more informed voting decisions.

2. Comments Received

a. Comments on Proposed Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

A number of commenters supported the proposed amendments and asserted that the changes would improve the completeness, accuracy, and reliability of the information underlying the voting advice,[253] which in turn would facilitate more informed decision-making by investors and investment advisers.[254] Many of these commenters stated that a review and feedback mechanism was warranted to ameliorate the incidence of errors, mistakes, and deficiencies in voting advice that they believe exists.[255] Several commenters also expressed the opinion that registrants and other soliciting persons had been disadvantaged under the existing system because very few were afforded the opportunity to review proxy voting advice in advance[256] or were given meaningful opportunities to engage with proxy voting advice businesses to remedy any perceived deficiencies they identified in voting advice.[257] Commenters supporting the proposal also stated that even when registrants do receive draft voting advice from proxy voting advice businesses in advance of its publication, they typically are not given sufficient time for a thorough review and response.[258]

In many cases, commenters who supported the opportunity for advance review provided by proposed Rule 14a–2(b)(9)(ii) disagreed with the suggestion of other commenters that the proposal would compromise the independence of proxy voting advice businesses, with some pointing to the fact that a number of registrants were already participating in advance review programs offered by proxy voting advice businesses.[259]

Several commenters that were in favor of the proposal offered suggested modifications intended to increase the rule's efficacy,[260] such as giving registrants more time to review reports than was proposed;[261] explicitly including within the scope of the advanced review process proxy voting advice based on custom policies[262] and mandating that proxy voting advice businesses make certain public disclosures to enhance transparency (*e.g.,* publishing proxy voting advice following shareholder meetings).[263]

While many commenters supported the proposed review and feedback provisions, a substantial number of commenters were opposed.[264] Many

[253] *See, e.g.,* letters from BIO; BRT; CCMC; CEC; CGC; ExxonMobil; Mark R. Allen, Executive Vice President, FedEx Corporation (Feb. 3, 2020) (''FedEx''); GM; IBC; Nasdaq; SCG.

[254] *See, e.g.,* letters from BRT; CCMC; CEC (''The ability of issuers to review and provided feedback on both draft and final proxy reports prior to publication is an important step in preserving the integrity of the proxy voting process. . . .''); NIRI (''Overall, we believe the proposed rules . . . address and rectify significant issues that have hindered investment advisers in making informed determinations on investors' behalf.''); ExxonMobil; Mylan; SCG; Bernard S. Sharfman, Chairman, Advisory Council, Main Street Investors Coalition (Dec. 20, 2019) (''B. Sharfman I'') (asserting that the proposed review process ''should be a good thing for shareholders because the back and forth between the company and the proxy advisor . . . should make each party better informed, allowing them to make sure that factual errors and inadequate analytics are not tainting their respective voting recommendations.'').

[255] *See, e.g.,* letters from ACCF (referring to its 2018 paper exploring the analytical and methodological errors in proxy advisors' recommendations: *Are Proxy Advisors Really a Problem?*); ACCF II (referring to its 2020 paper, *Are Proxy Advisors Still a Problem?);* BIO; BRT (''Business Roundtable has long been concerned that proxy advisors produce reports that frequently include errors, factually inaccurate information and incomplete analysis.''); CCMC (citing ''frequent and significant errors in analysis and methodology'' and a ''high incidence of factual and analytical errors in proxy advisor reports.''); CEC; CGC (''[The proposal to allow review of proxy voting advice] would help address one of the biggest flaws of the current proxy advice system, which is the tendency of proxy advisory firms to make egregious errors in vote recommendations''); ExxonMobil; Garmin; NAM (asserting that ''Proxy firm reports and recommendations feature a profusion of errors and misleading statements''); Nareit; Nasdaq (''Factual errors have . . . been identified by 95% of Business Roundtable members and 'all raise concerns regarding the rigor and integrity of the proxy advisory firms' internal fact-collection and analysis processes' . . . The ability to identify and correct errors is crucial for accuracy and accountability.''); NIRI; SCG.

[256] *See, e.g.,* letters from CGC; CEC (''[T]he lack of any reasonable access by all issuers—not just the largest issuers—to draft and final proxy reports and the inability of those issuers to adequately review both reports before publication is highly problematic . . . . Providing all companies with the ability to review the draft proxy report is an important step to ensuring the integrity of the data within the proxy report.''); Richard R. Dykhouse, Executive Vice President, General Counsel & Corporate Secretary, Charter Communications, Inc. (Feb. 3, 2020) (''Charter''); Penny Somer-Greif, Chair, and Gregory T. Lawrence, Vice-Chair, Committee on Securities Law, Maryland Bar Association (Feb. 3, 2020) (''MSBA''); Nareit; Nasdaq (describing current opportunities available to registrants for review of draft proxy voting advice as ''an uneven playing field''); NIRI.

[257] *See, e.g.,* letters from ACCF; BRT; CCMC; CEC; GM, Mylan; NAM; Nareit; Nasdaq, NIRI; SCG.

[258] *See, e.g.,* letters from BRT (noting the limited window that ISS allows for comment on draft reports that it provides to S&P 500 companies); CCMC; CEC; CGC; Charter; GM; NAM; Nasdaq; NIRI; SCG (''ISS provides its reports to S&P 500 companies in advance and takes comment on any factual errors in a 48-hour timeframe, although companies are sometimes given less response time.''). In support of their views on needed improvements to proxy voting advice, several commenters cited the results of various surveys. *See, e.g.,* letters from ACCF; BRT; CCMC; Nareit; Nasdaq; SCG. *But see, e.g.,* letters from CII IV; Elliott I; Glass Lewis II; SWIB (questioning the rigor, and therefore the usefulness, of such surveys).

[259] *See, e.g.,* letters from SCG (''It is difficult to understand how, if ISS' voluntary review and comment processes do not currently compromise the independence of their advice the Proposed Rule's review and comment period for all public companies would do so.''); BIO; ExxonMobil.

[260] *See, e.g.,* letters from ExxonMobil; GM; MSBA; Nasdaq; SCC I.

[261] *See, e.g.,* letters from BIO; BRT; Nasdaq.

[262] *See, e.g.,* letter from BRT (''The majority of our member companies surveyed indicated that voting advice formulated under a clients' custom policies should be subject to the proposed review and feedback period. Member companies noted that the same need to correct factual inaccuracies exists with these reports. . . .''). *But see, e.g.,* letters from CII IV; Heidi W. Hardin, Executive Vice President and General Counsel, MFS Investment Management (Feb. 3, 2020) (''MFS Investment'') (stating that advice based on custom policies should be excluded from the review framework as any research provided by proxy voting advice businesses under the MFS internal proxy voting is ''proprietary and commensurate with [MFS'] overall investment approach''); PIAC II.

[263] *See, e.g.,* letters from BRT (suggesting a requirement that proxy voting advice businesses issue final reports tallying final voting figures and comparing the results to the businesses' voting recommendations to clients); SCC I (asserting that publication would facilitate and encourage more public discussions about corporate governance standards and permit more informed feedback about the analyses and conclusions in company reports prepared by proxy voting advice businesses).

[264] *See, e.g.,* letters from 62 Professors; AFL–CIO II; Sharon Fay, Co-Head Equities, and Linda Giuliano, Head of Responsible Investment, AllianceBernstein (Feb. 3, 2020) (''AllianceBernstein''); Chelsea J. Linsley, Staff Attorney, and Danielle Fugere, President & Chief Counsel, As You Sow (Feb. 3, 2020) (''As You Sow II''); Baillie Gifford; Dennis M. Kelleher, President & CEO, et al., Better Markets, Inc. (Feb.3, 2020) (''Better Markets''), David Sneyd, Vice President, Analyst, Responsible Investment, BMO Global Asset Management (Jan. 31, 2020) (''BMO''); Lauren Compere, Managing Director, Boston Common Asset Management (Feb. 3, 2020) (''Boston Common'') (asserting that the proposal would ''allow corporations to intercept recommendations critical of the corporation or its management[, undermining] the checks and balances necessary for functioning markets''); Amy D. Augustine, Director of ESG Investing, and Timothy H. Smith, Director of ESG Shareowner Engagement, Boston Trust Walden (Nov. 20, 2019) (''Boston Trust''); Bricklayers; CalPERS (''While the release suggests that the Proposed Rule is necessary to protect investors from potentially incomplete or conflicted advice, the reality is that there has been no investor demand for the Proposed Rule.''); CalSTRS; CFA Institute I; CII IV; CIRCA (characterizing the proposed review and feedback process as ''an unprecedented intrusion into proxy voting''); Kevin E. McManus, Director of Proxy Services, Egan-Jones Proxy Services (Feb. 3, 2020) (''Egan-Jones''); Glass Lewis II; ICI; ISS; Cynthia M. Ruiz, Board President, Los Angeles City Employees' Retirement System (LACERS) (Feb. 18, 2020) (''LACERS''); MFS Investment; Scott M. Stringer, New York City Comptroller (Nov. 20, 2019) (''NYC Comptroller'');

Continued

such commenters argued that there was an absence of compelling evidence of frequent errors or significant deficiencies in proxy voting advice to warrant such a requirement.[265] Moreover, commenters emphasized that the clients of proxy voting advice businesses generally have been satisfied with the quality of the advice they receive.[266] In support of this view, commenters pointed to the absence of complaints from clients of proxy voting advice businesses, as distinguished from the large volume of complaints from registrants and their advocates.[267]

Commenters opposing the proposal also expressed their concern that requiring advance review of proxy voting advice by registrants would confer an unfair advantage to company management in disputed proxy matters[268] and would compromise the ability of proxy voting advice businesses to provide disinterested, independent advice.[269] Several such commenters stated that giving registrants the priority to review voting advice before the clients of proxy voting advice businesses was incompatible with the Commission's own published views,[270] as well as the principle behind FINRA Rule 2241, which governs conflicts of interest in connection with the publication of equity research reports and public appearances by research analysts.[271]

Some commenters were also concerned that the right of advance review would increase the risk of insider trading of material, non-public information[272] and, more generally, expressed doubts about the effectiveness of the proposal's framework for safeguarding the confidentiality of materials provided by proxy voting advice businesses to registrants.[273] Along these lines, some commenters asked for clarification about how the proposed confidentiality provision would work in practice,[274] and others suggested ways the provision and its implementation could be improved, including by reconsidering the duration of confidentiality and setting specific standardized terms.[275]

A substantial number of commenters opposed the proposed review and feedback process on the grounds that it would significantly impede the ability of proxy voting advice businesses to deliver timely and high quality advice to their clients[276] and, as a consequence, would weaken the ability of their clients to thoughtfully consider the advice and make informed decisions.[277] Many such commenters were doubtful that the proposed rules governing the advance review and feedback of proxy advice was a viable framework[278] and expressed concern

New York Comptroller II; Ohio Public Retirement; Richard Stensrud, Executive Director, School Employees Retirement System of Ohio (Jan. 30, 2020) (''Ohio School Retirement''); Olshan Shareholder Activism Group (Feb. 3, 2020) (''Olshan LLP''); PIAC II; PRI II; Seven Corners; Segal Marco II; Amy M. O'Brien, Senior Managing Director, Head of Responsible Investing, and Yves P. Denize, Senior Managing Director, Division General Counsel, Teachers Insurance and Annuity Association of America (TIAA) (Feb. 3, 2020) (''TIAA''); William J. Stromberg, President and CEO, T. Rowe Price (Jan. 29, 2020) (''TRP''); Third Point LLC (Feb. 3, 2020) (''Third Point LLC''); Jonas D. Kron, Senior Vice President, Trillium Asset Management, LLC (Feb. 3, 2020) (''Trillium''); ValueEdge I. *See also* IAC Recommendation.

[265] *See, e.g.,* letters from AFL–CIO II (''The Commission has not made any showing of factual errors or methodological weaknesses in proxy voting advice [that] need correction by companies before it is distributed to clients.''); AllianceBernstein; As You Sow II (''The Commission has failed to evidence any problem with the current state of affairs. . .''); Better Markets; BMO; Bricklayers; CalPERS; CalSTRS; CFA Institute I; CII IV (''[T]he paucity of evidence of pervasive factual errors by proxy advisors suggests that, in fact, no regulatory intervention is necessary or justified.''); CIRCA; Glass Lewis II; Michael W. Frerichs, Illinois State Treasurer (Jan. 16, 2020) (''Illinois Treasurer''); ISS; NYC Comptroller; New York Comptroller II; Ohio Public Retirement; PERA; PRI II; Jeffrey S. Davis, Executive Director, and Jason Malinowski, Chief Investment Officer, Seattle City Employees' Retirement System (SCERS) (Jan. 31, 2020) (''Seattle Retirement System''); Segal Marco II; TIAA; Trillium; TRP; Third Point LLC; ValueEdge I. One commenter also noted that at the Commission's 2018 Roundtable on the Proxy Process, ''not one single participant . . . saw a need to impose additional regulation on proxy advisers . . . .'' *See* letter from ISS. *See also* IAC Recommendation.

[266] *See, e.g.,* letters from Better Markets (''There is little evidence to support [the] claim [that the proposed changes are for the benefit of investors] . . . . To the contrary, institutional investors who manage trillions of dollars of Americans' savings and retirement funds are urging the SEC not to proceed with the misguided policies set forth in the Release.''); CalPERS (''It is worth noting that no institutional investors have suggested that [mandatory review periods for registrants] would enhance the quality, quantity, or timeliness of advice.'').

[267] *See, e.g.,* letters from CalPERS (''[T]he reality is that there has been no investor demand for the Proposed Rule. The push for reforms in this area is not from investors who are obtaining the advice . . . but instead is from the companies that are subjects of the advice sought.'' . . . Existing clients have few complaints about the quality of proxy voting advice . . . .'');ValueEdge I.

[268] *See, e.g.,* letters from Olshan LLP; PRI II (asserting that the proposal ''biases advice towards favoring managers, reducing the accuracy and independence of proxy voting advice,'' because it imposes costs only on recommendations that management opposes); SES (expressing concern regarding the possibility that the right of advance review creates information asymmetries favoring registrants).

[269] *See, e.g.,* letters from AFL–CIO II; AllianceBernstein; Baillie Gifford; CalPERS; CFA Institute I.; CII IV ('' [W]e believe the proposed requirement will be reasonably perceived as impairing the independence of the proxy advisor research, particularly since the proxy advisor is required to seek review and receive feedback from self-interested companies before sharing the draft report with their own paying client . . . .''); MFS Investment; New York Comptroller I; Ohio Public Retirement; PRI II; TRP.

[270] *See, e.g.,* letters from CII IV; ISS, New York Comptroller II; Sanford Lewis, Director, Shareholder Rights Group (Feb. 3, 2020) (''Shareholder Rights II''), referring to Communications Among Shareholders Adopting Release at 48279. In that release, the Commission stated: ''A regulatory scheme that inserted the Commission staff and corporate management into every exchange and conversation among shareholders, their advisors and other parties on matters subject to a vote certainly would raise serious questions under the free speech clause of the First Amendment, particularly where no proxy authority is being solicited by such persons. This is especially true where such intrusion is not necessary to achieve the goals of the federal securities laws.'' [48279]

[271] *See, e.g.,* letters from AFL–CIO II; As You Sow II; BMO; Boston Trust, CII IV; NYC Comptroller; New York Comptroller II; PIAC II; TRP.

[272] *See, e.g.,* letters from CII IV; ISS.

[273] For example, some commenters thought the confidentiality provision in Note 1 to proposed Rule 14a–2(b)(9)(ii) would be unwieldy and exacerbate delays. *See, e.g.,* letters from Baillie Gifford; CalPERS; CCMC; Glass Lewis II; ISS; Olshan LLP (stating that the proposals significantly underestimate the time and expense of negotiating confidentiality agreements and providing detailed reasons as to why the proposals would be so time consuming and costly); SES (asserting that needing to sign individual confidentiality agreements between every registrant and proxy voting advice business would be cumbersome ''without any tangible benefit''). *See also* letter from ExxonMobil (advocating in favor of a ''simple and straightforward confidentiality notice with a consent'' and against a ''complex or signed contractual agreement [which] could undermine the review process or registrants' other legal rights''). Other commenters were critical of the proposed stipulation that any confidentiality agreements could be ''no more restrictive than similar types of confidentiality agreements'' the proxy voting advice business uses with its clients.'' These commenters asserted that it was not feasible to use client agreements as a model for the terms of confidentiality with registrants. *See, e.g.,* letters from Glass Lewis II; ISS.

[274] *See, e.g.,* letter from Baillie Gifford.

[275] *See, e.g.,* letters from CII IV (suggesting that more consideration be given to the duration of confidentiality over proxy voting advice businesses' proxy advice and the businesses' permitted recourse when the terms of confidentiality are violated); Nasdaq (asserting that ''standardizing and streamlining this process would reduce legal costs and time spent negotiating each confidentiality agreement and help ensure that such agreements contain standardized restrictions and disclaimers'').

[276] *See, e.g.,* letters from AFL–CIO II; As You Sow II; Baillie Gifford; BMO; Boston Trust; CalPERS; CII IV; Elliott I; NYC Comptroller (stating its view that under the proposed review and feedback framework proxy voting advice businesses ''will have less time to collect, verify, analyze and present data and provide their research reports to clients well in advance of the annual meeting''); New York Comptroller II; PIAC II; TIAA; TRP (asserting that the time periods allotted for the review and feedback process ''have the very real potential to diminish the time needed for registered investment advisers to fulfill essential fiduciary obligations related to proxy voting'').

[277] *See, e.g.,* letters from As You Sow II; BMO; Bricklayers; CalPERS; CII IV; PERA; TRP.

[278] *See, e.g.,* letters from CIRCA; Paul Schott Stevens, President and CEO, Investment Company Institute (Feb. 3, 2020) (''ICI'') (stating that the proposed framework ''would affect substantially and adversely the timeliness and cost of proxy

that it would create numerous logistical and practical challenges that would be highly disruptive to the proxy voting system.[279] Commenters also noted the likelihood of significant costs associated with the proposal that would be incurred by proxy voting advice businesses, which many asserted would ultimately be borne by the businesses' clients.[280]

In addition to addressing practical challenges of the review and feedback process, commenters identified a number of potential unintended consequences that might result,[281] including diminished competition among proxy voting advice businesses,[282] limitation of market choice for consumers of proxy voting advice,[283] reduction in shareholder voting,[284] and a decline in the utility of proxy voting advice,[285] which some commenters warned might be watered down to lessen the risk of litigation [286] and would be influenced by the self-interested views of registrants before the advice was seen by clients.[287] Some commenters also raised the possibility that the proposal was unconstitutional because it violated the right of free speech under the First Amendment [288] and the takings clause of the Fifth Amendment.[289]

Many of the commenters who generally opposed the proposals also offered suggested modifications to the extent that the Commission elected to proceed to adoption of final rules.[290] This included shorter mandatory review periods provided to registrants,[291] limiting advance review to the factual information included in proxy voting advice,[292] allowing issuers to opt-in to the review and feedback procedures,[293] adjusting the timeline contemplated by the rule to require that proxy statements be filed a certain number of days in advance of the meeting in excess of what was proposed,[294] concurrent review by registrants and clients rather than advance review by registrants,[295] and other changes designed to make the review and feedback process more cost-effective and efficient.[296] In addition, several commenters asked for more clarification with regard to certain interpretive issues, including a more

advisory firms' advice, and thus its overall value to funds and their shareholders''); Interfaith Center II; TRP (stating, among other criticisms, that the review and feedback process would be logistically impracticable and ''unworkable within the current time constraints of the intensely seasonal proxy voting cycle'').

[279] This included the impracticability of applying the rules in the context of proxy contests or M&A transactions. *See, e.g.,* letters from CII IV; Olshan LLP (providing detailed reasons why the proposals would be challenging in proxy contests).

[280] *See, e.g.,* letters from 62 Professors; AFL–CIO II, Baillie Gifford; BMO; Bricklayers; CalPERS; CFA Institute I; CII IV; Egan-Jones; ICI; MFS Investment; NYC Comptroller; New York Comptroller II; Ohio Public Retirement; Ohio School Retirement; Olshan LLP; Segal Marco II; TIAA; Mark D. Epley, Executive Vice-President & Managing Director, General Counsel, Managed Funds Association, and Jiří Król, Deputy CEO, Global Head of Government Affairs, Alternative Investment (Feb. 3, 2020) (''MFA & AIMA'').

[281] *See, e.g.,* letters from 62 Professors; AFL–CIO II, Fran Seegull (Feb. 2, 2020) (''Alliance''), As You Sow II, BMO, Bricklayers; CalPERS, CFA Institute I; CII IV; Shawn T. Wooden, Connecticut State Treasurer (Jan. 31, 2020) (''CT Treasurer''); Egan-Jones; Elliott I; Diandra Soobiah, Head of Responsible Investment, NEST—National Employment Savings Trust (Jan. 27, 2020) (''Employment Savings''); Hermes; ISS; LA Retirement; MFA & AIMA; New York Comptroller II; TIAA.

[282] *See, e.g.,* letters from 62 Professors; Baillie Gifford (''It seems likely that the proposed amendments would be perceived as onerous and deter new entrants to the proxy advisory industry''); AFL–CIO II (''The additional burdens created by the proposed regulations and increase in market concentration if smaller proxy voting providers cannot stay in the business will significantly increase costs for investors. By limiting competition and creating barriers to entry, the Commission's proposed rulemaking is likely to result in an even greater reliance by investors on Institutional Shareholder Services and Glass Lewis''); BMO; Bricklayers; CalPERS, CII IV (arguing that mandatory ''pre-review'' requirements will be prohibitively costly for proxy voting advice businesses and therefore ''likely to preclude new entrants, eliminate one or more incumbents, and potentially lead any survivor to follow a business model that includes providing consulting services to issuers, compounding concerns on influencing of proxy advisor reports''); Prof. Sergakis; TIAA.

[283] *See, e.g.,* letters from CII IV (noting that some of its members switched from ISS to Glass Lewis because they believed ISS's practice of providing some companies the right to pre-review reports compromised the independence of the ISS analysis); Elliott I.

[284] *See, e.g.,* letters from Alliance, As You Sow II (''The Proposed Rule may increase the liability of proxy advisory services, or the perception of legal liability, causing proxy advisors to decline to issue recommendations where issuers challenge findings, thereby limiting the number of shareholders willing or able to conduct their own research sufficient to vote for a shareholder proposal''); BMO; CII IV.

[285] *See, e.g.,* letters from Bricklayers (stating that the additional burdens imposed by the proposal ''would almost certainly lead to . . . shrinking the overall market for proxy advisory services . . . , the Proposed Amendments thus would burden competition without serving the Exchange Act's purposes''); CalPERS; CII IV; ICI; New York Comptroller II; MFA & AIMA.

[286] *See, e.g.,* letters from BMO (discussing its concern that the proposal would ''significantly increas[e] the regulatory burden on proxy advisers through increasing litigation risk); CalPERS (''We recognize that the proxy advisors are not required to revise advice, but a heavy hammer is placed over their heads by the added emphasis on Rule 14a–9 liability . . . Although the Release states there is no new private right of action created by the new Rule 14a–2(b)(9), the process and greater focus on Rule 14a–9 will make it more likely that proxy voting advice businesses will be sued under the new rules.''); CFA Institute I (noting the possible consequence that commentary from analysts, who might be encouraged to self-censor, would be ''less forthright''); Ohio Public Retirement (questioning whether Rule 14a–9 liability might be used ''to threaten or pressure proxy advisory firms to incorporate issuer feedback or accept revisions to their voting advice''); NYC Comptroller; PRI II.

[287] *See, e.g.,* letters from Baillie Gifford (''In relation to the influence of registrants, allowing registrants to also comment on analysis and dispute methodology and opinion, in conjunction with the proposed anti-fraud amendments, could render proxy advisors vulnerable to litigation if these matters are not incorporated into the advice. This is clearly inappropriate as these matters are necessarily subjective. This could result in the watering down of advice to avoid potential actions, rendering the advice too bland to be of use.''); Bricklayers (''Another potential negative impact of the Proposed Amendments would be to advantage the viewpoints of corporate management.'').

[288] *See, e.g.,* letters from CFA Institute I; CII IV (noting the ''potential implications of the First Amendment on the independence of the research reports of proxy advisors if subject to required company review and feedback''); CIRCA (arguing that establishing a mandatory registrant review process of proxy voting advice would constitute an unconstitutional restraint on the speech of proxy advisory firms''); Elliot; Glass Lewis II; ISS; Interfaith Center II; New York Comptroller II; Mari C. Schwartzer, Director of Shareholder Activism and Engagement, NorthStar Asset Management, Inc. (Feb. 3, 2020) (''NorthStar''); Shareholder Rights II; Nell Minow, Vice Chair, ValueEdge Advisors (Mar. 10, 2020) (''ValueEdge III''); Washington State Investment. We discuss our response to certain Constitutional objections to the proposed amendments in Section II.C.3.d. *infra.*

[289] *See, e.g.,* letters from CalPERS (''Enabling a non-client to review the work product before actual clients . . . arguably violates the Constitution by taking private property for public use without compensation''); ISS. We discuss our response to certain Constitutional objections to the proposed amendments in Section II.C.3.d. *infra.*

[290] *See, e.g.,* letters from AFL–CIO II; AllianceBernstein; Baillie Gifford; BMO; CII IV; CIRCA; Elliott I; Glass Lewis II; ICI; Illinois Treasurer; Interfaith Center II; MFS Investment; Ohio Public Retirement; Olshan LLP; PIAC II; Seven Corners; TIAA. *See also* IAC Recommendation.

[291] *See, e.g.,* letters from IAA; PIRC.

[292] *See, e.g.,* letters from Baillie Gifford; BMO; CII IV; CIRCA; Elliott I; ICI; ISS; MFA & AIMA; Ohio Public Retirement. *See also* IAC Recommendation.

[293] *See, e.g.,* letter from Glass Lewis II (asserting that this would enable proxy voting advice businesses to collect important information before the process begins, potentially reducing some of the burden on the proxy voting advice businesses).

[294] *See, e.g.,* letters from CII IV (suggesting a timeline requiring registrants to file 50 or more days prior to the annual meeting; ICI; Interfaith Center II; ISS; Christopher Gerold, President, North American Securities Administrators Association (NASAA) (Feb. 3, 2020) (''NASAA''); TIAA.

[295] *See, e.g.,* letters from AllianceBernstein; Kevin A. Beaugez (June 3, 2020) (''K. Beaugez''); BMO; James Allen, Head, and Matt Orsagh, Director, Capital Markets Policy, CFA Institute (May 13, 2020) (''CFA Institute II''); CII IV; CIRCA; ICI; MFS Investment; SES (stating that its business model is to provide its voting advice report to clients and companies simultaneously 15 days prior to the meeting, and then provide an addendum should any corrections, changes, etc. be required). *See also* IAC Recommendation. *But see* letter from Niels Holch, Executive Director, Shareholder Communications Coalition (May 1, 2020) (''SCC II'') (''The Coalition strongly opposes the concurrent review recommendation.'').

[296] *See, e.g.,* letters from IAA (recommending that the proposed review and feedback process be replaced with a single review of the facts); ICI (recommending that proxy voting advice businesses be permitted to provide a draft of their reports to registrants and other soliciting persons for comment while simultaneously publishing it for public review).

precise understanding of which persons would be subject to the rule.[297]

As an alternative to the proposed framework for review and feedback, which they viewed as too rigid and prescriptive, some commenters urged the Commission to consider a more flexible, principles-based, and less intrusive solution.[298] One commenter noted that many of the practical concerns it expressed in its letter regarding the proposed review and feedback mechanism ''could be addressed by moving to a principles-based rule and using Commission or Staff guidance to ensure that the mechanisms are being administered in a fair and efficient manner.'' [299] Several commenters also pointed out that there already were existing mechanisms in place sufficient to address the concerns raised in the Proposing Release, including existing proxy voting advice business programs and policies for registrants to provide feedback,[300] antifraud liability under Rule 14a–9,[301] and ''counter-speech'' measures for registrants (such as filing additional proxy soliciting materials).[302]

b. Comments on Proposed Response to Proxy Voting Advice by Registrants and Other Soliciting Persons

A number of commenters supported the proposal as a means to improve the overall mix of information available to investors.[303] Commenters argued that registrants do not have a timely and effective method for conveying their views and assessments about proxy voting advice to clients of proxy voting advice businesses before many clients vote in reliance on such advice.[304]

Other commenters, however, opposed the proposal.[305] A number of these commenters raised concerns about costs and delays in the timely receipt of advice that they asserted would result from the proposal.[306] Many commenters asserted the proposal is unnecessary given the ability of registrants to conduct investor outreach and file supplemental proxy materials to address any concerns with the voting advice.[307] Some commenters also objected on the grounds that the proposed amendment was unconstitutional under the First Amendment.[308]

Supporters and opponents of the proposal provided a variety of suggested modifications to proposed Rule 14a–2(b)(9)(iii).[309] For example, some supporters recommended allowing registrants more time than the proposed two business days in which to provide their statement of response.[310] Others were in favor of requiring proxy voting advice businesses to include the full written statement of registrants in the proxy advice, rather than just a hyperlink.[311] Other commenters requested that the Commission clarify certain points, such as whether a proxy voting advice business would be subject to Rule 14a–9 liability for omissions of a registrant's response,[312] and whether it would be a violation of an investment adviser's fiduciary duty if it chose not to review a registrant's hyperlinked response.[313] Because of concerns that clients may not take the time to review registrants' hyperlinked statements, commenters also recommended that the Commission require proxy voting advice businesses to disable pre-populated voting mechanisms or the automatic

[297] *See, e.g.,* letters from AFL–CIO II; CII IV; Glass Lewis II; ISS.

[298] *See, e.g.,* letters from Baillie Gifford; Canadian Gov. Coal; CII IV; Glass Lewis II; ISS; Prof. Sergakis (describing the treatment of proxy voting advice businesses under the proposal as too ''formalistic'' and stringent'' by comparison to the regulation of such businesses in different parts of the world and recommending a more flexible, principles-based system).

[299] Glass Lewis II (''For example, the exemptive condition could be as concise as a requirement that proxy advisors 'maintain policies and procedures that provide registrants (and certain other soliciting persons) a meaningful opportunity to comment on proxy advice and final notice of any proxy advice,' with Staff or Commission guidance filling in the timing and other elements.'').

[300] *See, e.g.,* letters from Better Markets (''Both Glass Lewis and ISS already have systems in place to allow companies to correct factual errors in their reports and recommendations 'and respond to some aspect of their proxy voting advice' before they are sent to their clients.''); BMO; CII IV; Glass Lewis II; Ohio Public Retirement; Segal Marco II.

[301] *See, e.g.,* letters from AllianceBernstein; As You Sow II; Better Markets; Elliott I; ISS; Glass Lewis II; CalPERS; CII IV; New York Comptroller II; Segal Marco II; Seven Corners; Shareholder Rights II. *See also* IAC Recommendation.

[302] *See, e.g.,* letters from AllianceBernstein; As You Sow II (''Companies have the ability to make arguments in a variety of ways including in their proxies, by calling investor meetings, or sending out information to shareholders, among others. There is no reason to afford issuers yet another avenue to provide their views, especially when it is likely to dramatically interfere with what is already a time-constrained and difficult process for proxy advisory firms and shareholders''); Better Markets; CalPERS; CFA Institute I (noting that ''registrants already have many opportunities to communicate with investors,'' including the registrant's own proxy materials and ''the full array of social media avenues to reiterate and confirm their positions . . .''); CII IV; Elliott I; Glass Lewis II; SS; New York Comptroller II; PIAC II (''Issuers already provide their views via proxy statements and other communications from management that are easily accessible should they be needed. Giving companies the opportunity for additional participation in the recommendations of proxy advisors would detract from, rather than contribute to, the objectivity of those recommendations.''); Segal Marco II; Seven Corners; Shareholder Rights II. *See also* IAC Recommendation.

[303] *See, e.g.,* letters from Baillie Gifford; BIO; Michele Nellenbach, Director of Strategic Initiatives, Bipartisan Policy Center (Feb. 3, 2020) (''BPC'') (stating that the hyperlink is a cost-effective way to provide current information to investors), BRT; CEC (''The Commission's proposed changes ensure investors will have a full picture of the information from which they can then make an informed, proposal-specific voting decision.''); CCMC; CEC; CGC; ExxonMobil (''Timely access to both of these viewpoints [in the proxy voting advice and the registrant's response to the advice] each proxy season is critical for investors to make informed decisions at minimal cost.''); FedEx; GM; NAM; Nareit; Nasdaq (noting its belief that the hyperlink would improve the accuracy of proxy voting advice and the overall mix of information available to investors, especially given the lack of a requirement in the proposed rules that proxy voting advice businesses revise their recommendations based on registrant feedback); NIRI (''Shareholders will be better informed as a result of the inclusion of [the registrant's] response. Doing so will result in greater transparency in the proxy voting advice process, allowing investors to see both sides of the issue . . .''); SCG (asserting that ''factual errors have frequently been found after the voting recommendation has been disseminated'' and that ''the impact of additional proxy materials can be limited''); TechNet.

[304] *See, e.g.,* letters from BRT; CEC (''The problems facing issuers and the wider market occur due to the extreme difficulty in engaging with proxy advisory firms during the proxy season and the immediate and near irrecoverable impact the issuance of the proxy report has on voting results''); Charter; ExxonMobil (''Timely access to both of these viewpoints each proxy season is critical for investors to make informed decisions at minimal cost. Our experience is that supplemental proxy materials filed with the SEC after the release of the proxy advisors' reports, which are intended to supplement such reports, are ineffective.'').

[305] *See, e.g.,* letters from AFL–CIO II; CII IV; Elliott I; Glass Lewis II; ISS; Lars Dijkstra, Chief Investment Officer, and Eszter Vitorino, Senior Responsible Investment Advisor, Kempen Capital Management (Jan. 6, 2020) (''Kempen'') (asserting that such requirement would be duplicative of the information already filed in company proxy statements and meeting notices, adding burden without additional value); New York Comptroller II; Ohio Public Retirement; PERA; PRI II; Public Retirement Systems; ValueEdge III.

[306] *See, e.g.,* letter from CII IV (arguing that the proposed requirement would delay the timely receipt of proxy voting advice because proxy voting advice businesses will need to coordinate timing of the filing of supplementary proxy materials with registrants and that it would increase the businesses' direct costs (*e.g.,* costs to include a hyperlink in reports), which would likely be passed on to clients and their beneficiaries).

[307] *See, e.g.,* letters from Glass Lewis II; Public Retirement Systems.

[308] *See, e.g.,* letters from AFL–CIO II; CII IV; CIRCA; Elliott I; Glass Lewis II (characterizing the proposed requirement for a proxy voting advice business to publish a registrant's response to proxy voting advice in the form of a hyperlink as compelled speech and citing to legal precedent for the proposition that compelling a party to publish or otherwise provide access to speech with which the party may disagree violates the First Amendment); ISS (''Supreme Court precedent is clear that the government may not 'co-opt' a person's speech 'to deliver [a] message' from someone else.''); New York Comptroller II. We discuss our response to certain Constitutional objections to the proposed amendments in Section II.C.3.d. *infra.*

[309] *See, e.g.,* letters from BIO; ExxonMobil; Nasdaq; CII IV; CFA Institute II; Hermes; ISS.

[310] *See, e.g.,* letter from BIO.

[311] *See, e.g.,* letters from BIO; NAM.

[312] *See* letters from BRT; ExxonMobil.

[313] *See* letter from Nasdaq.

submission of votes in instances where companies respond to a proxy voting advice business's adverse voting recommendation, along the lines of the alternative described in the Proposal.[314]

Some commenters who objected to the proposal nevertheless recommended changes should the Commission adopt a response mechanism. Several such commenters encouraged the Commission to codify the view that a proxy voting advice business will not be held liable for the content of a registrant's response, whether provided as a hyperlink or included in the proxy statement in its entirety.[315] Additional suggestions included setting reasonable guidelines and limitations on the content of a registrant's response,[316] requiring that registrants provide their hyperlink to the proxy voting advice business before the end of the review period (not just request that it be included) to ensure that the hyperlink is provided in a timely manner,[317] requiring that the hyperlink be active when provided,[318] and permitting proxy voting advice businesses to require registrants to indemnify them for any loss or claim arising out of the hyperlinked content, its transmission, or use.[319]

3. Final Amendments

a. Overview

Based on commenter feedback, we are adopting amendments to Rule 14a–2(b) that we believe achieve the important objectives of the proposal but are modified in a number of respects to do so in a less prescriptive, more principles-based manner. We recognize the practical challenges faced by market participants—investors, registrants, investment advisers, proxy voting advice businesses, and others—to participate in, and fulfill their respective obligations in respect of, the proxy process. To varying extents, market participants must convey, assimilate, and give thoughtful consideration to relevant information from various parties on a potentially wide range of topics in what is generally viewed as a short time frame. In light of this, we believe a more principles-based approach is appropriate.

As reflected in the large number of public comments received, there is a wide range of opinions and competing views about the most effective way to ensure that market participants, including users of proxy voting advice, have access to adequate information when making their voting decisions. Although some commenters argued that there was insufficient evidence of inaccuracies or other problems with proxy voting advice to justify regulation, and asserted that clients of proxy voting advice businesses are satisfied with the quality of the advice they receive, the proposed amendments were not motivated solely by the Commission's interest in the factual accuracy of proxy voting advice. As we explained in the Proposing Release, even where proxy voting advice is not adverse to the registrant's recommendation or where there are no errors in the advice, facilitating investor access to enhanced discussion of proxy voting matters contributes to more informed proxy voting decisions.[320] Indeed, the principle that more complete and robust information and discussion leads to more informed investor decision-making, and therefore results in choices more closely aligned with investors' interests, has shaped our federal securities laws since their inception and is a principal factor in the Commission's adoption of these amendments. Regardless of the incidence of errors in proxy voting advice, we believe it is appropriate to adopt reasonable measures designed to promote the reliability and completeness of information available to investors and those acting on their behalf at the time they make voting determinations. In particular, we reiterate the far-reaching implications that proxy voting advice can have in the market[321] and accordingly continue to believe that measured changes designed to facilitate more complete and robust dialogue and information sharing among proxy voting advice businesses, their clients, and registrants would improve the proxy voting system, and ultimately lead to more informed decision-making, to the benefit of all participants, including shareholders that do not use proxy voting advice and yet may be affected by the recommendations of proxy voting advice businesses. We also believe that such measured changes, while not an exact substitution, would more closely approximate the discussion that could occur at a meeting with physical attendance and participation by shareholders and other parties. We therefore believe that ensuring that registrants have timely notice of proxy voting advice and that proxy voting advice businesses provide clients with a mechanism by which they can reasonably be expected to become aware of any written response by registrants to that advice—in a timely manner—will increase confidence across participants in the proxy system that clients of proxy voting advice businesses, whether those clients are investors or are acting on behalf of investors, have timely access to transparent, accurate, and complete information material to their voting decisions.

The Commission is aware of the risk that introducing new rules into a complex system like proxy voting, which has evolved over many years in response to changes in the marketplace as well as the interests and needs of market participants, could inadvertently disrupt the system and impose unnecessary costs if not carefully calibrated. For example, we understand the timing pressures and logistical challenges faced by shareholders, investment advisers, registrants, and, as a result, proxy voting advice businesses and their clients, particularly during the peak of proxy season.[322] We also acknowledge the concerns expressed by a number of commenters that the adoption of an overly prescriptive framework governing aspects of the proxy voting advice system could, depending on various facts and circumstances, impede the ability of proxy voting advice businesses to provide their clients with timely voting advice.[323] Ultimately, we are guided by the principle that informed decision-making by shareholders is the foundation on which the legitimacy of the proxy voting system rests[324] and believe that a well-functioning proxy system benefits from the ability of clients of proxy voting advice businesses to obtain more complete information on which to base their voting decisions.[325]

[314] *See, e.g.,* letters from BIO (''Accordingly, [we] support measures that would increase the likelihood that the registrant's statement is taken into account, such as disabling the auto-submission of votes when a registrant has submitted a response, or disabling auto-submission unless the client accesses the registrant's response or otherwise confirms the pre-populated voting choices.''); BRT; CGC; ExxonMobil (asserting that the failure to address automatic submissions would render the proposed rules ineffective, with ''limited practical impact.''); NAM; Nareit; SCC II.

[315] *See, e.g.,* letters from Baillie Gifford; CII IV; Glass Lewis II; ISS.

[316] *See, e.g.,* letter from Glass Lewis II.

[317] *Id.*

[318] *Id.*

[319] *Id.*

[320] *See* Proposing Release at 66530.

[321] *See supra* notes 51–53 and accompanying text.

[322] *See* Proposing Release at 52, n. 134.

[323] *See, e.g.,* letters from Baillie Gifford; Canadian Gov. Coal; CII IV; Glass Lewis II; ISS; Prof. Sergakis.

[324] *See supra* notes 2–5 and accompanying text.

[325] This is consistent with the Commission's views regarding steps an investment adviser could take when it retains a proxy voting advice business and it becomes aware of potential factual errors, potential incompleteness, or potential methodological weaknesses in the proxy voting advice business's analysis that may materially affect one or more of the investment adviser's voting

Continued

As noted above, some commenters asserted that certain existing mechanisms in the proxy system suffice to address the concerns raised in the Proposing Release and obviate the need for the proposed rules.[326] Those mechanisms include proxy voting advice businesses' existing programs and policies for registrants to provide feedback, ''counter-speech'' measures already available to registrants (*e.g.,* filing supplemental proxy materials), and antifraud liability under Rule 14a–9.[327] Contrary to the views of those commenters, however, we do not believe that those mechanisms, as currently implemented, suffice to achieve our goal of ensuring that clients of proxy voting advice businesses have timely access to a more complete mix of relevant information and exchange of views. Although it is encouraging that some proxy voting advice businesses have programs in place pursuant to which some registrants have the opportunity to review and provide feedback on or responses to proxy voting advice, those programs have not been universally adopted by proxy voting advice businesses and do not uniformly provide registrants (and their investors) with the same opportunities for (and benefits of) review, feedback, and response.[328]

As to ''counter-speech'' measures, under current market practices registrants are not systematically informed of proxy voting advice in a timely manner such that they can provide investors a response to such advice, let alone a response sufficiently in advance of the relevant meeting to allow investors to consider the response prior to casting their vote.[329] In addition, while the potential for liability under Rule 14a–9 helps to ensure that proxy voting advice is not materially false or misleading, it does not address the need for investors to have timely access to transparent, accurate, and complete information—including any written response by the registrant to the advice—that is material to their voting determinations.[330]

As we explained in the Proposing Release, under existing mechanisms, it can be difficult to ensure that those making voting decisions have timely access to materially complete information prior to voting.[331] Without notice of the proxy voting advice business's recommendations, registrants are often unable to provide a response prior to votes being cast. Also, given the high incidence of voting that takes place very shortly after a proxy voting advice business's advice is distributed to its clients, without a mechanism by which clients can reasonably be expected to become aware of any response in a timely manner (as they and other investors would if the discussion were taking place at a meeting where shareholders are physically attending and participating), votes may be cast on less complete information. Because proxy voting advice businesses have control over the timing of the dissemination of their proxy voting advice, we believe they are the best-positioned parties in the proxy system to both (1) make their proxy voting advice available to registrants and (2) provide clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written response to their proxy voting advice in a timely manner.

Although we do not believe the existing voluntary forms of outreach to registrants and other market participants discussed above are alone sufficient, we have carefully considered the views of a number of commenters, including the two largest proxy voting advice businesses. Those commenters indicated that a more principles-based approach would be appropriate and one of whom specifically indicated that such an approach would achieve the Commission's goals while avoiding many of the complexities and practical concerns arising from the approach taken in the proposal.[332] We agree and are therefore adopting amendments that articulate a set of principles, distilled from the proposed rules, upon which a proxy voting advice business may design its own policies and procedures. We believe this approach will provide proxy voting advice businesses the flexibility to satisfy their compliance obligations in a customized and cost-effective manner and avoid exacerbating the challenges posed by timing and logistical constraints,[333] while achieving the objective of ensuring that proxy voting advice businesses' clients have timely access to more transparent, accurate, and complete information upon which to base voting decisions. We believe such an approach addresses a number of concerns raised by commenters, is better equipped to fit the needs of participants in the proxy voting process, and will be adaptable as circumstances change.

b. Policies and Procedures To Facilitate Informed Decision-Making by Clients of Proxy Voting Advice Businesses [Rule 14a–2(b)(9)(ii)]

Consistent with the discussion above, we are adopting new Rule 14a–2(b)(9)(ii) to require, as a separate condition to the availability of the exemptions in Rules 14a–2(b)(1) and (b)(3), that a proxy voting advice business[334] adopt and publicly disclose

determinations. *See* Commission Guidance on Proxy Voting Responsibilities at 21–22 (''In reviewing its use of a proxy advisory firm, an investment adviser should also consider the effectiveness of the proxy advisory firm's policies and procedures for obtaining current and accurate information relevant to matters included in its research and on which it makes voting recommendations . . . As part of this assessment, investment advisers should consider . . . [t]he proxy advisory firm's engagement with issuers, including the firm's process for ensuring that it has complete and accurate information about the issuer and each particular matter, and the firm's process, if any, for investment advisers to access the issuer's views about the firm's voting recommendations in a timely and efficient manner. . . .'').

[326] *See supra* notes 300–302 and accompanying text.

[327] *See, e.g.,* letters from AllianceBernstein; As You Sow II; Better Markets; Elliott I; ISS; Glass Lewis II; CalPERS; CII IV; New York Comptroller II; Segal Marco II; Seven Corners; Shareholder Rights II. *See also* IAC Recommendation.

[328] *See supra* notes 256–258 and accompanying text; Proposing Release at 66529–30 (''[S]ome proxy voting advice businesses do not provide registrants with an opportunity to review their reports containing voting advice in advance of distribution to their clients. Even those proxy voting advice businesses that provide such review opportunities do not provide all registrants with an advance copy of their reports containing their voting advice.'').

[329] *See* Proposing Release at 66533 (''Although registrants are able, under the existing proxy rules, to file supplemental proxy materials to respond to negative proxy voting recommendations and to alert investors to any disagreements they have identified with a proxy voting advice business's voting advice, the efficacy of these responses may be limited, particularly given the high incidence of voting that takes place very shortly after a proxy voting advice business's voting advice is released to clients and before such supplemental proxy materials can be filed.'').

[330] *Id.* at 66530 (noting that ''[t]he registrant . . . may have disagreements that extend beyond the accuracy of the data used, such as differing views about the proxy advisor's methodological approach or other differences of opinion,'' the communication of which ''could improve the overall mix of information available when the clients make their voting decisions'').

[331] *Id.* at 66528–30.

[332] *See supra* notes 298–299 and accompanying text.

[333] *See* Proposing Release at 52, n. 135.

[334] As adopted, Rule 14a–2(b)(9) defines ''proxy voting advice business'' as ''a person furnishing proxy voting advice covered by § 240.14a–1(l)(1)(iii)(A).'' Some commenters opposed the use of this term. *See* letters from ISS (stating generally with respect to proposed Rule 14a–9 that the Commission should refer to entities subject to the rules as ''proxy advisers'' or ''proxy advisory firms,'' rather than creating a new term (''proxy voting advice business'')); CII IV (asserting that there is no evidence that the current terminology is inadequate). While we acknowledge commenters' concern about introducing a new term to the proxy rules, we believe that it is appropriate to clarify the type of proxy voting advice that the new rules are intended to address and accordingly scope in businesses that provide such advice, rather than basing application of the rules on the types of businesses that currently provide such services. We believe this avoids inadvertently scoping in other services that such businesses may provide, and also provides flexibility for the rule to address future

written policies and procedures reasonably designed to ensure that:

(A) Registrants that are the subject of proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the proxy voting advice business's clients; [335] and

(B) The proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants that are the subject of such advice, in a timely manner before the shareholder meeting (or, if no meeting, before the votes, consents, or authorizations may be used to effect the proposed action).[336]

While we appreciate the input of commenters that recommended we adopt the more prescriptive requirements of the proposed rule with modifications,[337] we believe that the objectives of the rule are better achieved through a principles-based requirement that is firmly rooted in our historic and proven disclosure framework and will provide proxy voting advice businesses with the ability to tailor their policies and procedures to ensure compliance with the requirements on a basis that is efficient and best serves the evolving needs of their clients and the practical realities of their individual business models.

i. Notice to Registrants and Safe Harbor

Paragraph (A) of Rule 14a–2(b)(9)(ii) reflects the Commission's judgment that effective engagement between proxy voting advice businesses and registrants, in which registrants are timely informed of proxy voting advice that bears on the solicitation of their shareholders, will further the goal of ensuring that proxy voting advice businesses' clients have more complete, accurate, and transparent information to consider when making their voting decisions. This will, by extension, benefit the shareholders on whose behalf those clients may be voting.

As adopted, 17 CFR 240.a–2(b)(9)(ii)(A) (''Rule 14a–2(b)(9)(ii)(A)'') does not dictate the manner or specific timing in which proxy voting advice businesses interact with registrants, and instead leaves it within the discretion of the proxy voting advice business to choose how best to implement the principles embodied in the rule and incorporate them into the business's policies and procedures. The rule does not require that proxy voting advice businesses provide registrants or other soliciting persons [338] with the opportunity to review proxy voting advice in advance of its dissemination to the businesses' clients, although providing registrants with the opportunity to review their proxy voting advice in advance would satisfy the principle and is encouraged to the extent feasible.[339] The rule requires that proxy voting advice businesses must have adopted and publicly [340] disclosed policies and procedures reasonably designed to ensure that proxy voting advice [341] is made available to registrants ''at or prior to the time when such advice is disseminated to the proxy voting advice business's clients.'' [342] The rule does not, however, require proxy voting advice businesses to ensure that proxy voting advice be made available to registrants after being initially provided to clients, if it is later revised or updated in light of subsequent events, as we recognize that

business models that may involve the type of advice the rules are intended to address.

[335] Rule 14a–2(b)(9)(ii)(A).

[336] Rule 14a–2(b)(9)(ii)(B). *See infra* Section II.C.3.c. for a discussion of Rules 14a–2(b)(9)(v) and (vi), which exclude certain types of proxy voting advice from the application of Rule 14a–2(b)(9)(ii).

[337] *See, e.g.,* letters from BRT; Exxon Mobil; GM; MFA & AIMA; MSBA; Nasdaq; Scott Hirst, Assoc. Prof., Boston University Law School (Feb. 3, 2020) (''Prof. Hirst''); Representatives Bryan Steil, et al., U.S. House of Representatives (Jan. 6, 2020) (''Rep. Steil''); SCC I.

[338] We believe that it could have been unduly burdensome on proxy voting advice businesses to extend the requirements of Rule 14a–2(b)(9)(ii)(A) to other soliciting persons (in addition to the relevant registrants). We are mindful of the costs and potential logistical complications that could arise if a proxy voting advice business were required to ensure that multiple soliciting persons were informed of its proxy voting advice in a timely manner. Notwithstanding such costs and potential complications, proxy voting advice businesses may structure their policies and procedures to inform other soliciting persons of their proxy voting advice if they wish to do so. Further, as we noted in the Proposing Release, neither shareholder proponents nor persons conducting exempt solicitations are required to file substantive disclosure documents with the Commission or to make public statements. Proposing Release at 66532. Because such disclosure documents and public statements generally contain substantive information that likely would form the basis of proxy voting advice businesses' analyses, there may be an information asymmetry as to proxy voting advice provided with respect to registrants' solicitations as compared to shareholder proponents' or exempt solicitations. Consistent therewith, we stated in the Proposing Release that proxy voting advice businesses would be required to extend the proposed review and feedback and final notice opportunities to parties other than the registrant only in those instances in which the registrant's solicitation is contested by soliciting persons who intend to deliver their own proxy statements and proxy cards to shareholders. *Id.* However, as discussed below (*see infra* Section II.C.3.c.ii.), we are adopting Rule 14a–2(b)(9)(vi) that, in part, excludes from the requirements of Rule 14a–2(b)(9)(ii) the portions of the proxy voting advice that relate to solicitations regarding contested matters, regardless of who is making such solicitation. *See* Rule 14a–2(b)(9)(vi).

[339] As noted above, we understand that certain proxy voting advice businesses currently provide at least some issuers with the opportunity to review and respond to their proxy voting advice in advance of its dissemination to their clients. *See* Proposing Release at 66529 (''In the United States, ISS offers the constituent companies of the Standard and Poor's 500 Index the opportunity to review a draft of ISS' voting advice before it is delivered to clients. Glass Lewis has a program that allows registrants who participate to receive a data-only version of its voting advice before publication to clients.''). Although such advance review opportunity is not required by Rule 14a–2(b)(ii), we encourage proxy voting advice businesses that are currently providing registrants with this opportunity to continue doing so as it furthers the objectives of this rule.

[340] The requirement that such policies and procedures be ''publicly'' disclosed would be satisfied if, for example, they were publicly available on a proxy voting advice business's website. This is consistent with the approach that at least some proxy voting advice businesses are currently taking with respect to the opportunities they provide registrants to review their proxy voting advice. *See, e.g.,* Glass Lewis, Report Feedback Statement (last visited June 11, 2020), *available at https://www.glasslewis.com/report-feedback-statement/;* ISS, ISS Draft Review Process for U.S. Issuers (last visited June 11, 2020), *available at https://www.issgovernance.com/iss-draft-review-process-u-s-issuers/.* Given the flexibility that proxy voting advice businesses have with respect to the method by which they satisfy the principle set forth in Rule 14a–2(b)(9)(ii)(A), we believe that the public disclosure of such policies and procedures is critical to ensuring that registrants understand how they can become informed of the relevant proxy voting advice. We also believe that the transparency created by such public disclosure may yield ancillary benefits, including increased assurance of compliance by proxy voting advice businesses with Rule 14a–2(b)(9)(ii).

[341] *See supra* note 7 for the definition of ''proxy voting advice'' as used in this release.

[342] Rule 14a–2(b)(9)(ii)(A). The goal of the principle is to provide registrants with enough time to respond to the proxy voting advice, should they choose to, sufficiently in advance of investors casting their final votes. Practically speaking, the most efficient way for proxy voting advice businesses to achieve this goal is to disseminate the reports containing their proxy voting advice to registrants (or otherwise provide registrants with access to such reports) either at the same time or before they disseminate such reports to their clients. We recognize that some commenters that supported the proposed rules indicated that even when registrants do have the opportunity to review proxy voting advice in advance, they do not have sufficient time for a thorough review and response. *See supra* note 258 and accompanying text. Although the proposed advanced review and feedback process likely would have afforded registrants more lead time to review and respond to proxy voting advice, we are conscious of the corresponding costs that other commenters identified. *See infra* notes 351–355 and accompanying text. We further note that even if some clients of proxy voting advice businesses make their voting decision after receiving such businesses' recommendations but before the registrant has had the opportunity to respond thereto, those clients retain the ability to change their vote prior to the meeting date. Under the final rules, therefore, registrants should have the opportunity to respond to proxy voting advice sufficiently in advance of the meeting date. Accordingly, clients of proxy voting advice businesses are more likely to become aware of a registrant's response pursuant to Rule 14a–2(b)(9)(ii)(B) and should have the opportunity to consider whether to adjust their votes based thereon. *See infra* note 387 and accompanying text.

such a requirement could be unduly burdensome given the timing constraints of the proxy process. We believe the final rules continue to advance the Commission's interest in improving the mix of information available to shareholders in a manner that is compatible with the complex and time-sensitive proxy voting advice infrastructure that currently exists and, in particular, the proxy voting advice businesses that many shareholders or those acting on their behalf use in connection with proxy voting, including meeting their voting obligations to investors.

In addition, paragraph (iii) of Rule 14a–2(b)(9) includes a non-exclusive safe harbor provision that, if followed, will give assurance to a proxy voting advice business that it has met the principles-based requirement of new Rule 14a–2(b)(9)(ii)(A). In accordance with this safe harbor, a proxy voting advice business will be deemed to satisfy Rule 14a–2(b)(9)(ii)(A) if it has written policies and procedures that are reasonably designed to provide registrants with a copy of its proxy voting advice, at no charge, no later than the time it is disseminated to the business's clients.[343] Such policies and procedures may include conditions requiring that such registrants have:

(A) Filed their definitive proxy statement at least 40 calendar days before the shareholder meeting; [344] and

(B) Expressly acknowledged that they will only use the proxy voting advice for their internal purposes and/or in connection with the solicitation and it will not be published or otherwise shared except with the registrant's employees or advisers.[345]

Under this safe harbor, the proxy voting advice business may structure its written policy however it wishes so long as the policy has been reasonably designed to provide [346] any registrant that meets the conditions of (A) and (B) above with a copy of the business's proxy voting advice with respect to that registrant at least concurrently with the delivery of such advice to its clients.[347]

We believe the 40 calendar-day aspect of the safe harbor [348] affords the proxy voting advice business a reasonable amount of time to provide the advisory materials to registrants, without adversely affecting the business's ability to provide timely voting advice to its clients. Proxy voting advice businesses perform much of the work related to their voting advice only after the filing of the definitive proxy statements describing the matters presented for a proxy vote and are subject to time pressure to deliver their research and analysis to their clients sufficiently in advance of the shareholder meeting.[349] Accordingly, we do not believe that it would be practicable to impose additional administrative and logistical burdens on proxy voting advice businesses in cases in which registrants' definitive proxy statements are filed closer to the date of the shareholder meeting.[350] However, if they wish to do so, proxy voting advice businesses may structure their policies to accommodate registrants that may file less than 40 calendar days before the shareholder meeting and remain within the safe harbor.

The concurrent dissemination of proxy voting advice to clients and registrants specified in the safe harbor addresses concerns expressed by commenters that the proposed review mechanism, which would have allowed registrants to review and provide feedback on voting advice before distribution to the clients of proxy voting advice businesses, could have undermined the ability of proxy voting advice businesses to provide impartial advice to their clients,[351] increased the risk of insider trading of material non-public information,[352] and impinged on proxy voting advice businesses' rights of free speech.[353] As discussed above, several commenters objected on the grounds that permitting registrants to review and comment on draft proxy voting advice in advance of a proxy voting advice business's clients would interfere in shareholders' communications with their advisors on matters subject to a vote.[354] In particular, some commenters argued that the review process, as proposed, gave preferential treatment to registrants over a proxy voting advice business's

[343] Rule 14a–2(b)(9)(iii).

[344] Rule 14a–2(b)(9)(iii)(A). Where the registrant is soliciting written consents or authorizations from shareholders for an action in lieu of a meeting, a proxy voting advice business's written policies and procedures may require that the registrant must file its definitive soliciting materials at least 40 calendar days before the action is effective in order to receive a copy of its proxy voting advice.

[345] Rule 14a–2(b)(9)(iii)(B).

[346] In terms of the method by which a proxy voting advice business provides a copy of its advice to a registrant, it could do so by, for example, sending the registrant an email either attaching an electronic copy of the relevant report or including an active hyperlink to the report.

[347] Under the terms of the safe harbor, registrants are not required to reimburse proxy voting advice businesses for the cost of providing a copy of the proxy voting advice. *See* Rule 14a–2(b)(9)(iii). While some commenters favored a requirement that registrants reimburse proxy voting advice businesses for reasonable expenses associated with the proposed review and feedback period (*see* letters from CII IV; New York Comptroller II), others asserted that proxy voting advice businesses should not be able to seek reimbursement from registrants for the costs to provide their reports (*see* letters from Exxon Mobil; GM; NAM; SCG). For purposes of the safe harbor, we believe that the benefit to investors of more timely, complete, and reliable information upon which to make informed voting decisions should not be lessened by making a registrant's ability to review proxy voting advice dependent on the registrant's willingness to pay for it. See *infra* note 412 for our discussion of how the final rules address certain comments we received on the proposed rules expressing concern regarding the takings clause of the Fifth Amendment.

[348] Rule 14a–2(b)(9)(iii)(A).

[349] *See e.g.,* letters from CII IV; Glass Lewis II; ISS (describing the timing and processes involved in the preparation and delivery of their proxy voting advice to clients). *See also* Proposing Release at 66531, n. 119.

[350] Based on the information we received from commenters, it is our understanding that 40 calendar days prior to the shareholder meeting is well within the customary range when definitive proxy statements are filed. *See e.g.,* letters from CII IV; Glass Lewis II. By comparison, we note that the Commission's proposal would have required proxy voting advice businesses to provide registrants with an opportunity for advance review and feedback of the proxy voting advice if the registrant filed its definitive proxy statement at least 25 calendar days before the shareholder meeting. *See* proposed Rule 14a–2(b)(2)(9)(ii); Proposing Release at 66531. We also note that such 40 calendar day-period exceeds the minimum number of days that some proxy voting advice businesses currently require that registrants file their definitive proxy statements prior to the shareholder meeting in order to review at least a portion of their proxy voting advice in advance of its dissemination. *See, e.g.,* Glass Lewis, Issuer Data Report (last visited June 11, 2020), *available at https://www.glasslewis.com/issuer-data-report/* (noting that in order for a registrant to review an issuer data report in advance of the proxy voting advice being disseminated to clients, registrants must ''disclose their meeting documents at least 30 days in advance of their meeting date''); ISS, ISS Draft Review Process for U.S. Issuers (last visited June 11, 2020), *available at https://www.issgovernance.com/iss-draft-review-process-u-s-issuers/* (''To ensure timely delivery of our analyses to our clients, we cannot provide a draft to any company that files its definitive proxy less than 30 days before its meeting.'').

[351] *See supra* note 269. We believe that the concurrent dissemination of proxy voting advice to clients and registrants pursuant to the safe harbor will achieve the objectives of this rulemaking and address commenters' concerns regarding a registrant's practical ability to review, consider, and respond to proxy voting advice. *See supra* note 342.

[352] *See supra* note 272. Proxy voting advice may, depending on the facts and circumstances, constitute material, non-public information. We expect proxy voting advice businesses, their clients, and registrants receiving non-public information in this process to take reasonable measures to safeguard any material, non-public information in their possession by, for example, adopting and implementing effective policies and procedures to ensure that its use and dissemination is consistent with applicable law. *See also infra* note 400; *Institutional S'holder Servs. Inc.,* Release No. IA–3611, 106 SEC. Docket 1681, 2013 WL 11113059, at *5 (May 23, 2013) (''In this case, ISS violated Section 204A [of the Advisers Act] because it failed to establish and enforce policies and procedures reasonably designed to prevent the misuse of ISS' shareholder advisory clients' material, nonpublic proxy voting information.'').

[353] *See supra* note 288.

[354] *See supra* notes 276–277.

own clients and would tend to promote management's interests because it allowed registrants to influence the content of advice at a critical stage of its production without granting similar access to shareholders.[355]

Several commenters who were opposed to the concept of advance review suggested concurrent review as a preferable alternative.[356] In the view of such commenters, a concurrent review would provide registrants with access to proxy voting advice, but it would be on an equal footing with the clients of proxy voting advice businesses and therefore would avoid many of the potential adverse consequences that commenters associated with mandating an opportunity for registrants' advance review.[357] We agree with this approach and believe that, for example, the receipt of a copy of proxy voting advice by a registrant who is the subject of such advice no later than the date upon which it is distributed to the proxy voting advice business's clients would bring about many of the same benefits for which the proposed registrant review was intended, particularly in conjunction with (1) a registrant's ability to file additional soliciting materials to communicate their views regarding the advice to shareholders and (2) the new requirement, described below,[358] that proxy voting advice businesses adopt written policies and procedures reasonably designed to ensure that they provide clients with a mechanism by which they can become aware of a registrant's statements of its views about such advice in a timely manner.

Under the proposed rules, a proxy voting advice business would have been able to require registrants to enter into confidentiality agreements for materials provided during the proposed review and feedback period as a condition of receiving the proxy voting advice on terms ''no more restrictive'' than similar types of confidentiality agreements the business has with its clients, which would cease to apply once the business released its proxy reports to clients.[359] Some commenters suggested this formulation would be unworkable in practice because the confidentiality agreements used with clients were not comparable and therefore would not be a suitable template.[360] In addition, commenters objected to the mandated cessation of the registrant's confidentiality agreement, as the risk of harm that would be suffered by the proxy voting advice business due to misuse of its confidential information could continue well into the future.[361] Moreover, a number of commenters expressed concern that requiring confidentiality agreements between proxy voting advice businesses and registrants would necessitate the parties' negotiation over contractual terms, an additional complication that could mire the proposed review and feedback process, and therefore the timely provision of voting advice to shareholders, in unmanageable delays.[362] Some commenters also noted that such negotiation would be costly.[363]

We believe that shifting to a principles-based requirement, which allows the report to be provided to registrants at the same time it is provided to clients, should eliminate or mitigate many of the concerns expressed. In light of these changes, we believe that negotiating a formal confidentiality agreement may not be necessary in all circumstances. We therefore believe it is appropriate to make clear that a proxy voting advice business may receive assurances from a registrant regarding the use of the proxy voting advice through less prescriptive means. Accordingly, paragraph (B) of the safe harbor in Rule 14a–2(b)(9)(iii) permits proxy voting advice businesses to include in their policies and procedures conditions requiring registrants to limit their use of the advice in order to receive a copy of the proxy voting advice. Such written policies and procedures may, but are not required to, specify that registrants must first acknowledge that their use of the proxy voting advice is restricted to the registrant's own internal purposes and/or in connection with the solicitation and will not be published or otherwise shared except with the registrants' employees or advisers.[364] Such acknowledgement could take a variety of forms at the discretion of the proxy voting advice business, including with respect to the duration of the acknowledgment. For example, a policy under the safe harbor could specify that the acknowledgement can or must be in the form of a written representation or an oral acknowledgement, or the policy could prescribe that a registrant must check a box or provide another electronic means of confirming that the registrant agrees to standardized terms of service before the materials could be accessed. To qualify for the safe harbor, the terms of the acknowledgement could not be more restrictive than those set forth in paragraph (B); however, if a proxy voting advice business wishes to impose more tailored or restrictive conditions, it could do so outside of the safe harbor, provided the policies and procedures do not unreasonably inhibit timely notice to the registrant consistent with the principles-based requirements of 14a–2(b)(9)(ii)(A).

We also note that, unlike the proposal, the safe harbor does not mandate the provision of draft proxy voting advice to registrants before dissemination to clients of the proxy voting advice business, which, as commenters noted, poses a higher risk of unintentional or unauthorized release of the information and its potential misuse.[365] Instead, compliance with the safe harbor requires only that the proxy voting advice business provide its voting advice to registrants no later than the time it is released to the business's clients.

A proxy voting advice business that has a policy in place that satisfies the principles-based requirements of Rule 14a–2(b)(9)(ii)(A), such as a policy elucidated in, or that is consistent with, the safe-harbor in Rule 14a–2(b)(9)(iii), will be under no obligation to provide its proxy voting advice to registrants that fail to file a definitive proxy statement early enough to meet the 40-day stipulation, or fail to acknowledge the limitations on its use of the voting advice. Moreover, in order to qualify for

[355] *See supra* note 268.

[356] *See supra* note 295.

[357] *Id.*

[358] *See infra* Section II.C.3.b.ii.

[359] *See* Note 2 to paragraph (b)(9)(ii) of proposed Rule 14a–2(b)(9); Proposing Release at 66532.

[360] *See, e.g.,* letter from SES (asserting that needing to sign individual confidentiality agreements between every issuer and proxy voting advice business would be cumbersome ''without any tangible benefit'').

[361] *See, e.g.,* letter from Glass Lewis II (recommending that the Commission remove the statement in the proposal that any confidentiality agreement ''shall cease to apply once the proxy voting advice business provides its advice to one or more recipients'').

[362] *See, e.g.,* letter from Olshan LLP (stating that the proposal significantly underestimates the time and expense of negotiating confidentiality agreements and providing detailed reasons as to why the proposal would be so time consuming and costly).

[363] *See infra* note 613.

[364] A registrant's advisers would include, for example, its attorneys and proxy solicitors.

[365] *See, e.g.,* letters from Clem Geraghty, Ardevora Asset Management LLP (Nov. 27, 2020) (''Ardevora''); CII IV; Elliott I; ISS (expressing concern that the proposal would require a proxy voting advice business to disclose material non-public information to any registrant or eligible soliciting person who signs a confidentiality agreement, even if that party is a known insider trader, and stating that such an outcome would interfere with the proxy voting advice business's obligations under the Investment Advisers Act to establish, maintain, and enforce policies and procedures reasonably designed to ensure compliance with insider trading laws); SES (noting that the proposal could result in certain company statements and information being made available to proxy voting advice businesses and their clients, but not to other shareholders).

the safe harbor, the proxy voting advice business's policy is not required to contemplate that the business repeat the process of providing a copy of its proxy voting advice to registrants if its advice is later revised or updated in light of subsequent events. The safe harbor does not impose any obligation on the proxy voting advice business to provide registrants with additional opportunities to review its proxy voting advice with respect to the same shareholder meeting. In response to concerns raised by commenters, in order to limit the logistical and other burdens imposed on proxy voting advice businesses, as well as to lessen potential uncertainty over questions of compliance,[366] proxy voting advice businesses may, but will not be required to, provide the registrant with additional materials that update or supplement proxy voting advice previously provided.

So long as the proxy voting advice business meets the conditions of the safe harbor in Rule 14a–2(b)(9)(iii), it will be deemed to satisfy Rule 14a–2(b)(9)(ii)(A). Assuming it also satisfies the principles-based requirement in new 17 CFR 240.14a–2(b)(9)(ii)(B) (''Rule 14a–2(b)(9)(ii)(B)''); discussed below and otherwise meets the requirements of Rule 14a–2(b)(9), the proxy voting advice business would be eligible to rely on the exemptions in Rules 14a–2(b)(1) or (3) (subject to the satisfaction of the other conditions of those exemptions).

By adopting this approach, as discussed above, we believe we have addressed the concerns raised by commenters regarding the potential unintended consequences of requiring a proxy voting advice business to engage with a registrant in connection with its proxy voting advice, including those related to timing[367] and the risk of affecting the independence of the advice[368] or diminishing competition in the proxy voting advice business industry.[369] Specifically, because Rule 14a–2(b)(9)(ii) does not require proxy voting advice businesses to adopt policies that would provide registrants with the opportunity to review and provide feedback on their proxy voting advice before such advice is disseminated to clients, the rule does not create the risk that such advice would be delayed or that the independence thereof would be tainted as a result of a registrant's pre-dissemination involvement.[370] Similarly, because proxy voting advice businesses are not required to adopt policies that would provide notice to, or otherwise require interaction with, registrants until they disseminate advice to their clients, any concerns that commenters had regarding increased marginal costs—and, correspondingly, diminished competition—associated with preparing proxy voting advice as a result of the proposed advance review and feedback process should be alleviated. Commenters also identified potential unintended consequences that could result from a heightened litigation risk that proxy voting advice businesses could face as a result of the proposed rules,[371] which may have been viewed as more significant in circumstances where differing views persisted following engagement with the registrant. As with the other unintended consequences discussed above, this concern is mitigated by the fact that under the principles-based approach we are adopting, proxy voting advice businesses will not be required to give registrants the opportunity to provide feedback on their proxy voting advice before it is disseminated to clients.

It is not a condition of this safe harbor, nor the principles-based requirement, that the proxy voting advice business negotiate or otherwise engage in a dialogue with the registrant, or revise its voting advice in response to any feedback. The proxy voting advice business is free to interact with the registrant to whatever extent and in whatever manner it deems appropriate, provided it has a written policy that satisfies its obligations. Although the Commission encourages cooperation and an open dialogue between the parties to the extent that it facilitates productive efforts to improve the quality of proxy voting advice for the benefit of shareholders, the rule that we are adopting does not prescribe the manner in which the parties conduct themselves in this regard, and leaves the content of proxy voting advice, as well as the specific methods and processes used to produce it, within the proxy voting advice business's discretion.

As noted above, the safe harbor is intended to provide a proxy voting advice business with a non-exclusive means to meet the requirements of Rule 14a–2(b)(9)(ii)(A). Proxy voting advice businesses may nonetheless choose to structure a policy that, though not within the parameters of the safe harbor, is reasonably designed to ensure that proxy voting advice is made available to registrants at or prior to the time when the advice is disseminated to clients. We acknowledge that there are different ways that a proxy voting advice business could structure such a policy consistent with the rule, and the safe harbor is not intended to become the *de facto* means by which the requirement of Rule 14a–2(b)(9)(ii)(A) may be met.

ii. Mechanism To Become Aware of Registrant's Response and Safe Harbor

The Commission's proposal to require that proxy voting advice businesses, at the request of a registrant, include in their voting advice a hyperlink (or other analogous electronic medium) to the registrant's statement about the voting advice was intended as an efficient and timely means of providing the businesses' clients with additional information that would assist them in assessing and contextualizing the voting advice.[372] In particular, the inclusion of the hyperlink with the proxy voting advice would have permitted clients, including investment advisers voting shares on behalf of other shareholders, to consider the registrants' views at the same time as the proxy voting advice

[366] For example, if proxy voting advice businesses were required under the safe harbor to redistribute proxy voting advice to registrants as a result of any updates or addenda to the advice, in many cases it might pose a difficult logistical challenge for the businesses to meet their production deadlines, satisfy rapid turn-around times and fulfill their delivery obligations to clients, thereby exacerbating the businesses' difficulty in meeting an already aggressive timeline so close to the date of the shareholder meeting. In addition, the determination of which kinds of materials would be covered by such a rule could lead to confusion and make administration of the rule unnecessarily complex and time-consuming.

[367] *See supra* notes 276–279 and accompanying text.

[368] *See supra* note 287 and accompanying text. A number of commenters expressed concerns that the proposed advance review and feedback process would conflict with FINRA Rule 2241, which prohibits review of an analyst's research report by a subject company for purposes other than factual verification. *See* letters from AFL–CIO II; As You Sow II; BMO; Boston Trust; CII IV; NYC Comptroller; New York Comptroller II; PIAC II; TRP. The final rules address these concerns, as neither Rule 14a–2(b)(9)(ii)(A) nor Rule 14a–2(b)(9)(iii) requires that registrants be given the opportunity to review or provide feedback on proxy voting advice before proxy voting advice businesses provide such advice to their clients.

[369] The competition-based unintended consequences that commenters identified included diminished competition among proxy voting advice businesses, a limitation in the market choice for consumers of proxy voting advice, and a decline in the utility of proxy voting advice. *See supra* notes 282, 283, 285 and accompanying text.

[370] Some commenters challenged the proposition that proxy voting advice businesses currently provide disinterested, independent advice. *See, e.g.,* letters from BIO; BRT; CEC; CCMC; J. Ward; NAM; Nareit; Nasdaq; SCG. As to commenters' concerns that the proposed advance review mechanism could compromise the ability of proxy voting advice businesses to provide disinterested, independent advice, we note that according to its current procedures governing registrants' advance review of its draft proxy analysis, rating, or other research report, ISS states that it retains sole discretion whether to accept any change recommended by the registrant. *See infra* note 530 and accompanying text.

[371] *See supra* notes 284, 286 and accompanying text.

[372] Proposing Release at 66533.

and before making their voting determinations. As the Commission has noted, although registrants are able under the existing proxy rules to file supplemental proxy materials to respond to proxy voting recommendations that they may know about and to alert investors to any disagreements with such proxy voting advice, the efficacy of these responses may be limited, particularly given the high incidence of voting that takes place very shortly after a proxy voting advice business's voting advice is released to clients and before such supplemental proxy materials can be filed.[373]

As with the Commission's proposed review and response mechanism, however, commenters have raised practical challenges and limitations that the parties would face in implementing processes and systems necessary to comply with the proposed rule's prescriptive requirements.[374] Accordingly, we believe that our objectives are better addressed by a principles-based requirement, particularly in light of the complexities and time pressures inherent in the proxy system. By broadly outlining the overarching principles and allowing the proxy voting advice businesses themselves to design a system of compliance best suited to their operations, our aim is to promote adherence to these principles in a flexible and minimally intrusive manner.

Consequently, paragraph (B) of Rule 14a–2(b)(9)(ii) sets forth an additional principle that a proxy voting advice business must observe in order to avail itself of the exemptions found in Rules 14a–2(b)(1) and (3). Specifically, a proxy voting advice business must adopt and publicly[375] disclose written policies and procedures reasonably designed to ensure that it provides clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written statements about the proxy voting advice in a timely manner[376] before the shareholder meeting (or, if no meeting, before the vote, consent, or authorization may be used to effect the proposed action).

By shifting to a principles-based requirement, the rule allows the proxy voting advice business to determine its specific manner of compliance, while preserving the Commission's objective to facilitate the ability of the business's clients to benefit from more complete information when considering how to vote their proxies. As such, it reflects the Commission's view that shareholders should have ready access to a more complete mix of information to make informed voting decisions. Rule 14a–2(b)(9)(ii)(B) is thus intended to help ensure that proxy voting advice businesses provide clients with a mechanism by which they can reasonably be expected to become aware of and access more complete information, including the input and views of registrants on proxy voting advice, in the compressed time period between when they receive the advice and vote their proxies.

We believe access to the registrant's views on proxy advice may benefit a proxy voting advice business's clients regardless of whether the voting recommendation is adverse to the registrant's recommendation. The registrant may have disagreements that extend beyond the voting recommendation itself, such as noting factual errors in the advice, differing views about the proxy voting advice business's methodological approach or other perspectives that it believes are relevant to the voting advice.[377] Or the registrant may wish to emphasize a particular point that the proxy voting advice business may have noted or may not have noted in its advice. In circumstances where the registrant largely or entirely agrees with the proxy voting advice business's methodology or conclusions, that fact would likely be relevant to and enhance a client's decision-making.

A number of commenters argued that registrants' ability to file supplemental proxy materials is sufficient to facilitate informed shareholder voting decisions.[378] Commenters have indicated, however, that the clients of proxy voting advice businesses often cast their votes before registrants can file such materials.[379] Rule 14a–2(b)(9)(ii)(B) requires that proxy voting advice businesses provide clients with a mechanism by which they can reasonably be expected to become aware that a registrant has filed such materials about the proxy voting advice in time to consider the materials before they cast their final vote. Due to the existing time constraints that proxy voting advice business clients have identified in their comments to the proposed rule,[380] the rule will ensure that such clients have an efficient means by which they can reasonably be expected to become aware of additional information that may affect their analysis of the proxy voting advice, and thereby their voting decisions, in the manner that each proxy voting advice business determines is most cost-efficient and best serves its clients.

As with Rule 14a–2(b)(9)(ii)(A), we recognize that proxy voting advice businesses may benefit from greater legal certainty about how to satisfy this general principle. We are therefore providing a non-exclusive safe harbor in new 17 CFR 240.14a–2(b)(9)(iv) (''Rule 14a–2(b)(9)(iv)'') pursuant to which proxy voting advice businesses will be deemed to satisfy the principle-based requirement of paragraph (ii)(B). To satisfy this safe harbor, a proxy voting advice business must have written policies and procedures reasonably designed to inform clients who have received proxy voting advice about a particular registrant in the event that such registrant notifies the proxy voting advice business that the registrant either intends to file or has filed additional soliciting materials with the Commission setting forth its views

[373] *Id.* at n.136. As we noted in the Proposing Release, although shareholders have the ability to change their vote at any time prior to a meeting—including as a result of supplemental proxy materials filed by registrants in response to proxy voting advice—to our knowledge, this seldom occurs. *Id.* at 66530 n.107. It is possible, however, that under the final amendments, as a result of proxy voting advice businesses' compliance with Rule 14a–2(b)(9)(ii)(B), clients of proxy voting advice businesses will be made aware of a registrant's response to proxy voting advice and, therefore, more likely to change votes that were cast after receiving such advice.

[374] *See, e.g.,* letters from CII IV; Glass Lewis II.

[375] See *supra* note 340 for an example of how proxy voting advice businesses may satisfy the requirement that such policies and procedures be ''publicly'' disclosed and a discussion of the reasons why we believe such requirement is important in the context of paragraph (A) of Rule 14a–2(b)(9)(ii). With respect to paragraph (B), it is likely that the clients of proxy voting advice businesses would be provided with such policies and procedures even absent a requirement that they be publicly disclosed. That said, in addition to the ancillary transparency-based benefits discussed *supra* note 340, we believe that the public disclosure of such policies and procedures will assist potential clients of proxy voting advice businesses in evaluating the service offerings that the various providers make available. Similarly, such public disclosure may assist the investors on whose behalf such clients act in evaluating whether any proxy voting decisions made on their behalf are informed by both the relevant proxy voting advice and any registrant response thereto.

[376] In this context, a proxy voting advice business will have become aware of a registrant's response to the proxy voting advice in a ''timely manner'' if such client has sufficient time to consider such response in connection with a vote.

[377] *See, e.g.,* IAC Recommendation (''The very differences in such judgments [between corporate managers and proxy advisors] are part of the value that independent advisors add to the proxy system . . . . By advancing their views . . . proxy advisors create meaningful public discussion of such topics. . . .'').

[378] *See, e.g.,* letters from Public Retirement System; AFL–CIO 2; CII IV; Glass Lewis II; ISS; New York Comptroller I. *See also* note 373.

[379] *See, e.g.,* letters from NAREIT, NAM, Exxon Mobil. *See also* Proposing Release at 53, n. 136.

[380] *See, e.g.,* letters from ACSI; BMO; CII VI; Florida Board; Glass Lewis II; Hermes; ICI; New York Comptroller II; Ohio Public Retirement; Olshan LLP; PRI II; Stewart; TIAA; TRP.

regarding such advice.[381] The safe harbor sets forth two methods by which the proxy voting advice business may provide such notice to its clients. It may either:

(A) Provide notice on its electronic client platform that the registrant has filed, or has informed the proxy voting advice business that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available); [382] or

(B) Provide notice through email or other electronic means that the registrant has filed, or has informed the proxy voting advice business that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available).[383]

The safe harbor in Rule 14a–2(b)(9)(iv) establishes a convenient mechanism by which the clients of a proxy voting advice business can stay informed of, and timely consider, additional information with respect to the proxy voting advice that the registrant believes is material to the shareholders' voting determination. The safe harbor provides a direct and simple means of alerting clients to the availability of the views of the registrant as they consider the voting advice.

The inclusion of the hyperlink required under Rule 14a–2(b)(9)(iv) would not, by itself, make the proxy voting advice business liable for the content of the hyperlinked registrant's statement. The Commission has previously stated a person's responsibility for hyperlinked information depends on whether the person has involved itself in the preparation of the information or explicitly or implicitly endorsed or approved the information.[384] As we explained in the Proposing Release, we believe our view is consistent with this framework as a proxy voting advice business likely would not be involved in the preparation of the hyperlinked statement and likely would be including the hyperlink to comply with the requirements of the Rule 14a–2(b)(9)(iv) safe harbor, and not to endorse or approve the content of the statement. Our view also extends to a proxy voting advice business that chooses to satisfy the principle-based requirement of Rule 14a–(b)(9)(ii)(B) outside of the Rule 14a–2(b)(9)(iv) safe harbor by adopting written policies and procedures that contemplate the delivery of a hyperlink to the registrant's statement to its clients.

We note that proxy voting advice businesses will retain a significant amount of discretion to formulate their own policies and procedures and dictate the mechanics of notification in ways they believe are most suitable to meet their clients' needs and compatible with their operations, including specifying the preferred channel by which registrants must notify the proxy voting advice business of supplemental proxy filings, provided they comply with the broad outlines of the safe harbor.

As discussed above, although proxy voting advice businesses may prefer the legal certainty afforded by the safe harbor in Rule 14a–2(b)(9)(iv), these provisions are not the exclusive means by which such businesses may satisfy the principle-based requirement set forth in Rule 14a–2(b)(9)(ii)(B). Proxy voting advice businesses may instead develop their own policies and procedures outside of the safe harbor that are reasonably designed to ensure that they provide clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written response to the proxy voting advice in a timely manner. We acknowledge that there are different ways that a proxy voting advice business could structure such a policy consistent with the rule, and the safe harbor is not intended to become the *de facto* means by which the requirement of Rule 14a–2(b)(9)(ii)(B) may be met.

The proposed rules included a provision that would have excused immaterial or unintentional failures to comply with the conditions of Rule 14a–2(b)(9).[385] This provision was motivated by our recognition of a potentially significant adverse result for a proxy voting advice business if it were to lose the ability to rely on the exemptions set forth in Rules 14a–2(b)(1) or (b)(3) and be required to comply with the federal proxy rules' information and filing requirements.[386] Although we recognize those potentially adverse results, we no longer view that provision as necessary in light of the principles-based approach of the final rules. Rule 14a–2(b)(9)(ii), as adopted, requires proxy voting advice businesses to adopt written policies and procedures that are reasonably designed to ensure satisfaction of paragraphs (A) and (B) thereof. We believe the framework we are adopting is sufficiently flexible to accomplish the Commission's objectives in ensuring shareholders have available to them more transparent, accurate, and complete information on which to base their voting determinations and thereby promote informed decision-making, without unnecessarily interfering with or burdening the complex infrastructure that is important to the proper functioning of the proxy system. We also believe that the principle of ensuring that proxy voting advice businesses provide clients with a mechanism by which they can reasonably be expected to become aware of registrants' written statements regarding the proxy voting advice in a timely manner will facilitate in particular the use and review of such advice by investment advisers.[387]

[381] If a registrant notifies a proxy voting advice business that the registrant intends to file additional soliciting materials setting forth its views regarding the proxy voting advice business's advice, then proxy voting advice business should consider whether, for purposes of complying with this safe harbor requirement, it needs to send two separate notices to the business's clients: (1) One notice regarding the registrant's intent to file and (2) another notice regarding the registrant's actual filing. Depending on the particular facts and circumstances, the first notice may be needed to inform clients of the fact that the registrant may be providing views that could be material to their voting decisions and to allow the clients to determine whether they wish to await these views before submitting their votes, and with the second notice providing the clients with the hyperlink to the registrant's soliciting material once it is filed on EDGAR. We note that Rule 14a–2(b)(9)(ii)(B), which is a principles-based requirement, gives proxy voting advice businesses the option of formulating alternatives to this approach as long as those alternatives achieve the principle set forth in the rule.

[382] Rule 14a–2(b)(9)(iv)(A).

[383] Rule 14a–2(b)(9)(iv)(B).

[384] *See* Use of Electronic Media, Release No. 34–42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)].

[385] Proposing Release at 66535 (''[T]he proposed amendments provide that such failure will not result in the loss of the exemptions in Rules 14a–2(b)(1) or 14a–2(b)(3) so long as (A) the proxy voting advice business made a good faith and reasonable effort to comply and (B) to the extent that it is feasible to do so, the proxy voting advice business uses reasonable efforts to substantially comply with the condition as soon as practicable after it becomes aware of its noncompliance.'').

[386] *Id.* at n.146 (''[W]ithout such an exception, a proxy voting advice business that failed to give a registrant the full number of days for review of the proxy voting advice due to technical complications beyond its control, even if only a few hours shy of the requirement, would be unable to rely on the exemptions in Rule 14a–2(b)(1) and (b)(3). Without an applicable exemption on which to rely, the proxy voting advice business likely would be subject to the proxy filing requirements found in Regulation 14A and its proxy voting advice required to be publicly filed.'').

[387] The Commission previously issued guidance discussing how the fiduciary duty and rule 206(4)–6 under the Advisers Act relate to an investment adviser's exercise of voting authority on behalf of clients and also provided examples to help facilitate investment advisers' compliance with their proxy voting responsibilities. *See* Commission Guidance on Proxy Voting Responsibilities. We expect that Rule 14a–2(b)(9)(ii)(A) will result in registrants being made aware of recommendations by proxy voting advice businesses in a timeframe that will permit those registrants to make any views regarding those recommendations available in a more timely manner than was previously the case. We therefore are concurrently supplementing that guidance to investment advisers in a separate Commission release. *See* Supplemental Proxy Voting Guidance.

We wish to emphasize that the principles-based approach we are adopting in Rule 14a–2(b)(9)(ii) is intended to be adaptable to a variety of circumstances and business models. Various policies and procedures, beyond those in the safe harbors set forth in Rules 14a–2(b)(9)(iii) and (iv), may be used to satisfy these principles. Whether a proxy voting advice business has complied with the principles-based requirements will be determined by the particular facts and circumstances of the business's adopted written policies and procedures and whether such facts and circumstances support the conclusion that the particular policies and procedures are reasonably designed to ensure that (1) registrants that are the subject of the proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the proxy voting advice business's clients and (2) the proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware that registrants have filed additional proxy materials that are responsive to the proxy voting advice in a timely manner before the shareholder meeting. Some relevant factors to be used in the analysis include:

- The degree to which a registrant has time to respond and whether the policy ensures prompt conveyance of information to the registrant.
- The extent to which the mechanism provided to clients is an efficient means by which they can reasonably be expected to become aware of the registrant's written response, once it is filed, such that the client has sufficient time to consider such response in connection with a vote.
- The reasonableness, based on facts and circumstances, of any fees charged by a proxy voting advice business to a registrant as a condition to receiving a copy of its proxy voting advice and the extent to which such fees may dissuade a registrant from seeking to review and provide a response to such proxy voting advice.

We reiterate that these factors are not exclusive and no single factor or combination of factors will control the determination of whether a proxy voting advice business has complied with the principles-based requirements.

c. Exclusions From Rule 14a–2(b)(9)(ii) [Rules 14a–2(b)(9)(v) and (vi)]

Notwithstanding the benefits that we expect will accrue to clients of proxy voting advice businesses, as well as the proxy voting system as a whole, we recognize that the requirements of Rule 14a–2(b)(9)(ii) may not be appropriate in all contexts. As such, pursuant to new Rules 14a–2(b)(9)(v) and (vi), respectively, proxy voting advice businesses need not comply with Rule 14a–2(b)(9)(ii) in order to rely on either the Rule 14a–2(b)(1) or (b)(3) exemption (1) to the extent that their proxy voting advice is based on a custom policy [388] or (2) if they provide proxy voting advice as to non-exempt solicitations regarding certain mergers and acquisitions or contested matters.[389]

i. Custom Policies

As noted above,[390] some commenters recommended—in the context of our proposed amendments to Rule 14a–1(l)—that we amend the definitions of ''solicit'' and ''solicitation'' to exclude proxy voting advice based on custom policies.[391] Specifically, one commenter that is a proxy voting advice business noted that it ''does not own, and is prohibited from disclosing, clients' custom policies and the recommendations based thereon.'' [392] That commenter also expressed doubt as to the efficacy, from an investor protection standpoint, of ''allowing issuers to vet the methodologies and assumptions institutional investors choose to implement for their own portfolios.'' [393] Although we reaffirm our prior interpretation of the scope of the terms ''solicit'' and ''solicitation'' and decline to amend their definitions as those commenters suggested, we find these points to be compelling with respect to the application of certain requirements of Rule 14a–2(b)(9). We also understand these commenters' concerns regarding the potential costs that would be imposed upon investors, as well as their doubts regarding the corresponding investor protection-based benefits, if the requirements of Rule 14a–2(b)(9)(ii) were to be applied to proxy voting advice based on a custom policy.

In light of these concerns, we are adopting new Rule 14a–2(b)(9)(v), which excludes from the scope of Rule 14a–2(b)(9)(ii) proxy voting advice to the extent that such advice is based on custom policies that are proprietary to a proxy voting advice business's client.[394]

Our adoption of new Rule 14a–2(b)(9)(v) is not only motivated by the potential costs that commenters identified, it also reflects our belief that many of the goals of this rulemaking will still be achieved with respect to proxy voting advice that is based on a custom policy, notwithstanding the fact that such advice will not be subject to Rule 14a–2(b)(9)(ii). For example, as noted above and consistent with prior Commission statements,[395] such proxy voting advice will constitute a ''solicitation'' subject to Rule 14a–9, and persons who provide such advice in reliance on the exemptions in either Rule 14a–2(b)(1) or (b)(3) must comply with the conflicts of interest disclosure requirements set forth in new Rule 14a–2(b)(9)(i). We further note that proxy voting advice businesses generally use substantially the same data to produce most of their voting advice (including reports containing proxy voting advice based on benchmark, specialty, or custom policies).[396] In addition, it is our understanding of the proxy voting advice market as it currently operates that proxy voting advice businesses' clients that receive proxy voting advice pursuant to their custom policies generally also receive the businesses' voting advice based on the businesses' benchmark policies. Such benchmark policy proxy voting advice contains the bulk of the data, research, and analysis underlying custom policy proxy voting advice. Thus, because the proxy voting advice based on the benchmark policies—including the data, research, and analysis therein—would be subject to Rule 14a–2(b)(9)(ii), clients that receive proxy voting advice pursuant to their custom policies generally will

[388] *See* Rule 14a–2(b)(9)(v).

[389] *See* Rule 14a–2(b)(9)(vi).

[390] *See supra* note 112 and accompanying text.

[391] *See* letters from ISS; New York Comptroller II; State Street. *See also supra* note 165 for a link to a description of the services that one major proxy voting advice business offers in connection with its clients' custom policies.

[392] Letter from ISS. *See also* letter from Glass Lewis II (''Mandating that custom voting recommendations go through the issuer review and feedback mechanisms would expose these investors' confidential, proprietary information and force Glass Lewis to breach its commitments to these clients.'').

[393] Letter from ISS.

[394] Rule 14a–2(b)(9)(v). The term ''custom policies'' for purposes of Rule 14a–2(b)(9)(v) would not include a proxy voting advice business's benchmark or specialty policies, even if those benchmark or specialty policies were to be adopted by a proxy voting advice business's client as its own policy. *See supra* note 12. If, however, a proxy voting advice business's client adopts a benchmark or specialty policy as its own policy, then the proxy voting advice business would have to satisfy the requirements of Rule 14a–2(b)(9)(ii) only with respect to the proxy voting advice that is based on the benchmark or specialty policy. For the avoidance of doubt, Rule 14a–2(b)(9)(ii)(A) does not require that the proxy voting advice business make available to the registrant multiple copies of the same voting advice, and for purposes of Rule 14a–2(b)(9)(ii)(B), the proxy voting advice business's policies and procedures should be reasonably designed to provide such client with a mechanism by which the client could reasonably be expected to become aware of any written statement regarding the benchmark or specialty policy.

[395] *See supra* text accompanying note 166.

[396] *See* letter from ISS (''Because substantially the same data are used to produce all ISS voting reports . . . .'').

benefit from an awareness of any responses that the registrants may file thereto.

ii. Merger and Acquisition Transactions and Contested Solicitations

Solicitations involving merger and acquisition (''M&A'') transactions or contested matters, such as contested director elections where a dissident soliciting party proposes its own slate of director-nominees, are generally fast-moving and can be subject to frequent changes and short time windows.[397] This often results in proxy voting advice businesses having to deliver their advice to clients on a tighter deadline, and with less lead time before the applicable meeting, than they would under normal circumstances.[398] As noted above, some commenters expressed concerns regarding the practical challenges and potential disruptions that the proposed review and feedback mechanism, with its specified time frames for each step of the process, would have caused in the context of M&A transactions or contested solicitations.[399] Commenters also expressed concerns about the heightened risk that the proposed review and feedback mechanism, which would involve reviews of proxy voting advice before it is disseminated to clients, could pose regarding the disclosure of market-moving or material, non-public information in the context of M&A transactions or contested solicitations.[400] We expect that these concerns will be significantly alleviated, if not eliminated entirely, by the fact that Rule 14a–2(b)(9)(ii), as adopted, does not include the proposed advance review and feedback mechanism and, with its principles-based requirements, provides proxy voting advice businesses with added flexibility. For example, absent the proposed advanced review and feedback mechanism, Rule 14a–2(b)(9)(ii)(A) does not increase the risk that proxy voting advice businesses will disseminate potentially market-moving or material, non-public information selectively to registrants (or any other soliciting persons) before they otherwise would disseminate such information to their clients.

To further address concerns raised by commenters, we are also adopting new 17 CFR 240.14a–2(b)(9)(vi) (''Rule 14a–2(b)(9)(vi)''), which excludes from the requirements of Rule 14a–2(b)(9)(ii) any portion of the proxy voting advice that makes a recommendation, as well as any analysis and research underlying such recommendation that is furnished along therewith, as to a solicitation subject to Rule 14a–3(a)[401]:

(A) To approve any transaction specified in Rule 145(a) of the Securities Act;[402] or

(B) By any person or group of persons for the purpose of opposing a solicitation subject to Regulation 14A by any other person or group of persons.[403]

As a result of new Rule 14a–2(b)(9)(vi), proxy voting advice businesses would be permitted (but not required) to adopt written policies and procedures pursuant to which the businesses would not make available to registrants any portion of the proxy voting advice relating to M&A transactions and contested matters at or prior to the time such advice is disseminated to clients and to exclude the registrant's response to such advice from the requirement of Rule 14a–2(b)(9)(ii)(B). To be eligible to rely on Rule 14a–2(b)(9)(vi), a proxy voting advice business must be providing advice with respect to a solicitation subject to Rule 14a–3(a). This requirement is intended to limit the scope of Rule 14a–2(b)(9)(vi) to proxy voting advice with respect to solicitations that are subject to the Federal proxy rules' information and filing requirements, including the requirement to file and furnish a definitive proxy statement. By contrast, proxy voting advice businesses providing advice with respect to any exempt solicitations (including solicitations as to M&A transactions or contested matters) would be ineligible to rely on the exception in Rule 14a–2(b)(9)(vi).

For the avoidance of doubt, this exception from the requirements of Rule 14a–2(b)(9)(ii) applies only to the portions of the proxy voting advice relating to the applicable M&A transaction[404] or contested matters and not to proxy voting advice regarding other matters presented at the relevant meeting. If, therefore, there is a shareholder meeting at which the only items presented for approval are the applicable M&A transaction or contested matters, a proxy voting advice business could have written policies and procedures that permit the entirety of the proxy voting advice provided with respect to that meeting to be

[397] *See, e.g.,* letter from Glass Lewis II (''[O]ur experience is that contested situations are often much more fluid with both sides making supplemental filings on a continuing basis as the meeting date approaches.'').

[398] *See, e.g., id.* (''Glass Lewis' data shows that report preparation and delivery timing varies significantly for mergers and acquisitions and other special situations. On average, proxy research reports were delivered to clients 14 days before the meeting date [in] M&A transactions and 13 days in contested situations.'').

[399] *See supra* note 279 and accompanying text. *See also* letters from ISS (stating that the proposal would hinder ''the ability of proxy advice to be appropriately responsive to important and often fast-moving situations such as proxy fights and contested mergers and acquisitions''); Glass Lewis II (''[I]t is important for a proxy advisor, when appropriate to best meet its clients' needs, to be able to defer providing its advice until near-final information is available and to be able to quickly amend already-provided advice, as needed.'').

[400] *See* letters from CII I (''It is not clear whether the PA Proposal creates the potential for insider trading on certain market-moving recommendations and related analysis, particularly in connection with mergers and acquisitions (M&A), and how the SEC staff thought about such a risk in proposing the five-day review and 'final notice' periods.''); Elliott I (''The risks of insider trading and leaks involving proxy voting advice are also higher when a shareholder vote involves a material event. The Proposal would put the draft proxy voting advice—potentially market-moving information—in the hands of issuers before it is provided to the investors who will act on it. This selective disclosure would necessarily increase the risk that the information will be misused or leaked, whether accidentally or deliberately.''); ISS (noting that it currently ''safeguard[s] [material, non-public information] by not pre-releasing potentially market-moving draft reports and vote recommendations'' and allowing ''selected issuers a limited review right of draft reports only for annual meetings, not special meetings'' and asserting that the proposal ''rais[es] significant concerns about confidentiality'' and ''selective disclosure of material non-public information''); Glass Lewis II (''[W]e note that commentators have raised significant questions about how the advance knowledge gained in the review processes could be misused in contested situations that should be addressed and resolved before adopting any rule mandating review in this context.''). As they likely are already aware (based on the concerns expressed in the foregoing comment letters), we remind proxy voting advice businesses that they have a responsibility to safeguard any material, non-public information in their possession. Although that responsibility is heightened in the context of shareholder meetings regarding M&A transactions or contested matters, when such information is particularly sensitive and potentially market-moving, we expect proxy voting advice businesses to discharge that responsibility in all situations.

[401] 17 CFR 240.14a–3(a).

[402] Rule 14a–2(b)(9)(vi)(A). Rule 145(a) lists and describes certain M&A transactions that are broadly categorized as reclassifications, mergers of consolidation, and transfers of assets. *See* 17 CFR 230.145(a).

[403] Rule 14a–2(b)(9)(vi)(B).

[404] We recognize that a registrant or other soliciting person may present at the shareholder meeting other matters that, while not directly approving an M&A transaction or a contested matter, are nevertheless closely related to such transaction or contested matter. For example, a registrant's definitive proxy statement may seek approval of a proposed M&A transaction, approval of the issuance of the registrant's securities to finance the M&A transaction, and an advisory vote on the ''golden parachute'' payments to be made in connection with the M&A transaction. In such a situation, the latter two matters may be sufficiently integral to the M&A transaction such that redaction of the proxy voting advice on the M&A transaction alone would render the proxy voting advice on the remaining matters to be confusing for a registrant reading such advice. In such a case, the Rule 14a–2(b)(9)(vi) exception would be available for all three matters. The determination of whether a matter is sufficiently integral to an M&A transaction or contested matter to fall within the Rule 14a–2(b)(9)(vi) exception will depend on the particular facts and circumstances.

excluded from the requirements set forth in Rule 14a–2(b)(9)(ii). If, however, additional matters are presented for shareholder approval at such meeting, then only the portion of the proxy voting advice provided with respect to the applicable M&A transaction or contested matters could be excluded from the requirements set forth in Rule 14a–2(b)(9)(ii).

We understand that proxy voting advice businesses often provide their proxy voting advice on all matters for which security holders are solicited at a particular meeting (*e.g.,* contested and uncontested matters, M&A- and non-M&A-related matters, etc.) together in a single report.[405] If a proxy voting advice business takes this approach but wishes to avail itself of the exception set forth in Rule 14a–2(b)(9)(vi), it can do so, for example, by redacting the portion of the report that contains proxy voting advice as to the applicable M&A transaction or contested matters in the version of such report that is provided to a registrant pursuant to Rule 14a–2(b)(9)(ii)(A). We further understand that at least one proxy voting advice business currently provides its clients with a separate, standalone report that provides recommendations only with respect to the M&A transactions or contested matters presented at the meeting.[406] If a proxy voting advice business adopts this approach with respect to M&A transactions and contested matters, then, under Rule 14a–2(b)(9)(vi), the requirements of Rule 14a–2(b)(9)(ii) would not be applicable to such standalone report. Finally, to the extent that a proxy voting advice business finds it too burdensome to either redact or bifurcate its reports, it is not required to avail itself of the exception set forth in Rule 14a–2(b)(9)(vi). Instead, the proxy voting advice business can choose to subject all of its proxy voting advice—including its advice as to the applicable M&A transaction and contested matters—to the requirements of Rule 14a–2(b)(9)(ii), subject to the proxy voting advice business's obligation to safeguard material, non-public information in its possession.[407]

As with proxy voting advice that is based on a custom policy, proxy voting advice that is excluded from the scope of Rule 14a–2(b)(9)(ii) pursuant to new paragraph (vi) will constitute a ''solicitation'' subject to Rule 14a–9. Similarly, persons who provide such advice in reliance on the exemptions in either Rule 14a–2(b)(1) or (b)(3) must comply with the conflicts of interest disclosure requirements set forth in new Rule 14a–2(b)(9)(i).

d. Response to Constitutional Objections

Some commenters raised First Amendment objections to the proposed amendments.[408] Their concerns focused primarily on the proposed registrant review and feedback provisions and the requirement that proxy voting advice businesses include in their advice a hyperlink to the registrant's response. The final amendments incorporate substantial modifications that address these concerns.

As discussed above, the proposed amendments requiring that proxy voting advice businesses give registrants an opportunity to review and provide feedback on their advice before the advice is disseminated to clients have not been included in the final amendments. Under the final amendments, proxy voting advice businesses can satisfy Rule 14a–2(b)(9)(ii)(A) by ensuring that their advice is made available to registrants at or prior to the time when such advice is disseminated to the proxy voting advice business's clients.[409]

Commenters also argued that requiring proxy voting advice businesses to share with registrants proxy voting advice that is based on custom policies would unconstitutionally compel them to disclose confidential client information.[410] Our decision to exclude such advice from Rule 14a–2(b)(9)(ii) should eliminate that concern.[411] Moreover, under the safe harbor in Rule 14a–2(b)(9)(iii), a proxy voting advice business has no obligation to provide a copy of its advice to a registrant unless such registrant acknowledges certain limits on its use of the advice.[412] Nor must a proxy voting advice business that avails itself of such safe harbor share its proxy voting advice if the registrant files its definitive proxy statement less than 40 calendar days before the shareholder meeting.

In addition, we have replaced the proposed requirement that proxy voting advice businesses include in their proxy voting advice a hyperlink to the registrant's response with a principles-based obligation to adopt policies and procedures reasonably designed to ensure that proxy voting advice businesses provide clients with a mechanism by which they can reasonably be expected to become aware of the registrant's written response in a timely manner. Rule 14a–2(b)(9)(ii)(B) gives proxy voting advice businesses flexibility in determining how to achieve compliance with this requirement in the manner best suited to their business. They also have the option of relying on the safe harbor set forth in Rule 14a–2(b)(9)(iv), which involves adopting policies and procedures to provide clients a hyperlink to the registrant's written response once the registrant gives notice that a response has been filed. However, Rule 14a–2(b)(9)(ii)(B) does not mandate that specific approach as a condition of the exemption.[413]

[405] Proposing Release at n.112 (''It is also common for a proxy voting advice business to present in a single, integrated written report its voting recommendations on all matters to be voted at the registrant's meeting . . . .'').

[406] *See* ISS, Special Situations Research, *available at https://www.issgovernance.com/solutions/governance-advisory-services/special-situations-research/* (last visited on May 28, 2020).

[407] If a proxy voting advice business decides not to avail itself of the exception set forth in Rule 14a–2(b)(9)(vi) and subjects its advice as to the applicable M&A transaction or contested matter to Rule 14a–2(b)(9)(ii), we believe that many of the concerns commenters expressed will be mitigated by the changes we made from the proposal. For example, to the extent that proxy voting advice businesses generally deliver their advice with respect to M&A transactions or contested matters to clients with less lead time before the applicable meeting, the principles-based requirements of Rule 14a–2(b)(9)(ii)(A) allows proxy voting advice businesses to design and implement policies and procedures that work best for their clients' needs and timing concerns. In addition, to the extent that proxy voting advice businesses amend their advice with respect to M&A transactions or contested matters in light of subsequent events, Rule 14a–2(b)(9)(ii)(A) does not require that proxy voting advice businesses make available to registrants such amended advice.

[408] *See, e.g.,* letters from CFA Institute I; CII IV; CIRCA; Elliott I; Glass Lewis II; ISS; Interfaith Center II; New York Comptroller II; NorthStar; Shareholder Rights II; Washington State Investment; ValueEdge III (stating that it has contacted the Department of Justice to review this proposal and recommends the Commission do the same). Most of these commenters generally opposed the proposed amendments on Constitutional grounds. Further, to the extent such commenters suggested potential alternative regulatory solutions, no commenters offered a more tailored solution that we believe would still achieve the objectives of this rulemaking.

[409] Rule 14a–2(b)(ii)(A). *See also supra* note 342 and accompanying text. We note that at least one proxy voting advice business already makes its proxy reports available for purchase by registrants upon their release to client. *See* Glass Lewis: Purchase a Proxy Paper, *available at https://www.glasslewis.com/request-a-proxy-paper-or-alert/* (last visited on May 26, 2020).

[410] *See supra* note 408.

[411] *See* Rule 14a–2(b)(9)(v).

[412] We also believe that these modifications from the proposal—among others, the fact that proxy voting advice businesses are not required to give registrants an opportunity to review proxy advice before its dissemination to clients and need not share the advice at all unless registrants acknowledge restrictions on its use—address the concerns raised by some commenters under the takings clause of the Fifth Amendment. *See* letters from CalPERS; ISS.

[413] For example, we understand that some proxy voting advice businesses already provide access to the registrant's proxy filings, including any supplemental proxy materials, automatically through their electronic platform. This kind of

Continued

We believe that the amendments, as modified from the proposal, are consistent with the First Amendment. In today's market, the proxy process represents the primary means by which registrants and their shareholders communicate to determine how the registrant governs itself. They exchange their respective views about the registrants' business operations and other registrant matters, and generally engage in discussions integral to the exercise of the shareholder franchise.[414] The Commission has a strong interest in ensuring that investors are able to obtain and evaluate information pertinent to proxy voting decisions before the vote is held.[415] The amendments are intended to facilitate the kind of robust discussion on which informed shareholder voting decisions depend in light of changing market conditions. Specifically, as discussed above, proxy voting advice businesses today are uniquely situated to influence the voting decisions of institutional investors, which hold an increasingly significant portion of shares in U.S. public companies.[416] The provision of proxy voting advice by these businesses therefore implicates a fundamental concern of our proxy rules.[417] Yet, because a significant percentage of proxy votes are typically cast shortly after a proxy voting advice business delivers its advice, and because currently proxy voting advice is not required to be publicly filed, many voting decisions are made before registrants have a meaningful opportunity to engage with that advice—for example, to address any material factual errors or omissions, or to offer views with respect to the proxy voting advice business's methodologies or conclusions—and to make investors aware of their views in time for investors to benefit from such an exchange.[418]

As previously discussed, the Commission has occasionally adjusted the proxy rules based on market developments to promote informed proxy voting decision-making.[419] The developments described above have convinced us of the need to update the application of the proxy rules to proxy voting advice businesses to facilitate the kind of robust discussion that would be possible at a meeting before a vote occurs. But at this time we do not believe it is necessary to subject proxy voting advice businesses to the full panoply of information and filing requirements that apply to registrants when seeking proxy authority. While registrants must publicly file soliciting materials and disseminate them to all shareholders, the Commission believes its objectives with respect to proxy voting advice businesses can be achieved by more tailored and far less burdensome and intrusive means.

We are therefore adopting amendments that allow proxy voting advice businesses to continue to be exempt from the filing and information requirements of the proxy rules, conditioned on their inclusion in the proxy voting advice of the conflicts of interest disclosure specified in Rule 14a–2(b)(9)(i) and their adoption and public disclosure of policies and procedures specified in Rule 14a–2(b)(9)(ii).[420] These principles-based requirements are tailored to minimize the burden on proxy voting advice businesses, while still directly advancing the Commission's regulatory objectives.

Although some commenters argued that the proposed amendments discriminated based on viewpoint,[421] our decision to impose exemption conditions on proxy voting advice businesses is unrelated to their viewpoint or message. The conditions apply regardless of the position a proxy voting advice business takes on any particular matter, and regardless of whether voting advice is supportive or adverse to registrants or to others. Proxy voting advice is subject to our proxy rules because it constitutes a ''solicitation'' under the Exchange Act. We have tailored the application of those rules to accommodate the unique business model of proxy voting advice businesses while also accounting for the consequential role those businesses have come to play in the proxy process.[422] The amendments to the proxy rules that we adopt in this document—like the rules that apply to registrants and other interested parties under the comprehensive regulatory scheme governing the proxy solicitation process—are intended to facilitate investor access, in a timely manner, to more accurate, complete, and transparent information and robust debate, as would occur at a meeting where shareholders are physically attending and participating. Indeed, the exemption conditions for proxy voting advice apply regardless of the content of the advice on any matter, and far from disapproving of the speech of proxy voting advice businesses, the Commission has recognized the important function proxy voting advice businesses serve in today's markets to some investors.[423]

D. Amendments to Rule 14a–9

1. Proposed Amendments

Rule 14a–9 prohibits any proxy solicitation from containing false or misleading statements with respect to any material fact at the time and in light of the circumstances under which the statements are made.[424] In addition, such solicitation must not omit to state any material fact necessary in order to make the statements therein not false or misleading.[425] Even solicitations that are exempt from the federal proxy rules' information and filing requirements are subject to this prohibition, as ''a necessary means of assuring that communications which may influence shareholder voting decisions are not

approach would generally be consistent with the principle.

[414] *Pac. Gas & Elec. Co.* v. *Pub. Utils. Comm'n of Ca.,* 475 U.S. 1, 14 n.10 (1986).

[415] Communications Among Shareholders Adopting Release at 48277; Concept Release at 42983; *see also Business Roundtable,* 905 F.2d at 410 (''The goal of federal proxy regulation was to improve [communications with potential absentee voters] and thereby to enable proxy voters to control the corporation as effectively as they might have by attending a shareholder meeting.'').

[416] *See supra* note 18.

[417] *See supra* notes 6 through 17 and accompanying text.

[418] *See supra* note 373 and accompanying text.

[419] *See supra* notes 33–35 and accompanying text. Contrary to the suggestion of some commenters, the Commission's measured pursuit of a similar objective in the amendments adopted in this document does not contradict our past recognition that applying governmental filing requirements to every communication among shareholders and other parties on matters subject to a proxy vote would raise First Amendment concerns. *See supra* note 270 and accompanying text.

[420] *See supra* Sections II.B.3; II.C.3.

[421] *See, e.g.,* letters from Better Markets (expressing concern that apprehensions regarding the accuracy of proxy voting advice businesses' advice have been driven by potentially self-interested corporate management that view proxy voting advice businesses as adversarial); CalPERS; Florida Board; Glass Lewis II; ISS; NYC Comptroller; New York Comptroller II; Public Citizen; Segal Marco II; TRP.

[422] *See SEC* v. *Wall Street Publishing Inst., Inc.,* 851 F.2d 365, 372 (D.C. Cir. 1988) (''Where the federal government extensively regulates a field of economic activity, communication of the regulated parties often bears directly on the particular economic objectives sought by the government, . . . and regulation of such communications has been upheld [as consistent with the First Amendment].''); *cf. Full Value Advisors, LLC* v. *SEC,* 633 F.3d 1101, 1109 (D.C. Cir. 2011) (''Securities regulation involves a different balance of concerns and calls for different applications of First Amendment principles.'') (internal quotation marks omitted).

[423] *See supra* Section II.A.3.

[424] 17 CFR 240.14a–9. *See also* Exchange Act Release No. 34–1350, 1937 WL 29099 (Aug. 13. 1937) (''The purpose of [the Commission's proxy] rules is to prevent the dissemination to the security holders and to the general public of untruths, half-truths, and otherwise misleading information which would stand in the way of a fair appraisal of a plan upon its merits by the security holders.'').

[425] 17 CFR 240.14a–9.

materially false or misleading.'' [426] This includes proxy voting advice that is exempt under Rules 14a–2(b)(1) and (b)(3). The Commission has previously stated that the furnishing of proxy voting advice, while exempt from the information and filing requirements, remains subject to the prohibition on false and misleading statements in Rule 14a–9.[427] We continue to believe that subjecting proxy voting advice businesses to the same antifraud standard as registrants and other persons engaged in soliciting activities, including those engaged in exempt solicitations, is appropriate in the public interest and for the protection of investors. Indeed, the Commission recently issued guidance specifically addressing the application of Rule 14a–9 to proxy voting advice,[428] stating that ''any person engaged in a solicitation through proxy voting advice must not make materially false or misleading statements or omit material facts, such as information underlying the basis of advice or which would affect its analysis and judgments, that would be required to make the advice not misleading.'' [429] To illustrate this point, the Commission gave a list of examples of types of information that a provider of proxy voting advice should consider disclosing in order to avoid a potential violation of Rule 14a–9.[430] This included the methodology used to formulate proxy voting advice, sources of information on which the advice is based, and material conflicts of interest that arise in connection with providing proxy voting advice, without which the advice could be misleading, depending on the specific statements at issue.[431]

Currently, the text of Rule 14a–9 provides four examples of things that may be misleading within the meaning of the rule, depending upon particular facts and circumstances.[432] These are:

- Predictions as to specific future market values;
- Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation;
- Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter; and
- Claims made prior to a meeting regarding the results of a solicitation.

The Commission proposed to amend this list of examples in Rule 14a–9 to include certain additional types of information that a proxy voting advice business may, depending on the particular facts and circumstances, need to disclose to avoid potentially violating the rule. As proposed, and consistent with the Commission's recent guidance, this included the proxy advice business's methodology, sources of information and/or conflicts of interest to the extent that, under the particular facts and circumstances, the omission of such information would be materially misleading.

In addition, the Commission proposed to amend Rule 14a–9 to address concerns that have arisen when proxy voting advice businesses make negative voting recommendations based on their evaluation that a registrant's conduct or disclosure is inadequate, notwithstanding that the conduct or disclosure meets applicable Commission requirements.[433] The Commission explained that, without additional context or clarification, some clients may mistakenly infer that the negative voting recommendation is based on a registrant's failure to comply with the applicable Commission requirements when, in fact, the negative recommendation is based on the proxy voting advice business's determination that the registrant did not satisfy the specific criteria used by the proxy voting advice business. If the use of the criteria and the material differences between the criteria and the applicable Commission requirements are not clearly conveyed to proxy voting advice businesses' clients, there is a risk that some clients may make their voting decisions based on a misapprehension that a registrant is not in compliance with the Commission's standards or requirements. Similar concerns exist if, due to the lack of clear disclosure, clients are led to mistakenly believe that the unique criteria used by the proxy voting advice businesses were approved or set by the Commission.

Accordingly, the Commission proposed to add as an example in Rule 14a–9 of what may be misleading within the meaning of the rule, depending upon the particular facts and circumstances, the failure to disclose the use of standards or requirements in proxy voting advice that materially differ from relevant standards or requirements that the Commission sets or approves.[434]

2. Comments Received

Commenters were divided in their views about the proposed amendment.[435] Those in favor of the proposal thought it would have a beneficial impact, reasoning that it would tend to improve the quality of voting advice by making proxy voting advice businesses more accountable for any misleading statements in their advice [436] and incentivizing them to provide more robust information about their methods and sources so that their clients would be in a better position to assess the businesses' recommendations and make informed voting decisions.[437]

[426] *See* 1979 Adopting Release at 48942.

[427] *See* Concept Release at 43010.

[428] *See* Question and Response 2 of *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice,* Release No. 34–86721 (Aug. 21, 2019) [84 FR 47416 (Sept. 10, 2019)] (''Commission Interpretation and Guidance'').

[429] *Id.* at 12.

[430] *Id.* The Commission also noted that some proxy voting advice businesses currently may be providing some of the disclosures described in the list of examples. *Id.* at n. 33.

[431] *Id.*

[432] Rule 14a–9 provides a note preceding the list of examples that reads: ''The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.'' This note and the examples provided were adopted in their current form by the Commission in 1956. *See* Release No. 34–5276 (Jan. 17, 1956) [21 FR 577 (Jan. 26, 1956)], 1956 WL 7757.

[433] *See* Proposing Release at 66538 n.160.

[434] *See* note (e) to proposed Rule 14a–9. Examples of standards or requirements that the Commission approves are the listing standards of the national securities exchanges, such as the New York Stock Exchange (NYSE). The Commission supervises, and is authorized to approve rules promulgated by, the NYSE and other national securities exchanges pursuant to Section 19 of the Exchange Act.

[435] *See* letters from commenters supporting the proposal, *e.g.,* ACCF (asserting that the proposals will increase accountability); Axcelis; John D. Campbell, Vice President, Government Relations, Ball Corporation (Jan. 31, 2020) (''Ball Corp.''); BIO; BRT; CCMC; CGC; Charter; Ecolab; ExxonMobil; FedEx; GM; IBC; NAM; Nareit; Nasdaq; SCG; James L. Setterlund, Executive Director, Shareholder Advocacy Forum (Feb. 3, 2020) (''Shareholder Advocacy''); TechNet. *But see* letters from commenters opposing the proposal, *e.g.,* Baillie Gifford; CalPERS; CII IV; CIRCA; Elliott I; Glass Lewis II; ISS; MFA & AIMA; PIAC II (although it agreed that proxy voting advice businesses should disclose material information relating to their methodology, sources of information, and conflicts of interest, the commenter indicated that it was satisfied with the disclosures currently provided and did not believe specific regulation on this point was necessary).

[436] *See, e.g.,* letters from ExxonMobil (supporting the proposal's clarification that Rule 14a–9 applies to material information concerning a proxy voting advice business's methodology, sources of information, and conflicts of interest); GM.

[437] *See, e.g.,* letters from BRT (''[I]t is important that proxy advisors not omit the disclosure of information underlying the basis of their advice or which would affect its analysis and judgment''); ExxonMobil; Nasdaq (''We agree with the Commission that the amendments are in the public interest, promote investor protection, and help ensure that investors are provided the information they need to make fully informed voting decisions.''); SCG.

Several such commenters voiced concerns that proxy voting advice businesses were not sufficiently transparent about their methodologies, models, and formulas used to generate their recommendations.[438] Some commenters also believed that proxy voting advice businesses do not adequately adjust their methodologies to take into account the unique circumstances of different companies and therefore more transparent disclosure of methodologies would help investors discern the extent to which voting advice may be based on a ''one-size-fits-all'' approach.[439]

Other commenters specifically approved of the proposed amendment's reference to a proxy voting advice business's use of standards that materially differ from relevant Commission standards or requirements.[440] These commenters were concerned that not all investors were fully aware when proxy voting advice businesses applied their own analytical standards that differed from the Commission's or other applicable regulatory standards.[441]

On the other hand, some commenters contended that, in general, the proposed amendment to Rule 14a–9 would heighten legal uncertainty and litigation risk for proxy voting advice businesses because it would broaden the concept of materiality and create a new source of liability for proxy voting advice businesses, the scope of which is not sufficiently clear.[442] Two commenters also suggested that the proposed amendment may be prohibited by the First Amendment.[443]

Commenters that opposed the proposed amendment's reference to a proxy voting advice business's use of standards that materially differ from relevant Commission standards or requirements argued that it was unnecessary and based on the flawed premise that clients are either unaware of, or lack the sophistication necessary to appreciate, the distinction between a company's failure to satisfy the particular analytical standards employed by a proxy voting advice business and a company's failure to comply with relevant regulatory standards.[444] Commenters made the point that most clients are well aware of such differences and often maintain custom policies that are more rigorous than relevant regulatory standards and require the proxy voting advice business to apply such policies when preparing their proxy voting advice.[445] Moreover, commenters stated that in many cases clients hire proxy voting advice businesses precisely because they are aware and approve of these businesses using certain standards that exceed applicable regulations.[446] In addition, other commenters asserted that the proxy voting advice businesses' disclosures about the use of differing standards were already sufficiently clear.[447]

Finally, some commenters recommended modifications to the proposal that would have added a number of specific examples to the list in Rule 14a–9 of information that may be material and needs to be disclosed in certain circumstances.[448] Others requested further clarification on questions related to the scope and application of the proposed amendment[449] or suggested that Rule 14a–9 be modified to exclude the content of recommendations or differences of opinion between management and proxy voting advice businesses.[450]

[438] *See, e.g.,* letters from BRT (''Proxy advisors offer little transparency into their internal standards, procedures, and methodologies. Neither ISS nor Glass Lewis fully discloses the methodologies used to develop their voting recommendations''); CEC; FedEx; GM; NAM; Nasdaq; TechNet.

[439] *See, e.g.,* letters from CCMC (noting that proxy voting advice businesses have been criticized for ''a one-size-fits-all approach of voting recommendations that ignores the unique characteristics and operations of individual companies and industries''); FedEx; Nasdaq; NAM; Nareit; TechNet (further noting that ''one-size-fits-all'' methodologies across different subject areas often fail to account for unique differences between companies).

[440] *See, e.g.,* letters from BRT; CCMC; GM (''[N]egative voting recommendations from a proxy advisor may not align with the Commission's requirements, which can mislead or cause confusion among proxy voters. We therefore believe that proxy voters should have the benefit of this additional context to ensure that they are fully informed and understand the standards employed by a proxy advisor when reviewing their voting recommendations.''); Nareit; Nasdaq (''In Nasdaq's own experience, ISS has determined that a director was not independent under its criteria even though the director was independent under Nasdaq and SEC rules.''); SCG.

[441] *See, e.g.,* letters from BIO (stating ''that it is important for proxy voting advice businesses to clarify when a negative voting recommendation is based on the proxy voting advice business's own determination that a registrant's conduct or disclosure is inadequate, notwithstanding that the conduct or disclosure meets applicable SEC requirements''); BRT (''Business Roundtable member companies are concerned that, when making recommendations, proxy advisors rely upon information not included in the company's public SEC filings or on factors other than the actual regulatory requirements to which companies are subject. For instance, proxy advisors have their own guidelines for determining the independence of directors. This has resulted in situations where a proxy advisor recommends against a director's election because it decided that the director is not independent under its standards, despite the fact that the company's board of directors—carrying out its fiduciary duties— determined that the director in question was independent under the Commission's requirements, the company's stock exchange listing rules and its corporate governance guidelines.''); Charter; SCG (asserting that proxy voting advice businesses ''apply standards or policies that differ from SEC and/or stock exchange listing requirements frequently enough that it strains credulity to believe that the reasonable investor always understands whether a voting recommendation reflects (non)compliance with existing rules/regulations/standards or simply proxy advisor judgment'').

[442] *See, e.g.,* letters from Carl C. Icahn (Feb. 7, 2020) (''C. Icahn''); CalPERS; CIRCA; Elliott I; Glass Lewis II (asserting that the Commission does not adequately explain how, for example, a failure to disclose information regarding ''use of standards that materially differ from relevant standards or requirements that the Commission sets or approves'' could mislead shareholders); MFA & AIMA.

[443] *See* letters from CII IV; ISS. Our clarification below that differences of opinion are not actionable under the final amendment to Rule 14a–9 resolves these constitutional concerns.

[444] *See, e.g.,* letters from CalPERS (''We think it would be rare for the professionals that actually use proxy voting advice to make such a mistaken inference.''); CII IV; Glass Lewis II.

[445] *See, e.g.,* letters from CalPERS (''Existing clients . . . already know when proxy voting advice businesses produce their own guidance as opposed to report on the minimal requirements of the SEC.''); CII IV; Glass Lewis II.

[446] *See, e.g.,* letter from PIAC II (''Proxy advisors are paid to make recommendations based on governance best practices rather than legal or regulatory minimums and PIAC members expect the standards of proxy advisors to exceed those minimums.'').

[447] *See, e.g.,* letters from CalPERS (''[The Proposing Release] provides examples highlighting a problem that does not exist in reality because proxy voting advice businesses already distinguish their advice from SEC guidance . . . Competent lay people doing a minimal amount of research will find that proxy advisors routinely inform clients about where the standards come from because clients want to know.''); CII IV (noting that the Commission did not produce examples of research reports to support its assertions in the Proposing Release).

[448] *See, e.g.,* letters from BRT; CCMC (''[W]e would expand the 'relevant standards or requirements' to also include those set by any relevant stock exchange. As another example, we would also list a proxy advisor's failure to disclose whether a registrant disputes any findings in the proxy advisor's report or whether a proxy advisor diverges from its own publicly disclosed guidelines.''); Exxon Mobil (suggesting that the rules should also address proxy voting advice that is ''not designed to maximize shareholder value, like SRI specialty reports'' and require ''risk factor'' style disclosures about the value of an investment when a proxy voting advice businesses applies a standard other than shareholder value); Nareit (requesting the Commission to expand the list to require disclosure ''when voting is predicated on an advisory firm's standard that materially differs from relevant statutory requirements of the state in which the issuer is chartered''); Nasdaq; TechNet.

[449] *See, e.g.,* letters from Baillie Gifford (inquiring, among other things, whether failure to disclose conflicts of interest would be a breach of Rule 14a–9); K. Beaugez; BRT (''Additionally, the Commission should specifically make clear whether these anti-fraud provisions [of Rule 14a–9] apply when proxy advisors' voting reports include information, statements or opinions that have not been included in material filed with the Commission''); Exxon Mobil; CIRCA.

[450] *See* letter from PRI II.

3. Final Amendments

We are adopting amendments to Rule 14a–9 that will add to the examples of what may be misleading within the meaning of the rule, largely as proposed, but with one modification in response to comments received. Consistent with the Commission's guidance on proxy voting advice,[451] the Note to Rule 14a–9 will include new paragraph (e) to provide that the failure to disclose material information regarding proxy voting advice, ''such as the proxy voting advice business's methodology, sources of information, or conflicts of interest'' could, depending upon particular facts and circumstances, be misleading within the meaning of the rule. However, for the reasons given in the discussion that follows, new paragraph (e) will not include the proposed clause ''or use of standards that materially differ from relevant standards or requirements that the Commission sets or approves.''

The ability of a client of a proxy voting advice business to make voting decisions is affected by the adequacy of the information it uses to formulate such decisions. Consistent with the Commission Interpretation on Proxy Voting Advice, the final amendments are designed to further clarify the potential implications of Rule 14a–9 for proxy voting advice specifically, and to help ensure that proxy voting advice businesses' clients are provided with the material information they need to make fully informed decisions.

Although we acknowledge commenters' concerns around the potential for heightened litigation risk associated with the proposed changes to Rule 14a–9,[452] we reiterate that Rule 14a–9 is grounded in materiality, and amending the rule to include updated examples of potentially misleading disclosure, depending on the facts and circumstances, in no way changes its application or scope. The amendment to Rule 14a–9 does not broaden the concept of materiality [453] or create a new cause of action, as some have suggested. As discussed above, the Commission has long taken the view that proxy voting advice generally constitutes a ''solicitation.'' [454] Because Rule 14a–9 applies to all solicitations, even those made in reliance on an exemption from the information and filing requirements of the federal proxy rules, proxy voting advice businesses and other market participants should have been on notice that Rule 14a–9 applies to proxy voting advice. The amendment also does not make ''mere differences of opinion'' actionable under Rule 14a–9.[455] Rather, it further clarifies what has long been true about the application of Rule 14a–9 to proxy voting advice and, more generally, proxy solicitations as a whole: No solicitation may contain any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.[456] The addition of paragraph (e) to the Note to Rule 14a–9, the substance of which has not been updated for over six decades, to account for contemporary market practices (including the prevalent use of proxy voting advice by institutional investors and others),[457] further clarifies that proxy voting advice is subject to Rule 14a–9. The addition of paragraph (e) also underscores that the examples are among the types of information that may provide material context without which, depending on the facts and circumstances, the proxy voting advice may run afoul of the rule. The examples are illustrative only, and are not intended to be exhaustive or absolute, or supersede the materiality principle or the facts and circumstances analysis required in each particular case.

As noted above, however, we have determined not to adopt the proposed example related to the use of standards that materially differ from relevant standards or requirements that the Commission sets or approves. To the extent that a proxy voting advice business does not make clear to its clients that it is making a negative voting recommendation based on its own criteria, notwithstanding that the registrant has complied with the applicable standards established or approved by the Commission, there is a risk that the proxy voting advice business's clients may misunderstand the basis for the proxy voting advice business's recommendation. The proposed amendment regarding use of standards or requirements in proxy voting advice that materially differ from relevant standards or requirements that the Commission sets or approves was designed to help ensure that proxy voting advice businesses' clients are provided the information they need to make a ''fair appraisal'' [458] of the recommendation and to clarify the potential implications of Rule 14a–9.

Nevertheless, we understand the concerns expressed by some commenters who asserted that the perceived lack of clarity regarding the scope of the proposed clause ''or use of standards that materially differ from relevant standards or requirements that the Commission sets or approves,'' which was not discussed in the earlier guidance, may increase legal uncertainty and litigation risks to both proxy voting advice businesses and registrants, and that the lack of legal certainty could affect the quality of analyses provided by proxy voting advice businesses.[459] We continue to believe that there could well be occasions where, for example, the omission or distortion of essential context from a proxy voting advice business's explanation of its methodologies may be misleading under a materiality principle and the particular facts and circumstances, such that a shareholder's ability to make an informed voting decision is subverted. However, we also believe that the existing principles of Rule 14a–9 are sufficiently robust to encompass such a situation, which ultimately will come down to a question of facts and circumstances. For that reason, we do not think it is necessary to memorialize this potentially nuanced situation with an illustrative example that, because it is by definition a generalization, could create more confusion than clarity.

Therefore, we are adopting the amendment to Rule 14a–9 without this example. However, this does not negate the fact that Rule 14a–9's prohibition against materially misleading solicitations applies to proxy voting advice where the disclosures are so materially deficient that the investor could not be reasonably expected to understand that the proxy voting advice business is applying a different standard to its analysis, and therefore may vote based on such misapprehension. For similar reasons, we are also not electing to expand the list of examples beyond

[451] *See supra* notes 428 through 431 and accompanying text.

[452] *See, e.g.,* letters from C. Icahn; CalPERS; CIRCA; Elliott I; Glass Lewis II; MFA & AIMA; Minerva I.

[453] *See* letter from CalPERS.

[454] *See supra* notes 149 through 154 and accompanying text.

[455] *See, e.g.,* letter from PRI II (''[The Commission] . . . should . . . narrow the scope of the Proposed Rule to avoid chilling litigation over proxy advice, for example, by ensuring that Rule 14a–9 does not cover the content on recommendations or mere differences of opinion between management and proxy firms.'').

[456] *See* Rule 14a–9.

[457] *See supra* note 432.

[458] *See supra* note 424.

[459] *See, e.g.,* letters from C. Icahn; CalPERS; Glass Lewis II; MFA & AIMA.

what was proposed, as suggested by some commenters.[460]

E. Compliance Dates

The Commission proposed a one-year transition period after the publication of the final rule in the **Federal Register** to give affected parties sufficient time to comply with the proposed new requirements, including the development of any necessary processes and systems.[461]

Some commenters, however, thought that a longer transition period would be necessary given their expectation that affected parties, particularly proxy voting advice businesses, would need to devote significant time and resources in order to bring their systems and processes into compliance.[462] As an alternative, two commenters suggested extending the transition period to eighteen months.[463] Other commenters recommended that small entities be given an extended timeframe for compliance.[464] One commenter also suggested that the Commission consider a phased implementation schedule that would not interfere with the peak of proxy season that typically occurs during the spring each year.[465]

We continue to believe that a transition period for compliance with new Rule 14a–2(b)(9) is appropriate. Based on commenter feedback, as well as the Commission's interest in limiting unnecessary disruptions during the peak proxy season, proxy voting advice businesses subject to the final rules will not be required to comply with the amendments to Rule 14a–2(b)(9) until December 1, 2021. We believe that the length of the transition period will accommodate the need of affected parties to have sufficient time to prepare for compliance with Rule 14a–2(b)(9) while also recognizing that our adoption of a principles-based framework should allow proxy voting advice businesses and other parties the flexibility to leverage their existing practices and mechanisms to more efficiently integrate their operations with the new requirements. The compliance date for Rule 14a–2(b)(9) is intended to sufficiently precede the typical commencement of the proxy season for 2022, so as to minimize disruption to the normal functioning of the proxy system. However, we welcome early compliance with the amendment. We note that the transition period only applies with respect to the amendments to Rule 14a–2(b)(9) and does not extend to the amendments to Rule 14a–1(l) and Rule 14a–9. Because these other amendments codify existing Commission interpretations and guidance, and do not impose new obligations that necessitate significant time for preparation, we do not believe the same rationale for a transition period exists.

III. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application. For example, the amendments to Rule 14a–2(b)(9)(i) operate independently from the amendments to Rule 14a–2(b)(9)(ii), and both provisions operate independently from the amendments to Rules 14a–1(1) and 14a–9.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules a ''major rule,'' as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

The discussion below addresses the economic effects of the amendments, including their anticipated costs and benefits, as well as the likely effects of the amendments on efficiency, competition, and capital formation.[466] We also analyze the potential costs and benefits of reasonable alternatives to the amendments. Where practicable, we have attempted to quantify the economic effects of the amendments; however, in certain cases, we are unable to do so because either the necessary data are unavailable or certain effects are not quantifiable. In the Proposing Release, we requested comment on our analysis of these effects. A few commenters provided quantitative estimates, and we have addressed and incorporated, where appropriate, those estimates into our analysis below. We also provide qualitative economic assessments for effects for which we are unable to provide quantitative estimates.

A. Introduction

We are adopting amendments to Exchange Act Rule 14a–2(b) to condition the availability of existing exemptions from the information and filing requirements of the proxy rules on proxy voting advice businesses satisfying certain additional disclosure and procedural requirements. These conditions will require proxy voting advice businesses to provide enhanced conflicts of interest disclosure. They will also separately require proxy voting advice businesses to: (i) Adopt and publicly disclose written policies and procedures reasonably designed to ensure that the proxy voting advice business's proxy voting advice is made available to registrants at or prior to the time when such advice is disseminated to the proxy voting advice business's clients; and (ii) adopt and publicly disclose written policies and procedures reasonably designed to ensure that the proxy voting advice business provides clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written statements about the proxy voting advice in a timely manner before the shareholder meeting. We also are codifying the Commission's interpretation that, as a general matter, proxy voting advice constitutes a solicitation within the meaning of Exchange Act Rule 14a–1(l). Finally, we are amending Exchange Act Rule 14a–9 to add as an example of a potentially material misstatement or omission within the meaning of the rule, depending upon particular facts and circumstances, the failure to disclose material information related to the proxy voting advice business's methodology, sources of information, or conflicts of interest.

We have considered the economic effects of the final amendments, including their effects on competition, efficiency, and capital formation. The purpose of the final amendments is to help ensure that investors who use proxy voting advice have access to more complete, accurate, and transparent information and are able to benefit from

[460] *See, e.g.,* letters from BRT; CCMC; CII IV; Exxon Mobil; NAM; Nareit; Nasdaq; TechNet.

[461] *See* Proposing Release at 66539.

[462] *See* letters from CalPERS; CII IV; Felician Sisters II; Glass Lewis II; Good Shepherd; IASJ; Interfaith Center II; New York Comptroller II; St. Dominic of Caldwell.

[463] *See* letters from CII IV; Glass Lewis II (additionally recommending that the effectiveness of final rules be delayed pending resolution of ongoing litigation that could impact the statutory and constitutional bases for the rulemaking).

[464] *See* letters from Felician Sisters II; Good Shepherd; IASJ; Interfaith Center II; St. Dominic of Caldwell.

[465] *See* letter from Glass Lewis II.

[466] Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] directs the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

a robust discussion of views—similar to what is possible at a meeting where shareholders and other parties are physically attending and participating—when making their voting decisions. We generally expect the final amendments to reduce information asymmetries between proxy voting advice businesses and their clients by eliciting more tailored and comprehensive disclosure of conflicts of interest and by facilitating client access to more complete information on matters that are the subject of proxy voting advice. We also believe that the final amendments may mitigate certain agency costs associated with the clients' use of proxy advice voting businesses and thereby facilitate more efficient use of the services provided by such businesses while preserving their economies of scale.[467]

As a threshold matter, the relationship between a proxy voting advice business client and a proxy voting advice business is an example of an agency relationship. As in any principal-agent relationship, the agent (the proxy voting advice business) may not always act in the best interests of the principal (the client).[468] The conditions imposed on proxy voting advice businesses by the final amendments may reduce the costs that arise from this divergence of interests. For example, by requiring proxy voting advice businesses to provide clients with more tailored and comprehensive conflict of interest disclosure than is currently required, the amendments may make it possible for proxy voting advice businesses to more credibly reassure their clients that relevant conflicts have been disclosed, and potentially addressed (by reducing the ability of proxy voting advice businesses to obfuscate information about conflicts or selectively disclose conflicts), than is otherwise achieved by the current system of conflict disclosure. In addition, to the extent that relevant conflicts are better understood by a client as a result of the more tailored and comprehensive disclosure, the client will be better able to assess the objectivity of proxy voting advice against the influence of potentially competing interests and thus to monitor proxy voting advice business services. Moreover, by separately ensuring that registrants receive notice of proxy voting advice and a proxy voting advice business provides clients with a mechanism by which they can become more readily aware of registrant responses to that advice, the final amendments may reduce the costs clients might otherwise incur to acquire information relevant to assessing proxy voting advice and increase the efficiency of this segment of the proxy system. At the same time, the final amendments will likely impose certain additional direct costs on proxy voting advice businesses which may offset this reduction in agency costs. However, as we detail in later sections, we expect the flexibility afforded by the final amendments and current practices of at least the three major proxy voting advice businesses in the United States will serve to limit those direct costs.

As explained in more detail below, many of the economic effects of the amendments cannot be reliably quantified. Consequently, while we have attempted to quantify the economic effects expected from the amendments wherever practicable, much of the discussion remains qualitative in nature. Where we are unable to quantify the potential economic effects of the final amendments, we provide a qualitative assessment of these effects as well as the potential impacts of the amendments on efficiency, competition, and capital formation.

1. Overview of Proxy Voting Advice Businesses' Role in the Proxy Process

Every year, retail investors, institutional investors, and investment advisers face decisions on whether and how to vote on a significant number of matters that are subject to a proxy vote.[469] These matters range from the election of directors and the approval of equity compensation plans to shareholder proposals submitted under Exchange Act Rule 14a–8. In addition to matters presented at a company's annual shareholder meeting, investors and investment advisers also make voting determinations when a matter is presented to shareholders for approval at a special meeting, such as a merger or acquisition or a sale of all or substantially all of the assets of the company. As described above, investment advisers and institutional investors play a large role in proxy voting for various reasons, including because institutional investors and clients of investment advisers individually or collectively own a large aggregate fraction of many U.S. public companies.[470] We understand that voting can be resource intensive for investors that hold or investment advisers that manage diversified portfolios. It involves organizing proxy materials, performing due diligence on portfolio companies and matters to be voted on, determining whether and how votes should be cast, and submitting proxy cards to be counted. Proxy voting advice businesses offer to perform a variety of tasks related to voting, including the following:

- Analyze and make voting recommendations on the matters presented for shareholder vote and included in the registrants' proxy statements;
- Execute proxy votes (or voting instruction forms) in accordance with their benchmark policy, a specialty policy, or a custom policy;[471]
- Assist with the administrative tasks associated with voting and keep track of the large number of voting determinations; and
- Provide research and identify potential risk factors related to corporate governance.

We also understand that, in the absence of the services offered by proxy voting advice businesses, investment advisers and other clients of these businesses may expend considerable resources to independently conduct the work necessary to analyze, recommend, and make voting determinations. As a consequence, we understand that some

[467] Researchers define a contract under which one or more persons (the principals) engage another person (the agent) to perform some service on their behalf as an agency relationship. ''Agency costs'' in the principal-agent relationship consist of: The cost to the principal of monitoring the agent to limit aberrant activities; ''bonding'' costs to the agent to reassure the client that the agent will not take certain actions that would harm the principal or that the principal will be compensated if the agent takes such actions; and the ''residual loss,'' or the loss of welfare to the principal from the divergence of activities by the agent from the interests of the principal. *See* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,* 3 J. Fin. Econ. 305 (1976).

[468] For example, agents may benefit by enhancing revenues, decreasing costs, both, or by taking actions other than those that are in the principals' best interest. *Id.*

[469] 17 CFR 240.14a–8; *see, e.g.,* letters from Barbara Novick, Vice Chairman, BlackRock, Inc. (Feb. 3, 2020) (''BlackRock'') (''BlackRock acts as a fiduciary for its clients. In this capacity, we engage with thousands of companies globally and we vote in proxies at over 16,000 company meetings annually.''); NYC Comptroller (''For the year ending June 30, 2019, my office voted on 126,775 individual ballot items at 13,122 shareowner meetings in 86 markets around the world. . . .''); *see also* letter in response to the SEC Staff Roundtable on the Proxy Process from Ohio Public Retirement (Dec. 18, 2018) (''OPERS receives in excess of 10,000 proxies in any given proxy season.'').

[470] *See supra* note 10 and accompanying text. *See also* Broadridge & PwC, 2019 *Proxy Season Review,* ProxyPulse (2019), at 1, *available at https://www.broadridge.com/_assets/pdf/broadridge-proxypulse-2019-review.pdf* (estimating that institutions own 70% of public company shares) (''Broadridge PwC 2019 Report''); Charles McGrath, *80% of Equity Market Cap Held by Institutions, Pensions & Investments* (Apr. 25, 2017), *available at https://www.pionline.com/article/20170425/INTERACTIVE/170429926/80-of-equity-market-cap-held-by-institutions.*

[471] *See* letter from ISS.

investment advisers and institutional investors find it efficient to hire proxy voting advice businesses to perform various voting and voting-related services, rather than performing them in-house.[472] Proxy voting advice businesses generally are able to capture significant economies of scale that are not available to many investment advisers and institutional investors on an individual basis.[473]

In 2007, the U.S. Government Accountability Office (''GAO'') found that among 31 institutions, including mutual funds, pension funds, and asset managers, large institutions relied less than small institutions on the research and recommendations offered by proxy voting advice businesses. Large institutions indicated that their reliance on proxy voting advice businesses was limited because they: (i) Conduct their own research and analyses to make voting determinations and use the research and recommendations offered by proxy voting advice businesses only to supplement such analyses; (ii) develop their own voting policies, which the proxy voting advice businesses are responsible for executing; and (iii) contract with more than one proxy voting advice business to gain a broader range of information on proxy issues.[474] In contrast, small institutions said they had limited resources to conduct their own research and tended to rely more heavily on the research and recommendations offered by proxy voting advice businesses.[475] The findings of a 2016 GAO study that surveyed 13 institutional investors were similar.[476]

As discussed in Section I above, proxy voting advice businesses have the potential to influence many investors' voting decisions and, as a result, the overall vote. Clients of proxy voting advice businesses number in the thousands, and they exercise voting authority or influence over a sizable number of shares that are voted annually. Commenters described the informational benefits that clients derive from proxy voting advice[477] and how proxy voting advice businesses enable them to make informed voting determinations on behalf of investors and beneficiaries.[478]

To the extent that proxy voting advice businesses influence voting decisions, they also may indirectly impose certain costs on shareholders. Recent theoretical research on the role of proxy voting advice suggests that the presence of proxy voting advice businesses may induce investors to over-rely on information produced by these businesses to make voting decisions. This over-reliance arises because shareholders do not internalize the benefits for other shareholders of their own independent research of matters put to a vote. Instead shareholders find it privately efficient to outsource the analysis of voting decisions to proxy voting advice businesses.[479] Additionally, if proxy voting advice businesses significantly influence voting,[480] registrants and other market participants may seek to engage with proxy voting advice businesses rather than engaging directly with investors or registrants. Thus, the presence of proxy voting advice businesses may negatively affect the ability of certain investors to engage with and influence registrants and other investors. On the other hand, from a transactions cost perspective, being able to engage with a few large and important intermediaries, compared to engaging bi-laterally with multiple shareholders, may be more efficient for registrants and investors.

Although the economic incentives to concentrate voting power and influence in proxy voting advice businesses are strong, research on the role of proxy voting advice businesses in influencing voting, however, has produced a wide range of results. For example, a number of studies suggest that proxy voting advice has substantial influence on proxy votes,[481] while others suggest a more limited influence.[482] We note that existing academic studies examine the relationship between proxy votes and proxy voting advice businesses' recommendations based on benchmark policies. The relationship between proxy votes cast and voting recommendations provided to clients using clients' custom policies has not, to date, been the subject of academic study.[483]

[472] *See* Concept Release at 42983.

[473] *See* Chester S. Spatt, Proxy Advisory Firms, Governance, Market Failure, and Regulation 7 (2019), *available at https://www.milkeninstitute.org/sites/default/files/reports-pdf/Proxy%20Advisory%20Firms%20FINAL.pdf* (''Spatt (2019)''). Commenters also suggest that proxy voting advice businesses are an economically efficient means of collecting information and analyzing voting issues. *See, e.g.,* letter from CEC.

[474] *See* U.S. Gov't Accountability Office, GAO–07–765, Report to Congressional Requesters, Corporate Shareholder Meetings: Issues Relating to the Firms that Advise Institutional Investors on Proxy Voting, 17–18 (2007), *available at https://www.gao.gov/new.items/d07765.pdf* (''2007 GAO Report''); *see also* Letters in response to the SEC Staff Roundtable on the Proxy Process from BlackRock (Nov. 16, 2018) (''BlackRock's Investment Stewardship team has more than 40 professionals responsible for developing independent views on how we should vote proxies on behalf of our clients.''); NYC Comptroller (Jan. 2, 2019) (''We have five full-time staff dedicated to proxy voting during peak season, and our least-tenured investment analyst has 12 years' experience applying the NYC Funds' domestic proxy voting guidelines.''); Transcript of the Roundtable on the Proxy Process at 194 (comments of Mr. Scot Draeger) (''If you've ever actually reviewed the benchmarks, whether it's ISS or anybody else, they're very extensive and much more detailed than small firm[s] like ours could ever develop with our own independent research.'').

[475] 2007 GAO Report, *supra* note 474, at 17–18.

[476] *See* 2016 GAO Report, *supra* note 141, at 2.

[477] *See* letter from Kenneth A. Bertsch, Executive Director, and Jeffrey P. Mahoney, General Counsel, Council of Inst. Investors (Feb. 20, 2020) (''CII VIII'').

[478] *See, e.g.,* letters from MFA & AIMA; New York Comptroller II.

[479] *See generally* Andrey Malenko & Nadya Malenko, *Proxy Advisory Firms: The Economics of Selling Information to Voters,* 74 J. Fin. 2441 (2019). In their theoretical model, the authors assume shareholders have perfectly aligned incentives, with all shareholders agreeing on share value maximization as the singular goal of the firm so the applicability of their results is limited by the extent to which investors have goals other than, or in addition to, share value maximization. The authors further assume that proxy advice is provided by a single monopolistic proxy advisory firm, and that shareholders follow proxy advisory firm advice without exception. Additionally, the authors assume that when deciding whether to invest in their own independent research, shareholders believe that their votes will be pivotal to the vote outcome. The ownership structure of the company is key to the reported findings: The paper shows that proxy advisory services are valuable when ownership is sufficiently dispersed. In contrast, proxy advisory services are likely to have negative effects for companies with more concentrated ownership because they discourage independent information acquisition by shareholders. However, their results also imply that when ownership is very concentrated shareholders again find proxy advisory services to be valuable because each shareholder's vote is more likely to be pivotal.

[480] *See infra* notes 481 and 482.

[481] *See, e.g.,* Cindy R. Alexander et al., *Interim News and the Role of Proxy Voting Advice,* 23 Rev. Fin. Stud. 4419, 4422 (2010); Alon Brav et al., *Picking Friends Before Picking (Proxy) Fights: How Mutual Fund Voting Shapes Proxy Contests* (Columbia Bus. Sch., Research Paper No. 18–16, 2019) at 4, *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3101473* (''Brav et al. (2019)''); James R. Copland, David F. Larcker, & Brian Tayan, *The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry* (Stanford Bus. Sch. Closer Look Series, May 30, 2018) at 3, *available at https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-closer-look-72-big-thumb-proxy-advisory.pdf;* James R. Copland, David F. Larcker, & Brian Tayan, *Proxy Advisory Firms: Empirical Evidence and the Case for Reform,* Manhattan Institute (May 2018) at 6, *available at https://media4.manhattan-institute.org/sites/default/files/R-JC-0518-v2.pdf* (''Copland et al. (2018)''); Albert Verdam, *An Exploration of the Role of Proxy Advisors in Proxy Voting* (Working Paper, 2006) at 23, *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=978835* (''Verdam (2006)''); *See* letter from Chong Shu, University of Southern California, Marshall School of Business (Jun. 22, 2020).

[482] *See* Stephen Choi, Jill Fisch, & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?,* 59 Emory L.J. 869, 905–06 (2010). *See also* Brav et al. (2019), *supra* note 481, at 35. The authors find that larger mutual fund families cast votes ''in ways completely independent from what are recommended by the advisors.''

[483] Commenters stated that a large majority of proxy votes are cast by proxy advice business clients who provide custom policies to proxy voting

Research on the role of proxy voting advice businesses in proxy voting has also produced inconclusive results with respect to the quality of voting advice. For example, proxy voting advice businesses have been the subject of criticism for potentially being influenced by conflicts of interest,[484] producing reports that contain inaccuracies, and utilizing one-size-fits-all methodologies when evaluating a diverse array of registrants or when providing services to a diverse array of clients.[485]

To assess the quality of voting advice, studies have sought to examine stock market reactions to registrants' announcements that they will adopt policies consistent with proxy voting advice businesses' recommendations.[486] These studies hypothesize that the value of such policies should be impounded in stock prices, and if investors expect adoption of a particular policy to increase the value of a registrant, an announcement that the registrant plans to adopt the policy should be associated with a positive stock price reaction. This reasoning assumes clients aim to increase a registrant's share price and that proxy voting advice businesses tailor voting recommendations to achieve this aim. Proxy voting advice businesses and certain of their clients, however, may have goals other than, or in addition to, maximizing the current value of a registrant's shares. Furthermore, the attribution of stock price reactions to the adoption of policies by a registrant may be challenging due to multiple announcements and other information about the registrant that may be released concurrently. Together, these limitations make it difficult for researchers to conclusively infer recommendation quality from stock market reactions to implementation of proxy voting advice business recommendations.[487]

2. Commenter Concerns Regarding the Rule's Economic Justification

In response to the Proposing Release, commenters expressed a range of views regarding the rule's economic justification. Some commenters asserted that there are failures in the market for proxy advice that justify the final rule.[488] In addition to a variety of anecdotal evidence, some commenters provided surveys of registrants,[489] corporate governance professionals,[490] and retail investors [491] that indicated concerns about factual inaccuracies and conflicts of interest in the proxy voting process.

Other commenters stated, generally, that there is no principal-agent problem or other market failure and that the proposed rule's economic analysis failed to describe or provide demonstrable evidence of a problem in the market for proxy advice that cannot be solved via contractual arrangements in the private sector, other market based mechanisms, or existing Commission rules (*e.g.,* Rule 206(4)–6 under the Investment Advisers Act).[492] For example, one commenter disputed the claims cited in the Proposing Release that proxy voting advice contains inaccuracies or errors significant enough to require regulatory intervention, stating that proxy voting advice businesses ''have every incentive to conduct credible research and provide accurate recommendations.'' [493] Another commenter provided analysis showing that two proxy voting advice businesses are more likely to recommend their clients vote with management than a typical investor is to vote with management, casting doubt on claims that proxy voting advice businesses tend to encourage shareholders to oppose management proposals.[494] Another commenter provided independent analysis of the dynamics of proxy vote recommendations, showing that they change over time in response to events

advice businesses and, in return, receive customized voting recommendations based on these policies. *See* letter from ISS. To our knowledge, however, no academic study examines the relation between proxy votes and the voting recommendations provided under the client's custom policies. It is our understanding that clients who receive voting recommendations based on custom policies also receive the proxy voting advice business's benchmark reports.

[484] For example, some proxy voting advice businesses provide consulting services to registrants on corporate governance or executive compensation matters, such as assistance in developing proposals to be submitted for shareholder vote. *See* Concept Release at 42989. As a result, some proxy voting advice businesses provide advice regarding a registrant to their institutional investor clients on matters for which they may also provide consulting services to the registrant. One commenter submitted research that attempts to identify and quantify the impact of conflicts of interest on recommendations and the effect of competition between proxy voting advice businesses on the likelihood of biased recommendations. The research finds that competition reduces recommendations in favor of management, and that biased recommendations have negative effects on registrants. The ability to identify the provision of consulting services and to measure biases in recommendations, however, represents a significant data challenge for the estimation of the purported effects. *See* letter from Prof. Li.

[485] *See* letter from CCMC.

[486] *See generally* David F. Larcker, Allan L. McCall, & Gaizka Ormazabal, *Outsourcing Shareholder Voting to Proxy Advisory Firms,* 58 J.L. & Econ. 173 (2015) (finding that when registrants adjust their compensation program to be more consistent with recommendations of proxy voting advice businesses, the stock market reaction is statistically negative).

[487] Proxy voting advice business clients may have goals other than, or in addition to, maximizing the value of a registrant's shares, or these clients may have investment objectives that would not be achieved solely on the basis of a positive market reaction. *See* Spatt (2019), *supra* note 473, at 4; Patrick Bolton et al., *Investor Ideology* (Nat'l Bureau of Econ. Research, Working Paper No. 25717, 2019), *available at https://www.nber.org/papers/w25717.pdf;* Gregor Matvos & Michael Ostrovsky, *Heterogeneity and Peer Effects in Mutual Fund Proxy Voting,* 98 J. Fin. Econ. 90 (2010); Copland et al. (2018), *supra* note 481, at 6; Verdam (2006), *supra* note 481, at 12.

[488] *See, e.g.,* letters from CEC; BPC; Mylan; Exxon Mobil; Nareit; ACCF; BRT; Timothy M. Doyle (Feb. 3, 2020) (''T. Doyle''); CGC; State Street; Nasdaq; SCG; Charter; NAM; J. Ward; BIO; Christopher A. Iacovella, Chief Executive Officer, American Securities Association (Feb. 3, 2020) (''ASA''); Shareholder Advocacy; Michael Hietpas (Feb. 3, 2020) (''M. Hietpas''); John Endean, President, American Business Conference (Feb. 19, 2020) (''ABC'').

[489] *See* letter from Nasdaq.

[490] *See* letter from SCG.

[491] *See* letter from J.W. Verret, Associate Professor of Law, George Mason University Antonin Scalia School of Law (Jan. 22, 2020) (''Prof. Verret'') (updating prior Spectrem survey results). One commenter disputed the methodology used in the survey of retail investors, claiming it used leading questions and ultimately showed that retail investors are generally uninformed about the proxy voting advice market. *See* letter from Prof. Coates.

[492] *See, e.g.,* letters from Segal Marco II; TRP; PRI II; ProxyVote II; Laura Chappel, Chief Executive, Brunel Pension Partnership Limited (Feb. 3, 2020) (''Brunel''); Michael J. Clark, Founder and Director, Ario Advisory (Feb. 3, 2020) (''Ario''); CII IV; Prof. Coates; Kevin Thomas, Chief Executive Officer, Shareholder Association for Research and Education (Jan. 30, 2020) (''SHARE II''); Louise Davidson, Chief Executive Officer, Australian Council of Superannuation Investors (Jan. 31, 2020) (''ACSI''); BMO; Proxy Insight (Jan. 31, 2020) (''Proxy Insight''); Elliott I; Better Markets; New York Comptroller II; AFL–CIO II; Joel Schneider, Chair, Corporate Governance Committee, Dimensional Fund Advisors (Feb. 3, 2020) (''Dimensional''); Ron Baker, Executive Director, Colorado Public Employees' Retirement Association (Feb. 3, 2020) (''Colorado PERA''); Ashbel C. Williams, Executive Director & CIO, State Board of Administration of Florida (Feb. 3, 2020) (''Florida Board''); David Villa, Executive Director & Chief Investment Officer, et al., State of Wisconsin Investment Board (Feb. 3, 2020) (''SWIB''); CFA Institute I; CIRCA; AllianceBernstein; LA Retirement; Glass Lewis II (noting that no market failure is identified in the release and that other jurisdictions' regulators, including ESMA, have concluded that there is no market failure in the proxy voting advice business industry); ISS; Michael Passoff, CEO, Proxy Impact (Feb. 3, 2020) (''Proxy Impact''); Kenneth A. Bertsch, Executive Director, and Jeffrey P. Mahoney, General Counsel, Council of Inst. Investors (Feb. 4, 2020) (''CII V''); C. Icahn; ValueEdge I; CII VIII. *See also* IAC Recommendation (stating that, rather than citing reliable evidence of material problems with proxy voting advice businesses, the SEC asserts that problems ''may'' or ''could'' exist, based on claims from private interests (who are biased in favor of issuers) that problems exist).

[493] *See* letter from New York Comptroller II. *See also* letter in response to the SEC Staff Roundtable on the Proxy Process from CII (stating that ''[p]roxy advisers' business model depends on factual accuracy and their incentives are thus aligned with issuers and institutional investors alike.'').

[494] *See* letter from Proxy Insight.

and new information, suggesting they are not ''monolithic.'' [495]

One commenter suggested that there is a different source of market failure inherent to the proxy voting process and proxy voting advice businesses stemming from the collective action problem inherent in shareholder voting.[496] According to the commenter, investors do not value expending resources to determine their position on a given proxy vote because, on the margin, their vote does not matter and they do not fully internalize all of the benefits associated with any resources they do expend.[497] The commenter further asserts that proxy voting advice businesses, in turn, can therefore only charge modest fees for their services, which leads them to be resource constrained in performing their own research. Thus, according to the commenter, this arrangement leads to voting recommendations that are not adequately informed or precise, and thus imposes negative externalities on shareholders. The commenter argues that, because market forces are unable to improve the quality of voting recommendations and reduce these externalities, there is a need for regulatory action.[498] Another commenter offered a different perspective, arguing instead that proxy voting advice businesses represented a private market solution to shareholders' collective action problem, rendering regulatory intervention unnecessary.[499] Other commenters posited that the underlying concentration among proxy voting advice businesses and conflicts of interest are the result of past regulatory action that created demand for the services of proxy voting advice businesses.[500]

We believe that the important role proxy voting advice businesses currently play in facilitating clients' participation in the proxy process, as well as the importance of ensuring that clients have access to more complete information regarding matters to be voted on, and the material conflicts of interest proxy voting advice businesses may have, support the final amendments. As discussed in Section I above, the purpose of the amendments is to help ensure that investors who use proxy voting advice have access to more transparent, accurate, and complete information and benefit from a robust discussion of views—similar to what is possible at a meeting where shareholders are physically attending and participating—when making their voting decisions, while minimizing costs or delays that could adversely affect the timely provision of proxy voting advice. The amendments are expected to reduce the costs incurred by clients of proxy voting advice businesses in monitoring for conflicts of interest or acquiring information relevant to assessing proxy voting advice. In this way, the amendments should improve the overall efficiency associated with this segment of the proxy system. Proxy voting advice businesses often act as the intermediary for their clients' participation in the proxy system, and the requirements of the rule will facilitate clients' timely access to, and awareness of, more complete information prior to voting. This has the potential to benefit not just those clients and the immediate shareholders they serve but also investors in our public markets more generally.

B. Economic Baseline

The baseline against which the costs, benefits, and the impact on efficiency, competition, and capital formation of the final amendments are measured consists of the current regulatory requirements applicable to registrants, proxy voting advice businesses, investment advisers, and other clients of these businesses, as well as current industry practices used by these entities in connection with the preparation, distribution, and use of proxy voting advice.

1. Affected Parties and Current Market Practices

a. Proxy Voting Advice Businesses

Proxy voting advice businesses will be affected by the final amendments. As the Commission has previously stated, voting advice provided by a firm such as a proxy voting advice business that markets its expertise in researching and analyzing proxy issues for purposes of helping its clients make proxy voting determinations (*i.e.,* not merely performing administrative or ministerial services) generally constitutes a solicitation subject to Federal proxy rules because it is ''a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' [501]

Several commenters noted that certain firms involved in the proxy process do not supply research, analysis, and recommendations to support the voting decisions of their clients.[502] To the extent such firms are not providing any voting recommendations and are instead exercising delegated voting authority on behalf of their clients, we agree that such services generally will not constitute ''proxy voting advice'' under Rule 14a–1(l)(1)(iii)(A) and have adjusted our baseline accordingly.[503]

As of July 22, 2020, to our knowledge, the proxy voting advice industry in the United States consists of three major firms: ISS, Glass Lewis, and Egan-Jones.

- ISS, founded in 1985, is a privately-held company that provides research and analysis of proxy issues, custom policy implementation, vote recommendations, vote execution, governance data, and related products and services.[504] ISS also provides advisory/consulting services, analytical tools, and other products and services to corporate registrants through ISS Corporate Solutions, Inc. (a wholly owned subsidiary).[505] As of April 2020, ISS had nearly 2,000 employees in 30 locations, and covered approximately 44,000 shareholder meetings in 115 countries, annually.[506] ISS states that it executes about 10.2 million ballots annually on behalf of those clients representing 4.2 trillion shares.[507] ISS is registered with the Commission as an investment adviser and identifies its

[495] *See* letter from PRI II.

[496] *See* letter from B. Sharfman I. *See also* letter from Bryce C. Tingle, N. Murray Edwards Chair in Business Law, Faculty of Law, University of Calgary (Jan. 31, 2020) (''Prof. Tingle'') (similarly asserting that both fund managers and proxy voting advice business are not incentivized to expend significant resources in producing and evaluating voting advice, but without attributing this lack of incentives to a collective action problem on the part of shareholders.).

[497] Academic research has shown, theoretically, that the inability of shareholders to fully internalize the benefits of developing an informed position on matters put to a shareholder vote can cause shareholders to over-rely on proxy voting advice under certain conditions. *See supra* note 479.

[498] *See* letter from B. Sharfman I.

[499] *See* letter from Glass Lewis II.

[500] *See, e.g.,* letter from P. Mahoney and J.W. Verret.

[501] *See* Commission Interpretation on Proxy Voting Advice at 47417.

[502] Specifically, commenters indicated that two additional firms included in the set of affected proxy voting advice businesses in the Proposing Release, ProxyVote Plus and Marco Consulting Group did not advise investment advisers and institutional investors on their voting determinations and would therefore not be affected by the proposed amendments. *See supra* note 100 and accompanying text. *See also* letters from Segal Marco II; ProxyVote II; CII IV.

[503] *See supra* notes 170–173 and accompanying text.

[504] *See* 2016 GAO Report, *supra* note 141, at 6.

[505] *Id.*

[506] *See* About ISS, *available at https://www.issgovernance.com/about/about-iss/* (last visited May 22, 2020). *See also supra* note 10.

[507] *See* About ISS, *available at https://www.issgovernance.com/about/about-iss/* (last visited May 22, 2020).

work as pension consultant as the basis for registering as an adviser.[508]

• Glass Lewis, established in 2003, is a privately-held company that provides research and analysis of proxy issues, custom policy implementation, vote recommendations, vote execution, and reporting and regulatory disclosure services to institutional investors.[509] As of April 2020, Glass Lewis had more than 380 employees worldwide that provide services to more than 1,300 clients that collectively manage more than $35 trillion in assets.[510] Glass Lewis states that it covers more than 20,000 shareholder meetings across approximately 100 global markets annually.[511] Glass Lewis is not registered with the Commission in any capacity.

• Egan-Jones was established in 2002 as a division of Egan-Jones Ratings Company.[512] Egan-Jones is a privately-held company that provides proxy services, such as notification of meetings, research and recommendations on selected matters to be voted on, voting guidelines, execution of votes, and regulatory disclosure.[513] As of September 2016, Egan-Jones' proxy research or voting clients mostly consisted of mid- to large-sized mutual funds,[514] and the firm covered approximately 40,000 companies.[515] Egan-Jones Ratings Company (Egan-Jones' parent company) is registered with the Commission as a Nationally Recognized Statistical Ratings Organization.[516]

Of the three proxy voting advice businesses identified, ISS and Glass Lewis are the largest and most often used for proxy voting advice.[517] We do not have access to general financial information for ISS, Glass Lewis, and Egan-Jones such as annual revenues, earnings before interest, taxes, depreciation, and amortization, and net income. We also do not have access to client-specific financial information or more general or aggregate information regarding the economics of the proxy voting advice business.

Several commenters stated that the economic analysis in the Proposing Release failed to consider effects of the proposal on smaller firms that provide proxy voting services, such as Investor Advocates for Social Justice (''IASJ'').[518] Further, commenters stated that the final amendments could affect the propensity of non-U.S. firms to compete with U.S. proxy voting advice businesses.[519] Based on the information available to the Commission,[520] including comments on the Proposing Release, we are not aware of smaller firms that currently supply research, analysis, and recommendations in the United States to support the voting decisions of their clients that would fall within the definition of ''solicitation.'' We acknowledge that any smaller firms or non-U.S. proxy voting advice businesses could be affected by the final amendments to the extent they provide proxy voting advice on registrants who have filed proxy materials with the Commission, or if the final amendments affect their willingness to enter the market to supply proxy voting advice in the United States.

In a principal-agent relationship, such as the relationship between a proxy voting advice business and a client, to the extent that the principals' and agents' interests are not perfectly aligned, agents can expend resources to assure principals that they will act in the principals' best interest. When agents operate in a competitive market soliciting business from principals, they have an incentive to expend resources to assure principals that they will act in the principals' best interest, or risk putting themselves at a competitive disadvantage.[521] Where the agent's interest and the principal's interest diverge, there can be a strong counterweight to this incentive and where a relationship is multifaceted the agent may emphasize areas of alignment and de-emphasize areas of conflict. In the proxy voting advice market, certain practices by proxy voting advice businesses serve as mechanisms to assure their clients that proxy voting advice businesses will take actions that are in clients' best interest. All three major proxy voting advice businesses have policies, procedures, and disclosures in place that are intended to reduce clients' costs of monitoring the businesses' behavior.[522]

Proxy voting advice businesses' reliance on information available to all shareholders is one example of how current market practices may mitigate agency costs. One commenter noted that facing the prospect of having their work checked by clients can discipline proxy voting advice businesses that might otherwise act based on conflicts of interest when developing proxy advice.[523] The same commenter included use of publicly available information as a step it has taken to ''ensure quality and minimize error in its published research.'' [524] The three major proxy voting advice businesses state that they base their recommendations exclusively on information that is publicly available. Relying on publicly available information to develop proxy advice enables clients to validate the inputs that proxy voting advice businesses provide, rather than expending effort to obtain proprietary, and potentially commercially sensitive, information

[508] *See* Form ADV filing for ISS, *available at https://adviserinfo.sec.gov/IAPD/content/ViewForm/crd_iapd_stream_pdf.aspx?ORG_PK=111940* (last accessed April 23, 2020). *See also* 2016 GAO Report, *supra* note 141, at 9.

[509] *Id.* at 7.

[510] *See* Glass Lewis Company Overview, *available at https://www.glasslewis.com/company-overview/* (last visited Apr. 26, 2020).

[511] *Id.*

[512] *See* 2016 GAO Report, *supra* note 141, at 7.

[513] *Id.*

[514] *Id.*

[515] *Id.* While ISS and Glass Lewis have published updated coverage statistics on their websites, the most recent data available for Egan-Jones was compiled in the 2016 GAO Report.

[516] *See* Order Granting Registration of Egan-Jones Rating Company as a Nationally Recognized Statistical Rating Organization, Exchange Act Release No. 34–57031 (Dec. 21, 2007), *available at https://www.sec.gov/ocr/ocr-current-nrsros.html#egan-jones.*

[517] *See* 2016 GAO Report, *supra* note 141, at 8, 41 (''In some instances, we focused our review on Institutional Shareholder Services (ISS) and Glass Lewis and Co. (Glass Lewis) because they have the largest number of clients in the proxy advisory firm market in the United States.''); *see also* letters in response to the SEC Staff Roundtable on the Proxy Process from Center on Executive Compensation (Mar. 7, 2019) (noting that there are ''two firms controlling roughly 97% of the market share for such services''); Society for Corporate Governance (Nov. 9, 2018) (''While there are five primary proxy advisory firms in the U.S., today the market is essentially a duopoly consisting of Institutional Shareholder Services . . . and Glass Lewis & Co. . . . .'').

[518] *See* letter from IASJ. We understand that this firm typically does not make voting recommendations to its institutional investor clients but rather assists those ''who seek a partner to carry out their proxy voting.'' *Id.* To the extent a firm does not make voting recommendations to its clients and is instead exercising delegated authority on their behalf, it would not be engaged in a ''solicitation'' within the meaning of Rule 14a–1(l)(1)(iii)(A). *See supra* notes 170–173 and accompanying text. Therefore, based on our understanding of its current activities, this commenter (and others engaged in similar conduct) would not appear to be subject to compliance with Rule 14a–2(b)(9). *See also* letters from Felician Sisters II; Good Shepherd; Interfaith Center II; ProxyVote II; Segal Marco II; St. Dominic of Caldwell.

[519] *See* letters from Minerva I; PIRC.

[520] Our awareness of providers of proxy voting services may be limited because firms that provide proxy voting services, including proxy voting advice businesses, do not always engage in activities that would require them to register with the Commission. *See supra* Section I.

[521] Agents have an incentive to expend resources to assure principals that they will act in the principals' best interest as long as the cost of providing the assurance is less than the value of the assurance to principals.

[522] *See, e.g.,* letter from Glass Lewis II.

[523] *See* letter from ISS.

[524] *See id.*

directly from registrants or other sources.

As part of our consideration of the baseline for the final rules, we focus on two industry practices that are particularly relevant for the new conditions in Rule 14a–2(b): Conflicts of interest disclosure and procedures for engagement with registrants.

i. Conflict of Interest Disclosures

While the nature of potential conflicts related to revenues might be different among the three proxy voting advice businesses, all three proxy voting advice businesses have conflicts of interest policies and make disclosures to clients disclosing the nature of potential conflicts and the steps that they have taken to address them.[525] These existing policies and disclosures are part of the economic baseline for the amendments.

For example, we understand that ISS has implemented policies and procedures designed to prevent and manage conflicts that could arise from the work of ISS' research and analytics teams (''Global Research'') and the work of ISS Corporate Solutions (''ICS'') for public companies.[526] More specifically, Global Research prepares proxy voting governance research, analyzes proxy issues, and provides ratings on, and other assessments of, public companies for the benefit of institutional investors. ICS provides advisory services, analytical tools, and publications to registrants to enable registrants to improve shareholder value and reduce risk. According to ISS, one of the primary steps the firm has taken to prevent and manage this potential conflict of interest is implementing a firewall with the goal of separating ICS from ISS. ISS notes that it makes available to its institutional clients information about the relationships between ICS and its clients in a way that is intended not to alert Global Research analysts to the possible existence of such relationships. ISS also notes that it adds a legend to each global or domestic proxy analysis advising the reader of the existence of ICS and offering ISS' clients the ability to learn more about ICS and its clients. In addition, ISS indicates that it has implemented a policy on the disclosure of significant relationships, under which ISS provides clients with ''proactive visibility'' regarding a range of significant relationships within the client-facing side of the ProxyExchange platform.[527] ICS also discloses in all of its contracts that ISS' status as a registered investment adviser (as well as its internal policies and procedures) may require ISS to disclose to ISS institutional clients ICS' relationship with the registrant.

We understand the other two major proxy voting advice businesses also provide disclosure of potential conflicts of interest. Glass Lewis notes that it provides disclosure of potential conflicts on the cover of the relevant research report.[528] This is intended to enable clients and any other parties with access to a Glass Lewis report (*e.g.,* the media) to review potential conflicts at the same time they review the research, analysis, and voting recommendations contained therein. Egan-Jones also discloses its management of three categories of potential conflicts—revenue, cost, and structural—to the public.[529]

Thus, it appears that all three major proxy voting advice businesses have some level of conflict of interest disclosure policies in place and provide such disclosure to affected parties. These disclosures, which are intended to support the objectivity of voting advice and the integrity of the voting process, may overlap to a certain degree with the requirements in the final amendments. These disclosure policies, however, vary in terms of structure and coverage as well as the manner the in which the information is conveyed.

ii. Engagement With Registrants

The following section discusses existing proxy voting advice business engagement with the subjects of proxy voting advice—one avenue by which such businesses may signal to their clients that the information underlying proxy voting advice is accurate, transparent, and complete.

We understand that all three major proxy voting advice businesses have certain policies, procedures, and disclosures in place intended to assure clients that the voting advice they receive will be based on accurate, transparent, and complete information. In some cases, proxy voting advice businesses seek input from registrants to further these objectives. All three of these proxy voting advice businesses offer certain registrants some form of pre-release review of at least some of their proxy voting advice reports, or the data used in their reports. Also, all three such proxy voting advice businesses offer some registrants access to proxy voting reports and offer mechanisms by which registrants can provide feedback on those reports, in some cases for a fee.

For example, ISS states that it may, in some circumstances, give registrants, whether or not they are ICS clients, the right to review draft research analyses, ratings, or other advisory research reports so that ISS may correct factual inaccuracies before delivering final voting advice. ISS acknowledges that review of draft analyses may provide an opportunity for registrants to unduly influence those analyses and reports. To avoid the appearance of impropriety, ISS states that it generally offers registrants an opportunity to review a draft proxy analysis, rating, or other research report only for the purposes of verifying the factual accuracy of information. ISS further states that it retains sole discretion whether to accept any change recommended by the registrant. ISS's policies also govern changes to analyses based on registrant feedback. According to ISS's Code of Ethics, if the analyst changes the proposed voting recommendation or other proposed conclusion, the proposed change must be reviewed by a senior analyst and ISS will retain in its files the documents supplied by the registrant detailing the factual inaccuracies.[530]

Glass Lewis introduced a ''Report Feedback Statement'' service in 2019 that has allowed companies to submit feedback on Glass Lewis reports and have that feedback be transmitted directly to Glass Lewis clients in the proxy research papers they receive.[531] In addition to these services, beginning in 2015, Glass Lewis started providing the subjects of its research with its

[525] *See, e.g.,* letters from ISS; Glass Lewis II. *See also* Egan-Jones Proxy Services Conflict of Interest Statement (Sept. 2019), *available at https://www.ejproxy.com/media/documents/Egan-Jones_Proxy_Conflict-of-Interest_Sep-2019.pdf.*

[526] *See* ISS, Best Practice Principles for Providers of Shareholder Voting Research & Analysis: ISS Compliance Statement (2017), *available at https://www.issgovernance.com/file/duediligence/best-practices-principles-iss-compliance-statement-april-2017-update.pdf.*

[527] *See* ISS Policy Regarding Disclosure of Significant Relationships, *available at https://www.issgovernance.com/file/duediligence/Disclosure-of-Significant-Relationships.pdf* (last visited Apr. 27, 2020).

[528] *See* Glass Lewis' Policies and Procedures for Managing and Disclosing Conflicts of Interest (2019), *available at https://www.glasslewis.com/wp-content/uploads/2019/11/GL-Policies-and-Procedures-for-Managing-and-Disclosing-Conflicts-of-Interest-050819-FINAL.pdf.*

[529] *See* Egan-Jones Proxy Services Conflict of Interest Statement, available at *https://ejproxy.com/media/documents/Egan-Jones_Proxy_Conflict-of-Interest_Sep-2019.pdf* (last visited Apr. 27, 2020).

[530] *See* ISS Code of Ethics 7 (2020), *available at https://www.issgovernance.com/file/duediligence/code-of-ethics-mar-2020.pdf.*

[531] *See* Press Release, Glass Lewis, Glass Lewis Announces that Company Opinions are Now Included With Research and Voting Recommendations (Apr. 2, 2020), *available at https://glasslewis.com/report-feedback-statement-included-with-research. See also* Press Release, Glass Lewis, Glass Lewis Launches Report Feedback Statement Service (Mar. 14, 2020), *available at https://glasslewis.com/glass-lewis-launches-report-feedback-statement-service.*

Issuer Data Report, which details the key facts underlying the relevant report for their review before the report is finalized. According to Glass Lewis, materials provided are deliberately limited. Glass Lewis has indicated that by providing the facts underlying the report, it can benefit from registrant review without inviting debates about Glass Lewis' methodology or what result that methodology should lead to in the context of a particular recommendation. This service has been available without a fee for several years and more than 1,400 companies currently participate in it on an annual basis.[532]

Egan-Jones provides several avenues for registrants to review and correct any material errors found in its reports. Registrants may obtain a ''draft,'' or pre-publication copy, of a report pertaining to them in order to review it. If a registrant believes there is a material error in an Egan-Jones report, the registrant may contact Egan-Jones directly. In addition, major U.S. third-party proxy solicitors participate in Egan-Jones' Research Preview program. Through that program, proxy solicitors can supply draft copies of the research regarding the registrant to the registrant, and convey appropriate documentation to Egan-Jones to correct any errors found in the research on behalf of the registrant.[533]

Although the three major proxy voting advice businesses offer registrants opportunities to review proxy voting advice, existing policies and procedures limit review in some respects. ISS, for example, offers only ''eligible'' registrants an opportunity to review draft proxy analyses and generally uses the S&P 500 constituent list to determine eligibility. Moreover, even for eligible companies, ISS provides an opportunity to review solely on a ''best-efforts'' basis.[534] As noted above, Glass Lewis indicates that its registrant review process is limited to pre-publication review of only the key facts underlying each relevant report.[535]

Additionally, it is our understanding that some proxy voting advice businesses currently include links to filings by registrants that are the subject of proxy advice in their online platforms. These links provide a means by which clients may access additional definitive proxy materials that registrants may file in response to proxy voting advice.

Non-U.S. proxy voting advice businesses that are signatories to the Best Practice Principles for Shareholder Voting Research have provided information about their engagement with registrants.[536] Based on these public disclosures, we understand that levels of registrant engagement vary across non-U.S. proxy voting advice businesses. For example, the U.K.-based firm PIRC states that it provides pre-publication drafts of proxy voting advice to registrants for some jurisdictions as a courtesy, while France-based firm Proxinvest does not.[537] While acknowledging the practices of these non-U.S. proxy voting advice businesses, this section focuses on the three major proxy voting advice businesses that operate in the United States.[538]

b. Clients of Proxy Voting Advice Businesses as Well as Underlying Investors

Clients that use proxy voting advice businesses for voting advice will be affected by the final rule amendments. In turn, investors and other groups on whose behalf these clients make voting determinations will be affected. One of the three major proxy voting advice businesses—ISS—is registered with the Commission as an investment adviser and as such, provides annually updated disclosure with respect to its types of clients on Form ADV. Table 1 below reports client types as disclosed by ISS.[539]

TABLE 1—NUMBER OF CLIENTS BY CLIENT TYPE

[as of March 28, 2020]

Type of client [a]	Number of clients [b]
Banking or thrift institutions	195
Pooled investment vehicles	300
Pension and profit sharing plans	170
Charitable organizations	110
State or municipal government entities	10
Other investment advisers	960
Insurance companies	40
Sovereign wealth funds and foreign official institutions	10
Corporations or other businesses not listed above	70
Other	225
Total	2,095

[a] The table excludes client types for which ISS indicated either zero clients or less than five clients.

[b] Form ADV filers indicate the approximate number of clients attributable to each type of client. If the filer has fewer than five clients in a particular category (other than investment companies, business development companies, and pooled investment vehicles), it may indicate that it has fewer than five clients rather than reporting the number of clients.

Table 1 illustrates the types of clients that utilize the services of one of the largest proxy voting advice businesses. For example, while investment advisers (''Other investment advisers'' in Table 1) constitute a 46 percent plurality of clients for ISS, other types of clients include pooled investment vehicles (14 percent) and pension and profit sharing plans (eight percent). Other users of the services offered by ISS include corporations, charitable organizations, and insurance companies.[540] Certain of these users of proxy voting advice business services make voting determinations that affect the interests of a wide array of individual investors, beneficiaries, and other constituents.[541]

c. Registrants

Registrants also will be affected by the final amendments. Registrants that have a class of equity securities registered under Section 12 of the Exchange Act as well as non-registrant parties that conduct proxy solicitations with respect to those registrants are subject to the

[532] *See* letter from Glass Lewis II.

[533] *See* Egan-Jones Issuer Engagement, *available at https://ejproxy.com/issuers* (last visited Apr. 28, 2020).

[534] *See* ISS Draft Review Process for U.S. Issuers, *available at https://issgovernance.com/iss-draft-review-process-u-s-issuers/* (last visited Apr. 28 2020).

[535] *See supra* note 532.

[536] *See* BPP Group Signatory Statements, *available at https://bppgrp.info/signatory-statements* (last visited Apr. 29, 2020).

[537] *Id.*

[538] As noted in above, we are not aware of smaller firms that currently supply research, analysis, and recommendations to support the voting decisions of their clients that would fall within the definition of ''solicitation.'' Thus we do not speculate as to how smaller firms might engage with registrants.

[539] *See* ISS Form ADV filing, *supra* note 508. ISS describes clients classified as ''Other'' as ''Academic, vendor, other companies not able to identify as above.''

[540] *Id.*

[541] One commenter argued that the economic analysis should include more data and data analysis related to senior citizens since they make up a large portion of the mainstream investor community. In particular, the commenter suggested we include more data on the proportion of total investors that are senior citizens and some demographic analysis. We are sympathetic to the commenter's suggestion regarding the importance of senior citizens as investors, but we do not have data to perform the analysis the commenter requested and none was provided by commenters. *See* letter from Jim Martin, Chairman, et al., 60 Plus Association (Feb. 3, 2020) (''60 Plus''). We note that, to the extent the final rules improve the mix of information available to shareholders when voting decisions are made, they will benefit the investor community generally, including senior citizen investors.

federal proxy rules.[542] In addition, there are certain other companies that do not have a class of equity securities registered under Section 12 of the Exchange Act that file proxy materials with the Commission. Finally, Rule 20a–1 under the Investment Company Act subjects all registered management investment companies to the federal proxy rules.[543]

As of December 31, 2018, we estimate that 5,758 registrants had a class of securities registered under Section 12 of the Exchange Act.[544] As of the same date, there were approximately 20 companies that did not have a class of securities registered under Section 12 of the Exchange Act that filed proxy materials.[545] As of August 31, 2019 there were 12,718 registered management investment companies that were subject to the proxy rules: (i) 12,040 open-end funds, out of which 1,910 were Exchange Traded Funds (''ETFs'') registered as open-end funds or open-end funds that had an ETF share class; (ii) 664 closed-end funds; and (iii) 14 variable annuity separate accounts registered as management investment companies.[546] As of December 2018, we identified 98 Business Development Companies (''BDCs'') that could be subject to the final amendments.[547] The summation of these estimates yields 18,594 companies that may be affected to a greater or lesser extent by the final amendments.[548]

The above estimates are an upper bound of the number of potentially affected companies because not all of these registrants may file proxy materials related to a meeting for which a proxy voting advice business issues proxy voting advice in a given year. Out of the 18,594 potentially affected registrants mentioned above, 5,690 filed proxy materials with the Commission during calendar year 2018.[549] Out of the 5,690 registrants, 4,758 (84 percent) were Section 12 or Section 15(d) registrants and the remaining 932 (16 percent) were registered management investment companies.[550]

Whether or not proxy voting advice businesses permit registrants to review draft proxy voting advice, all registrants are able to respond to final proxy voting advice by filing additional definitive proxy materials. However, as discussed in the Proposing Release, some registrants have asserted that a large percentage of proxies are voted within 24 to 48 hours of proxy voting advice being issued[551] and that it can be difficult for registrants to access and analyze the proxy voting advice, formulate a response, and file the necessary materials with the Commission within that time period.[552] This is consistent with feedback received from commenters, who also indicated that registrants face time pressure in their efforts to communicate their responses to proxy voting advice to shareholders prior to votes.[553] The Proposing Release included an analysis that estimated the number of additional definitive proxy material filings in 2016, 2017, and 2018,[554] and Commission staff subsequently refined the process for identifying relevant filings and published a list of the filings it identified in a memorandum to the public comment file.[555] This list shows approximately 105, 93, and 90 filings in 2016, 2017, and 2018, respectively. Further, in the Proposing Release, the staff identified in a subset of additional definitive proxy material filings in 2018, where data were available, the number of business days between when a proxy voting advice business delivered proxy voting advice and when the registrant filed additional definitive proxy

[542] Foreign private registrants are exempt from the Federal proxy rules under Rule 3a12–3(b) of the Exchange Act. *See* 17 CFR 240.3a12–3. We are not aware of any asset-backed registrants that have a class of equity securities registered under Section 12 of the Exchange Act. Most asset-backed registrants are registered under Section 15(d) of the Exchange Act and thus are not subject to the federal proxy rules. Nine asset-backed registrants had a class of debt securities registered under Section 12 of the Exchange Act as of December 2018. As a result, these asset-backed registrants are not subject to the federal proxy rules.

[543] Rule 20a–1 under the Investment Company Act requires registered management investment companies to comply with regulations adopted pursuant to Section 14(a) of the Exchange Act that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act. *See* 17 CFR 270.20a–1. ''Registered management investment company'' means any investment company other than a face-amount certificate company or a unit investment trust. *See* 15 U.S.C. 80a–4.

[544] We estimate the number of registrants with a class of securities registered under Section 12 of the Exchange Act by reviewing all Forms 10–K filed during calendar year 2018 with the Commission and counting the number of unique registrants that identify themselves as having a class of securities registered under Section 12(b) or Section 12(g) of the Exchange Act. Foreign private registrants that filed Forms 20–F and 40–F and asset-backed registrants that filed Forms 10–D and 10–D/A during calendar year 2018 with the Commission are excluded from this estimate. This estimate excludes BDCs that filed Form 10–K in 2018.

[545] We identify these issuers as those (1) subject to the reporting obligations of Exchange Act Section 15(d) but that do not have a class of equity securities registered under Exchange Act Section 12(b) or 12(g) and (2) that filed any proxy materials during calendar year 2018 with the Commission. The proxy materials we consider in our analysis are DEF14A; DEF14C; DEFA14A; DEFC14A; DEFM14A; DEFM14C; DEFR14A; DEFR14C; DFAN14A; N–14; PRE 14A; PRE 14C; PREC14A; PREM14A; PREM14C; PRER14A; PRER14C. Form N–14 can be a registration statement and/or proxy statement. We manually review all Forms N–14 filed during calendar year 2018 with the Commission and we exclude from our estimates Forms N–14 that are exclusively registration statements. To identify registrants reporting pursuant to Section 15(d) but not registered under Section 12(b) or Section 12(g), we review all Forms 10–K filed in calendar year 2018 with the Commission and count the number of unique registrants that identify themselves as subject to Section 15(d) reporting obligations but with no class of equity securities registered under Section 12(b) or Section 12(g).

[546] We estimate the number of unique registered management investment companies based on Forms N–CEN filed between June 2018 and August 2019 with the Commission. Open-end funds are registered on Form N–1A. Closed-end funds are registered on Form N–2. Variable annuity separate accounts registered as management investment companies are trusts registered on Form N–3. The number of potentially affected Section 12 and Section 15(d) registrants is estimated over a different time period (*i.e.,* January 2018 to December 2018) than the number of potentially affected registered management investment companies (*i.e.,* June 2018 to August 2019) because there is no complete N–CEN data for the most recent full calendar year (*i.e.,* 2018). Registered management investment companies started submitting Form N–CEN in September 2018 for the period ended on June 30, 2018 with the Commission.

[547] BDCs are entities that have been issued an 814- reporting number. Our estimate includes 88 BDCs that filed Form 10–K in 2018 as well as BDCs that may be delinquent or have filed extensions for their filings. Our estimate excludes six wholly-owned subsidiaries of other BDCs.

[548] The 18,594 potentially affected registrants is the sum of: (a) 5,758 registrants with a class of securities registered under Section 12 of the Exchange Act; (b) 20 registrants without a class of securities registered under Section 12 of the Exchange Act that filed proxy materials; (c) 12,718 registered management investment companies; and (d) 98 BDCs.

[549] For details on the estimation of companies that filed proxy materials with the Commission during calendar year 2018, *see supra* note 544.

[550] According to data from Forms N–CEN filed with the Commission between June 2018 and August 2019, there were 965 registered management investment companies that submitted matters for its security holders' vote during the reporting period: (i) 729 open-end funds, out of which 86 were ETFs registered as open-end funds or open-end funds that had an ETF share class; (ii) 235 closed-end funds; and (iii) one variable annuity separate account. *See* Form N–CEN Item B.10. The discrepancy in the estimated number of registered management investment companies submitting proxy filings (*i.e.,* 932) and Form N–CEN data (*i.e.,* 965) likely is attributable to the different time periods over which the two statistics are estimated.

[551] *See* Proposing Release at 66545, n.235.

[552] *See id.* at 66545, n.236. As we noted above, shareholders have the ability to change their vote at any time prior to a meeting, including as a result of a registrant filing supplemental proxy materials in response to proxy voting advice. *See supra* note 373.

[553] *See, e.g.,* letters from Nareit; NAM; Exxon Mobil. *See also* Proposing Release at 66533, n.136.

[554] *See* Proposing Release at 66546, Table 2.

[555] *See* Memorandum from the U.S. Securities and Exchange Commission, Division of Economic Risk and Analysis, Regarding Data Analysis of Additional Definitive Proxy Materials Filed by Registrants in Response to Proxy Voting Advice (Jan. 16, 2020), *available at https://www.sec.gov/comments/s7-22-19/s72219-6660914-203861.pdf* (''Data Analysis of Additional Definitive Proxy Materials'').

materials, and the number of business days until the planned shareholder meeting. Based on this sample, staff estimated a median value of three business days and an average value of 3.8 business days between when a proxy voting advice business issues proxy voting advice and when a registrant responds. Further, the median (average) number of days between the registrant response and the shareholder meeting based on the sample was 9.5 (10.3) business days.[556]

A number of commenters interpreted our analysis in Table 2 of the Proposing Release to indicate that the Commission took the view that the ''concerns'' raised by registrants about errors or inaccuracies reflected actual factual errors.[557] One commenter questioned whether Commission staff evaluated the merits of registrant claims presented in the Proposing Release[558] and supplied its own estimates of actual error rates in proxy voting advice business research report based on its own research,[559] as well as on supplementary information made available in the comment file.[560]

In contrast, another commenter had a different critique of Table 2, arguing that estimating error rates based on filings of additional definitive proxy materials might actually underestimate the true error rate because registrants who submit filings subject themselves to potential liability under SEC Rule 14a–9.[561]

The method for identifying filings that contained registrant concerns and classifying those concerns was detailed in the Proposing Release and in the subsequent staff memorandum.[562] Importantly, the analysis set forth in the Proposing Release took no position on the merits of responses. The analysis was intended to present how registrants currently respond to proxy voting advice and the frequency and timing of those responses and made no judgment as to whether the concerns raised by registrants in their supplemental filings were valid. Nor was the analysis intended to provide an ''error rate.'' Although we agree that reasonable readers might disagree in their classification of registrant concerns, lack of agreement on classification of specific responses does not change our assessment, discussed below, that the final rules would benefit clients of proxy voting advice businesses, and the proxy process as a whole, by improving client access to registrant information and analysis. Indeed, the fact that reviewers of additional definitive proxy materials may differ both in how they identify registrant concerns and how they classify those concerns supports the idea that clients would benefit from having a mechanism available by which they can reasonably be expected to become aware of registrant responses so they might form their own view of the merits of those responses.

2. Current Regulatory Framework

The economic baseline includes the current regulatory framework that applies to proxy voting advice businesses. As explained in the Proposing Release, under the Commission's proxy rules, any person engaging in a proxy solicitation, unless exempt, is generally subject to filing and information requirements designed to ensure that materially complete and accurate information is furnished to shareholders solicited by the person.[563] Over the years, the Commission has recognized that these filing and information requirements may, in certain circumstances, impose burdens that deter communications useful to shareholders, and in such circumstances, may not be necessary to protect investors in the proxy voting process.[564] Accordingly, the Commission has exempted certain kinds of solicitations from the filing and information requirements of the proxy rules, subject to various conditions, where such requirements are not necessary for investor protection.[565] Notwithstanding the exemptions, these solicitations remain subject to Rule 14a–9, the antifraud provisions of the federal proxy rules.[566]

Proxy voting advice businesses typically rely upon the exemptions in Rule 14a–2(b)(1) and (b)(3) to provide advice without complying with the filing and information requirements of the proxy rules.[567] The existing conditions to these exemptions are designed to ensure that investors are protected where the Commission's filing and information requirements do not apply. For example, any person who wishes to rely on the Rule 14a–2(b)(3) exemption may not receive special commissions or remuneration from anyone other than the recipient of the advice and must disclose any significant relationship or material interest bearing on the voting advice.[568] By contrast, the exemption in Rule 14a–2(b)(1) does not currently require conflicts of interest disclosure. Both exemptions were adopted by the Commission before proxy voting advice businesses played the significant role that they now do in the proxy voting process and in the voting decisions of investment advisers and institutional investors.

Several commenters stated that the analysis in the Proposing Release did not reflect requirements to address conflicts of interest under existing law, including the regulatory scheme under the Investment Advisers Act, as well as proxy voting advice business best practices under the baseline.[569] We recognize that, in addition to the rules governing proxy solicitation, some proxy voting advice businesses may be subject to other regulatory regimes.[570]

[556] *See* Proposing Release at 66546.

[557] *Id.* at Table 2.

[558] *See* letter from CII I.

[559] *See* letter from CII IV.

[560] *See* letter from CII V. This commenter suggested that the error rate implied by the Commission's classification in Table 2 of the Proposing Release was 0.5% and that after correcting for registrant assertions that appear to be in error, the rate is reduced to 0.3%. The same commenter performed a case-by-case analysis of claims they believed may have been classified as errors in the Proposing Release's analysis, casting doubt on whether many of them were actually related to factual errors, and concluded that, after excluding analytical errors, which may just represent differences of opinion, the actual error rate is only 0.06%.

[561] *See* letter from ACCF.

[562] *See* Proposing Release at n.239. *See also* Data Analysis of Additional Definitive Proxy Materials, *supra* note 555.

[563] *See* Proposing Release at 66524.

[564] *See, e.g.,* Communications Among Shareholders Adopting Release at 49278 (''[S]hareholders can be deterred from discussing management and corporate performance by the prospect of being found after the fact to have engaged in a proxy solicitation. The costs of complying with [the proxy] rules also has meant that . . . shareholders and other interested persons may effectively be cut out of the debate regarding proposals . . . .'').

[565] For example, Rule 14a–2(b)(1) generally exempts solicitations by persons who do not seek the power to act as proxy for a shareholder and do not have a substantial interest in the subject matter of the communication beyond their interest as a shareholder. Another exemption, Rule 14a–2(b)(3), generally exempts proxy voting advice furnished by an advisor to any other person with whom the advisor has a business relationship.

[566] 17 CFR 240.14a–9.

[567] *See* Commission Interpretation on Proxy Voting Advice at 47416 (discussing the ''two exemptions to the federal proxy rules that are often relied upon by proxy advisory firms'').

[568] The conditions to Rule 14a–2(b)(3) are: (i) The advisor renders financial advice in the ordinary course of his business; (ii) the advisor discloses to the recipient of the advice any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the advisor in such matter; (iii) the advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and (iv) the proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 240.14a–12(c). 17 CFR 240.14a–2(b)(3).

[569] *See* letters from ISS; Glass Lewis II. *See also* IAC Recommendation.

[570] *See* Proposing Release at 66527, n.88; 66529, n.99.

For example, one of the major proxy voting advice businesses, ISS, is also a registered investment adviser, and as such, must eliminate or make full and fair disclosure of all conflicts of interest to its clients that might cause ISS to render proxy voting advice that is not disinterested such that a client can provide informed consent to the conflict.[571] In addition, ISS has noted that, as a registered investment adviser, it has a fiduciary duty of care to make a reasonable investigation to determine that it is not basing vote recommendations on materially inaccurate or incomplete information.[572] Similarly, Egan-Jones is registered with the Commission as a Nationally Recognized Statistical Rating Organization (NRSRO). Registered NRSROs are required under Rule 17g-5 to disclose conflicts of interest relating to maintenance or issuance of a credit rating. However, these regulatory regimes serve distinct, though overlapping, regulatory purposes.[573]

One commenter also stated that the final rule's economic effects should be measured relative to a baseline that consists of regulation in effect prior to the Commission Interpretation on Proxy Voting Advice,[574] noting that no cost-benefit analysis was performed in connection with that interpretation.[575] Consistent with its past practice, the Commission continues to believe that the appropriate baseline for its economic analysis consists of all existing regulatory requirements that apply to the affected parties, including the Commission Interpretation on Proxy Voting Advice, as well as industry practice in response to those requirements. Moreover, the Commission Interpretation on Proxy Voting Advice did not create any new legal obligations under the securities laws but rather articulated the Commission's longstanding views on what constitutes ''solicitation.'' Indeed, as noted above, there is evidence that the proxy voting advice business industry has understood for over 30 years that its proxy voting advice constitutes a ''solicitation'' under Rule 14a–1(l) or at least that the Commission may consider such advice to constitute a ''solicitation.''[576]

Even if a proxy voting advice business had believed it was not engaged in a ''solicitation'' prior to the interpretation, and thus newly realized it was engaged in a ''solicitation'' upon issuance of the interpretation, the impact of this change would have been minimal given the existing exemptions from the filing and information requirements of the proxy rules available to proxy voting advice businesses. The only thing that potentially would have changed for proxy voting advice businesses would have been heightened awareness of the application of Rule 14a–9 liability, including the examples of specific circumstances that could result in a violation of that rule. To the extent that some proxy voting advice businesses did not previously understand their voting advice to constitute solicitations and thus be subject to Rule 14a–9 liability, it is possible that this heightened awareness could cause those businesses to take more care in preparing their recommendations. It is also possible that this heightened awareness could expose proxy voting advice businesses to greater risk of litigation under Rule 14a–9. However, the Commission is not aware of evidence—including any specific information provided by commenters—that the interpretation has resulted or would result in substantial changes in proxy voting advice businesses' practices. In any event, even if we were to consider Rule 14a–9 as though it were to apply to proxy voting advice businesses for the first time, we believe the benefits to investors of this antifraud rule insofar as it would deter proxy voting advice businesses from making materially false or misleading statements or omissions supports its application to proxy voting advice notwithstanding the costs associated with any increased risk of litigation. For all of these reasons, we do not expect that using a baseline prior to the Commission Interpretation on Proxy Voting Advice would have significantly altered our assessment of the economic effects of the proposed amendments.

Finally, we note that—beyond the codification of our interpretation of solicitation—the conflicts disclosure requirements and principles-based engagement requirements in the final amendments will be new for all proxy voting advice businesses. The economic effects of these amendments are thus analyzed as new requirements for each of these businesses, regardless of whether they understood their proxy voting advice to constitute a ''solicitation'' prior to the interpretation. Accordingly, we believe that our economic analysis appropriately captures the anticipated economic effects of the final amendments.

C. Benefits and Costs

We discuss the economic effects of the final amendments below. For both the benefits and the costs, we consider each piece of the final amendments in turn. The final amendments include: (1) Amendments to the definition of solicitation in Rule 14a–1(l); (2) conditioning availability of the exemptions in Rules 14a–2(b)(1) and (b)(3) on (a) proxy voting advice businesses providing disclosure regarding conflicts of interest and (b) proxy voting advice businesses adopting and publicly disclosing written policies and procedures reasonably designed to ensure that the proxy voting advice is made available to registrants at or prior to the time when such advice is disseminated to the proxy voting advice business's clients and that the proxy voting advice business provides clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written statement about the proxy voting advice in a timely manner; and (3) an amendment to the examples in Rule 14a–9 of disclosure that, if omitted from a proxy solicitation and depending upon the particular facts and circumstances, may be misleading.

1. Overview of Benefits and Costs and Comments Received

a. Benefits

As discussed in further detail below, we expect the rule to generate benefits compared to the baseline for clients of proxy voting advice businesses and investors, and, albeit to a lesser extent, for proxy voting advice businesses and registrants. We expect that the largest benefits will come from conditioning availability of the exemptions in Rules 14a–2(b)(1) and (b)(3) on proxy voting advice businesses providing certain disclosures and maintaining certain policies and procedures. In contrast, amendments to the definition of solicitation in Rule 14a–1(l) and to Rule 14a–9 represent less significant changes from the existing baseline and will likely result in more modest benefits for proxy voting advice businesses and their clients.

Two commenters expressed support for the general benefits that the

[571] *See* letter from ISS; *see also* Standard of Conduct for Investment Advisers.

[572] *See* letter from ISS.

[573] *See supra* notes 41 through 53 and accompanying text.

[574] *See supra* note 74.

[575] *See* letter from ISS. Another commenter argued that under that baseline, proxy voting advice businesses were governed by the fiduciary standard of the Advisers Act, which already required proxy voting advice businesses to disclose conflicts of interest. *See* letter from Glass Lewis II. As noted above, the Commission acknowledges that some, but not all, proxy voting advice businesses may be subject to other regulatory regimes, including the Advisers Act.

[576] *See supra* Section II.A.3.

proposed rules would generate.[577] Both commenters argued that the shareholder proxy voting process is beset with collective-action problems, whereby both institutional and retail investors are not motivated to incur large expenses to collect information to become better informed about a company, particularly when the company is just one of a portfolio. According to the commenters, this results in resource-constrained proxy voting advice businesses that produce voting recommendations that are not adequately informed or precise. Such voting recommendations could lead to suboptimal voting decisions by clients of the proxy voting advice businesses. As we mention above, the purpose of the final amendments is to improve the information available to shareholders when making voting decisions, which could ultimately result in more efficient investment outcomes.

In contrast, several commenters generally disputed the benefits to proxy voting advice businesses' clients and investors resulting from the proposed amendments.[578] One commenter argued that the general benefits of the rule are speculative at best,[579] while two other commenters characterized them as ''illusory.'' [580] One of these commenters asserted that none of the amendments would create any benefits for proxy voting advice businesses and their clients and that the only beneficiaries would be self-interested corporate insiders.[581] Another commenter argued that the proposed rules would not improve the quality of proxy advice, asserting that the benefits are small and uncertain.[582]

We do not agree with these assessments. While the extent of the benefits will depend on the existing practices of proxy voting advice businesses and how they choose to implement the required disclosures and procedures (as well as the existing practices of their clients and how they, in turn, adjust), we believe that the improved transparency that the final rules will generate will be beneficial for proxy voting advice businesses' clients and will likely improve the overall proxy voting process. Indeed, the fact that in certain circumstances, and to varying extents, proxy voting advice businesses already incorporate practices similar to the final amendments belies the notion that these expected benefits are speculative or illusory. For example, if proxy voting advice businesses saw no benefit to providing conflicts of interest disclosure to their clients, they would not provide such disclosure currently, absent a regulatory requirement. We also note that the final amendments reflect significant changes from the proposal in light of commenter input and concerns, and we believe these changes focus on improvements to the proxy process most likely to yield benefits and result in final amendments that are less costly, when measured against the baseline, as compared to the costs of the proposal.

b. Costs

We expect that proxy voting advice businesses as well as registrants will incur direct costs as a result of the final amendments. In the following sections, we analyze the costs of the final amendments due to changes in proxy voting advice business disclosure and engagement practices relative to the baseline. Further, to the extent that any of the final amendments impose direct costs on proxy voting advice businesses that are passed along to clients, the final amendments could impose indirect costs on clients of proxy voting advice businesses, including investment advisers and institutional investors, and the underlying investors they serve, if applicable.

Some commenters expressed concern that the economic analysis in the Proposing Release was not thorough enough or that it understated the costs and other negative effects that the proposed rules would have on proxy voting advice businesses and investors.[583] Some of these commenters also commented on the costs of specific proposed amendments, which we discuss below. One commenter stated that, with respect to the quantitative cost estimates in the Commission's Paperwork Reduction Act (''PRA'') analysis, it believed the actual compliance costs would be 240 times those estimated in the Proposing Release.[584] One commenter urged a more thorough cost-benefit analysis or other investigation to gather data from which reasonable cost estimates can be extrapolated.[585]

We acknowledge, as we did in the Proposing Release, that the final amendments will likely generate direct and indirect costs for proxy voting advice businesses and potentially their clients. To the extent that a large driver of the costs discussed by commenters would have been the proposed amendment regarding registrant review and response to proxy voting advice, the flexibility afforded by the principles-based approach reflected in the final rules, particularly as it accommodates practices similar to current practices, should result in lower costs for proxy voting advice businesses and their clients as compared to the more prescriptive approach we proposed.

In the following sections, we discuss the specific costs and benefits for each aspect of the final amendments.

2. Codification of the Commission's Interpretation of ''Solicitation'' Under Rule 14a–1(l) and Section 14(a)

We are codifying the Commission's interpretation that, as a general matter, proxy voting advice constitutes a solicitation within the meaning of the Exchange Act Rule 14a–1(l). Overall, we do not expect this amendment to have a significant economic impact because it codifies an already-existing Commission interpretation. This interpretation itself did not modify existing law or reflect a change in the Commission's position and is distinct from the amendments conditioning availability of the exemptions in Rules 14a–2(b)(1) and (b)(3) on proxy voting advice businesses providing certain disclosures and maintaining certain policies and procedures, which we acknowledge would alter the costs and benefits associated with being subject to the federal proxy rule regime and which we discuss in detail below.[586] Nonetheless, the final amendment to Rule 14a–1 codifying this interpretation in the Commission's proxy rules may provide more clear notice that Section 14(a) and the proxy rules apply to proxy voting advice. Parties receiving proxy voting advice may benefit from such notice to the extent that it informs them that the

[577] *See* letters from James R. Copland, Senior Fellow and Director, Legal Policy, Manhattan Institute for Policy Research (Feb. 3, 2020) (''Manhattan Institute''); B. Sharfman I.

[578] *See* letters from Bricklayers; ISS; New York Comptroller II; ProxyVote II.

[579] *See* letter from ProxyVote II.

[580] *See* letters from CFA Institute I; ISS.

[581] *See* letter from ISS.

[582] *See* letter from Bricklayers.

[583] *See* letters from Bricklayers; CalPERS; CFA Institute I; Kathryn McCloskey, Director, Social Responsibility, United Church Funds (Feb. 3, 2020) (''Church Funds''); CII IV; Glass Lewis II; Karen L. Barr, President and CEO, Investment Adviser Association, (Feb. 3, 2020) (''IAA''); ICI; ISS; New York Comptroller II; Ohio Public Retirement; Lucian Arye Bebchuk, James Barr Ames Professor of Law, Economics, and Finance, Harvard Law School (Feb. 3, 2020) (''Prof. Bebchuk''); ProxyVote II; IASJ; Segal Marco II. *See also* IAC Recommendation.

[584] *See* letter from Nichol Garzon-Mitchell, Senior Vice President, General Counsel, Glass Lewis (Jan. 7, 2020) (''Glass Lewis I'').

[585] *See* letter from Ohio Public Retirement.

[586] Several commenters suggested that the Commission should use a baseline that does not include the August 19 interpretation. *See, e.g.,* letters from Glass Lewis II; ISS. We respond to these comments in *supra* Section IV.B.2.

communication they receive from proxy voting advice businesses is subject to the protections (*e.g.,* antifraud protections) that come from the fact that such communication is a solicitation. As discussed above, even if a proxy voting advice business had believed it was not engaged in a ''solicitation'' prior to the interpretation, we believe the impact of this change would be minimal given the existing exemptions from the filing and information requirements of the proxy rules available to proxy voting advice businesses. The Commission is unaware of specific evidence that the interpretation has resulted or would result in a substantial increase in costs due to the application of Rule 14a–9 to proxy voting advice.[587]

We also are amending Rule 14a–1(l)(2) to clarify that the furnishing of proxy voting advice by certain persons will not be deemed a solicitation. Specifically, voting advice from a person who furnishes such advice only in response to an unprompted request for the advice or a person who does not market its expertise as a provider of proxy voting advice, separately from other forms of investment advice, will not be deemed a solicitation. Again, we do not expect this adopted amendment to have a significant economic impact because it codifies the Commission's longstanding view that such a communication should not be regarded as a solicitation subject to the proxy rules.

3. Amendments to Rule 14a–2(b)

a. Conflicts of Interest—New Rule 14a–2(b)(9)(i)

i. Benefits

We are amending Rule 14a–2(b) to make the availability of the exemptions in Rules 14a–2(b)(1) and (b)(3) for proxy voting advice businesses contingent on providing enhanced disclosure of conflicts of interest specifically tailored to proxy voting advice businesses and the nature of their services.[588] These conflicts of interest disclosures are intended to augment existing requirements by eliciting information that may not be captured by the current requirements of either Rule 14a–2(b)(1) and (b)(3) and that is more tailored to proxy voting advice businesses and the nature of their conflicts. The final amendments require disclosure of conflicts that is sufficiently detailed such that clients of proxy voting advice businesses can understand the nature and scope of the interest, transaction, or relationship and assess the objectivity and reliability of the proxy voting advice they receive. In addition, proxy voting advice businesses availing themselves of an exemption will be required to disclose any policies and procedures used to identify, as well as the steps taken to address, any material conflicts of interest, whether actual or potential, arising from such relationships and transactions. The final amendments also will specify that the enhanced conflicts disclosures must be provided in the proxy voting advice and in any electronic medium used to deliver the advice.

We believe the final amendments will benefit the clients of proxy voting advice businesses by enabling them to better assess the objectivity of the proxy voting advice businesses' advice against potentially competing interests. Under Rule 14a–2(b)(9)(i), disclosure of conflicts will be more comprehensive regardless of which exemption the proxy voting advice business relies upon for its proxy voting advice.[589] Furthermore, we believe the requirement that conflicts of interest disclosures be included in the voting advice will benefit clients of proxy voting advice businesses by making more standard the time and manner in which such principles-based information is disclosed and ensuring that the required disclosures receive due prominence and can be considered together with proxy voting advice at the time clients are making voting determinations. We believe this will, in turn, make it easier or more efficient for such clients to review and analyze the conflicts disclosure, thus reducing the agency costs associated with utilizing the services of proxy voting advice businesses.

Disclosure of material conflicts of interest can lead to more informed decision-making, and we anticipate that institutional investors and investment advisers will use information from disclosures of material conflicts of interest to make more informed voting decisions.[590] Thus, to the extent they enable the clients of proxy voting advice businesses to make more informed voting decisions on investors' behalf, these disclosure requirements will also benefit investors. Further, we believe these disclosures will make it easier and more efficient for clients that are investment advisers to conduct a reasonable review of a proxy voting advice business's policies and procedures regarding how the proxy voting advice business identifies and addresses conflicts of interest.[591]

One commenter that is a proxy voting advice business and a registered investment adviser suggested that the benefits associated with Rule 14a–2(b)(9)(i) will be marginal because of proxy voting advice businesses' existing fiduciary duty to their clients and the disclosures they already provide.[592] Relatedly, several institutional clients of proxy voting advice businesses stated that they believe existing practices provide sufficient disclosure of conflicts of interest under the baseline.[593] As an initial matter, not all proxy voting advice businesses have registered as investment advisers and hence may not have the same fiduciary duty as the commenter. Moreover, even where certain proxy voting advice businesses provide detailed disclosure about conflicts of interest under existing practices or regulatory regimes, requiring tailored disclosure as a condition to the proxy rule exemptions will help to ensure that the disclosure is more consistently provided to consumers of proxy voting advice across the industry. As noted in Section IV.B.1 above, existing conflict of interest disclosure by proxy voting advice businesses differs across firms, including in structure, coverage, and manner of conveyance.

Importantly, the final rule will provide users of proxy voting advice with timely access to such disclosure in the proxy voting advice and in any electronic medium used to deliver the advice. As a result, we believe the final rule will allow clients of proxy voting advice businesses to more efficiently access the conflicts disclosure and assess a proxy voting advice business's potential conflicts of interest. However, we acknowledge that, to the extent that proxy voting advice businesses currently provide information that meets or exceeds the adopted disclosure requirements, and to the extent that clients of proxy voting advice businesses find current disclosure practices under the baseline to be sufficient, the benefits described above will be more limited.[594]

[587] See discussion in *supra* Section IV.B.2.

[588] *See supra* Section II.B.3.

[589] As noted above, Rule 14a–2(b)(3) requires disclosure of significant relationships with the registrant or relevant shareholder proponent, whereas Rule 14a–2(b)(1) does not currently require conflict of interest disclosures.

[590] *See* letter from CEC.

[591] *See supra* Section II.B.3.

[592] *See* letter from ISS.

[593] *See supra* notes 195–197.

[594] For example, ISS and Glass Lewis are signatories to a set of voluntary industry-developed practices which state that, as a matter of principle, signatories should have processes in place to identify and disclose conflicts of interest to their clients. *See* BPP Group Best Practice Principles for Shareholder Voting Research, *available at https://bppgrp.info* (last visited May 21, 2020).

iii. Costs

The new conflicts of interest disclosure requirements will impose a direct cost on proxy voting advice businesses to the extent proxy voting advice businesses are not already providing information that meets the adopted materiality-based disclosure requirements.[595] Specifically, proxy voting advice businesses will bear direct costs associated with: (i) Reviewing and preparing disclosures describing their conflicts; (ii) developing and maintaining methods for tracking their conflicts; (iii) seeking legal or other advice; and (iv) updating their voting platforms. Proxy voting advice businesses that are investment advisers are already required to identify conflicts and to eliminate or make full and fair disclosure of those conflicts.[596] Further, proxy voting advice businesses that are retained by investment advisers to assist them with proxy voting may already provide such conflicts disclosure in connection with the investment advisers' evaluation of the capacity and competency of the proxy voting advice business. Additionally, as discussed above, proxy voting advice businesses who currently rely on the Rule 14a–2(b)(3) exemption already must disclose any significant relationship or material interest bearing on the voting advice.

We are unable to provide quantitative estimates of these direct costs on proxy voting advice businesses because the facts and circumstances unique to each proxy voting advice business, including the disclosures it currently provides to its clients as well as the nature of its material interests, transactions, and relationships, will dictate the additional disclosure, if any, it must provide under the final rule. As discussed in Section II.B.1 above, boilerplate language will not be sufficient to satisfy new Rule 14a–2(b)(9)(i). Under the rule, a proxy voting advice business will be required to provide conflicts disclosure with enough specificity to enable its clients to adequately assess the objectivity and reliability of the proxy voting advice. As a result, the disclosure provided by the proxy voting advice business could differ depending on the circumstances (*e.g.,* depending on the scope of services it provides its clients and the subject registrant) and may need to be updated periodically as both the business's and its clients' interests change. Additionally, proxy voting advice businesses' direct costs will depend on the extent to which their current practices and procedures already meet or exceed the new disclosure requirements.[597]

A number of commenters asserted that the amendments regarding enhanced conflict of interest disclosure would impose compliance costs.[598] One commenter stated that the proposed additional disclosures of conflicts of interest would generate additional paperwork burdens but no additional benefits.[599] Another commenter that addressed the PRA burdens of the new conflicts of interest disclosure estimated that identifying and disclosing conflicts in the manner specified in the proposal would result in an additional one hour to identify conflicts at 5,565 registrants and 0.5 hours to disclose conflicts at 807 issuers, for a total of 5,969 additional hours per year.[600] As noted in Section V.C.1.a below, in response to that commenter's feedback, we have increased our PRA burden estimates of the enhanced conflict of interest disclosure. For PRA purposes, we estimate that the cost of the enhanced conflict of interest disclosure will be 6,000 burden hours per proxy voting advice business.

One commenter stated that the proposed amendments would compromise the firewall between its proxy voting advice business and corporate services business,[601] presumably by revealing the clients of the corporate services arm to the research arm. We note, however, that the rule we are adopting gives a proxy voting advice business the option to include the required disclosure either in its proxy voting advice *or* in an electronic medium used to deliver the proxy voting advice, such as a client voting platform, which allows the business to segregate the information, as necessary, to limit access exclusively to the parties for which it is intended.

Another commenter argued that the enhanced conflict of interest disclosure could artificially and significantly inflate the number of conflicts reported.[602] Because proxy voting advice businesses have not been providing the level of enhanced disclosure required by the final rule, compliance with the final rules would, according to the commenter, make it appear as if proxy voting advice businesses have to date been underreporting material conflicts of interest. According to the commenter, this would result in reputational harm for proxy voting advice businesses. While we agree that an increase in the number of material conflicts reported could affect the reputation of proxy voting advice businesses, we believe it is appropriate for proxy voting advice businesses that have conflicts with the potential to influence the recommendations they provide clients to bear the reputational effects and other costs associated with disclosure of those conflicts.

As discussed in Section II.B.3 above, the final amendments have been revised to streamline the requirements and provide proxy voting advice businesses the flexibility to determine which situations merit disclosure and the specific details to provide to their clients about any conflicts of interest identified. This less prescriptive approach should help alleviate concerns that the new requirement will compel disclosure of information that may compromise existing safeguards, result in unduly lengthy disclosures, or harm proxy advice voting businesses' reputations. In addition, the revised approach may make it easier for businesses to leverage their existing disclosures to satisfy the final rule and mitigate concerns that the rule will result in unnecessary paperwork burdens, while still providing more consistent information about conflicts of interest.

b. Notice of Proxy Voting Advice and Registrant Response—New Rule 14a–2(b)(9)(ii)

i. Benefits

In contrast to the Proposing Release, the final amendments to Rule 14a–2(b)(9) set forth a principles-based approach designed to ensure that proxy voting advice businesses' clients have access to more transparent and complete information and benefit from a robust discussion of views when making voting decisions.[603] The final amendments also provide non-exclusive safe harbors that the proxy voting advice businesses may use to satisfy the principles-based requirements in Rule 14a–2(b)(9)(ii).

We believe the final amendments will benefit clients of proxy voting advice businesses—and thereby ultimately benefit the investors they serve—by enhancing the overall mix of information available to those clients as they assess proxy voting advice and make determinations about how to cast votes. Providing timely notice to registrants of voting advice will allow registrants to more effectively determine

[595] *Id.*

[596] *See* Standard of Conduct for Investment Advisers.

[597] *See supra* Section II.B.3.

[598] *See, e.g.,* letters from ISS; IAA; Ohio Public Retirement.

[599] *See* letter from CalPERS.

[600] *See* letter from Glass Lewis I.

[601] *See* letter from ISS.

[602] *See* letter from Ohio Public Retirement.

[603] *See supra* Section II.C.3.

whether they wish to respond to the recommendation by publishing additional soliciting materials and to do so in a timely manner prior to shareholders casting their votes. Registrants may wish to do so for a variety of reasons, including, for example, because they have identified what they perceive to be factual errors or methodological weaknesses in the proxy voting advice businesses' analysis or because they have a different or additional perspective with respect to the recommendation. In either case, clients of proxy voting advice businesses may benefit from the availability of additional information upon which to base their voting decision. Registrants may also wish to respond because they agree with some or all aspects of the analysis. In that case, that fact also would likely be relevant to and enhance a client's decision-making. Further, to the extent that proxy voting advice businesses choose to adopt policies and procedures that permit them to refine their advice based on any feedback they might receive from registrants, users of the advice and the investors they serve (if applicable) could benefit from more reliable and complete voting advice.

Ensuring that a proxy voting advice business provides clients with a mechanism by which they can reasonably be expected to become aware of any written response by a registrant to the proxy voting advice (*i.e.,* additional soliciting materials) will benefit users of the advice—including any underlying investors—by ensuring that they have ready and timely access to the registrant's perspective on such advice when considering how to vote. Clients of proxy voting advice businesses often must make voting decisions in a compressed time period. Timely access to registrant responses to the advice would facilitate clients' evaluation of the voting advice by highlighting disagreement on facts and data, differences of opinion, or additional perspectives before the client casts its votes.

One commenter questioned the benefits to clients of proxy voting advice businesses from the registrants' ability to review the proxy voting advice.[604] According to that commenter, accurate and complete advice is already being provided by proxy voting advice businesses to their clients. As we discuss in Section II.B.2 above, and as noted by several commenters,[605] some proxy voting advice businesses currently have internal policies and procedures aimed at enabling feedback from certain registrants before they issue voting advice. This suggests that proxy voting advice businesses themselves recognize the potential benefit of such feedback, which could serve as a bonding mechanism for these businesses by demonstrating to clients that the proxy voting advice business believes the advice it provides is based on accurate information. Even where proxy voting advice businesses currently provide opportunities for review and feedback, however, these existing practices may be inadequate to appropriately mitigate the agency costs associated with use of proxy voting advice. Specifically, it does not appear that all proxy voting advice businesses currently provide all registrants with an opportunity to review proxy voting advice.[606] Under Rule 14a–2(b)(9)(ii), proxy voting advice businesses' policies and procedures must be reasonably designed to ensure that proxy voting advice is made available to registrants that are the subject of such advice in a timely manner prior to or at the same time when such advice is disseminated to the proxy voting advice businesses' clients and thus will provide additional registrants with the ability to respond to that advice (if they so choose) in a timely manner, thereby enhancing the total mix of information available to proxy voting advice business clients.

Rule 14a–2(b)(9)(iii) could also yield benefits to the extent that proxy voting advice businesses' policies and procedures encourage registrants to file their definitive proxy statements earlier than they otherwise would. Earlier filing of definitive proxy statements could benefit investors generally, as they will have more time to review the materials. As discussed below, earlier filing of these materials also could help mitigate potential costs for proxy voting advice businesses stemming from Rule 14a–2(b)(9)(iii). Under the safe harbor provided by the final amendments, proxy voting advice businesses may condition dissemination of proxy voting advice to a registrant on the registrant filing its definitive proxy statement at least 40 calendar days before the annual meeting. One commenter submitted data analysis showing that, for 2018, more than 87.8 percent of registrants filed proxy materials at least 40 calendar days before an annual meeting.[607] Based on these estimates, proxy voting advice businesses that choose to avail themselves of the safe harbor by implementing its terms without modification might affect the timing of up to 12.2 percent of filings.[608] We note, however, that proxy voting advice businesses may structure their policies to accommodate registrants that may file less than 40 calendar days before the shareholder meeting and remain within the safe harbor.

ii. Costs

With respect to the requirement that proxy voting advice businesses adopt and publicly disclose policies and procedures reasonably designed to ensure that (i) registrants receive in a timely manner the proxy voting advice report, and (ii) proxy voting advice businesses provide clients with a mechanism by which they can reasonably be expected to become aware of a registrant's additional soliciting material in response to the advice in a timely manner, proxy voting advice businesses will bear direct costs. There will also be indirect costs to other parties.

(a) Direct Costs

For the principle set forth in Rule 14a–2(b)(9)(ii)(A), proxy voting advice businesses will bear direct costs associated with modifying current systems and methods, or developing and maintaining new systems and methods, to ensure the conditions of the exemption are met and with delivering the report to registrants. While some proxy voting advice businesses may already have systems in place to address some or all of these requirements,[609] we do not have data that would allow us to estimate the costs associated with modifying or developing these systems and methods to encompass all registrants. To the extent proxy voting advice businesses already have similar systems in place, any additional direct cost may be limited. In addition, as we

[604] *See* letter from ISS.

[605] *See, e.g.,* letters from Glass Lewis II; ISS.

[606] *See supra* Section IV.A.

[607] *See* letter from CII VIII. Calculated as (2,900 + 460)/3,828 = 0.878. The commenter stated that of 3,828 companies, 2,900 filed proxy materials between 40 and 48 calendar days in advance of annual meetings and 460 filed proxy materials 50 or more days in advance of annual meetings.

[608] Under the safe harbor, a registrant may opt to forgo the benefits of receiving notice of proxy voting advice at the same time as clients if it deems accelerating the filing of its proxy materials to meet the 40-day threshold sufficiently costly.

[609] *See, e.g.,* letter in response to the SEC Staff Roundtable on the Proxy Process from Glass Lewis (Nov. 14, 2018) (''Glass Lewis has a resource center on its website designed specifically for the issuer community via which public companies, their directors and advisors can, among other things: (i) Submit company filings or supplementary publicly available information; (ii) participate in Glass Lewis' Issuer Data Report ('IDR') program, prior to Glass Lewis completing and publishing its analysis to its investor clients; and (iii) report a purported factual error or omission in a research report, the receipt of which is acknowledged immediately by Glass Lewis, then reviewed, tracked and dealt with internally prior to responding to the company in a timely manner.'').

discuss in more detail below, depending on how proxy voting advice businesses choose to meet the principle, they may incur direct costs associated with executing, obtaining, or modifying acknowledgments or agreements with respect to the use of any information shared with the registrant in the process of delivering the report to the registrant.

A proxy voting advice business may also incur direct costs in satisfying the requirement of Rule 14a–2(b)(9)(ii)(B) that it adopt and publicly disclose written policies and procedures reasonably designed to ensure that the proxy voting advice business provides clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written statements about the proxy voting advice in a timely manner before the shareholder meeting. For example, to be eligible for the safe harbor in the new Rule 14a–2(b)(9)(iv), a proxy voting advice business could provide: (i) Notice on its electronic client platform that the registrant has filed, or has informed the proxy voting advice business that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available); or (ii) notice through email or other electronic means that the registrant has filed, or has informed the proxy voting advice business that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available). Both mechanisms for informing clients could involve initial set-up costs as well as ongoing costs.

Since they are not required to rely on the safe harbor, proxy voting advice businesses may also put in place other mechanisms by which their clients may reasonably be expected to become aware of a registrant's written statements about the proxy voting advice in a timely manner, which could be more or less costly than relying on the safe harbor. Under the final amendments, those mechanisms also must ensure that clients obtain the notification in a timely manner. Because the final amendments permit proxy voting advice businesses substantial flexibility in satisfying this condition, we expect proxy voting advice businesses to implement mechanisms differently depending on, among other things, their own facts and circumstances and the nature of their client bases. Thus, the overall costs of satisfying this condition are difficult to quantify. We believe, however, that the costs of implementing a mechanism by which clients may reasonably be expected to become aware of registrants' views could involve (i) developing systems to gather information about the filing of additional soliciting materials by registrants; and (ii) modifying existing systems so that clients may reasonably be expected to become aware that registrants have filed such additional soliciting materials. To the extent proxy voting advice businesses already have similar systems in place, any additional direct cost may be limited.

Many commenters asserted that allowing registrants to review the proxy voting advice that proxy voting advice businesses have prepared for clients, as would have been required under the proposed rules, would generate significant costs for proxy voting advice businesses and their clients.[610] Some commenters stated that the sheer volume of reports that proxy voting advice businesses would have to send to registrants would generate large compliance costs. For example, one commenter noted that the number of reports it alone would need to send to registrants for review would increase from 450 in 2019 to approximately 6,500 to 25,000 post-adoption, and that it would incur costs of drafting at least 6,000 confidentiality agreements.[611] Another commenter asserted that the compliance costs stemming from this amendment would be disproportionately higher for smaller proxy voting advice businesses.[612] Some commenters indicated that, under the proposed rules, proxy voting advice businesses would have to negotiate and enter into confidentiality agreements with each applicable registrant to avoid the dissemination of sensitive information, and the commenters provided estimates of those burdens.[613]

We recognize the concerns raised by these commenters regarding compliance costs associated with the proposed registrant review and response process. In response, as suggested by several commenters, we are adopting a more principles-based approach intended to achieve many of the same objectives of the proposal without unduly encumbering the ability of proxy voting advice businesses to provide their clients with timely and reliable voting advice. The final amendments will require proxy voting advice businesses to have policies and procedures reasonably designed to ensure that proxy voting advice is made available to registrants at or prior to or at the same time it is disseminated to the proxy voting advice businesses' clients rather than within a specified period of time. Additionally, the final amendments impose only a one-time obligation with respect to notifying registrants of a given proxy voting advice. We are also adopting new Rule 14a–2(b)(9)(v), which will exclude from the scope of Rule 14a–2(b)(9)(ii) proxy voting advice to the extent that such advice is based on custom policies, and new Rule 14a–2(b)(9)(vi), which will exclude from the scope of Rule 14a–2(b)(9)(ii) proxy voting advice as to non-exempt solicitations regarding certain mergers and acquisitions or contested matters.

We believe the significant additional flexibility in the final amendments will enable proxy voting advice businesses to design policies and procedures that satisfy the new conditions of the exemptions but are nonetheless efficiently tailored to their specific business models and practices. This more flexible approach also may permit proxy voting advice businesses to leverage their existing systems and methods to satisfy the conditions. We thus believe, when measured against the baseline, the final amendments will impose lower compliance costs and result in fewer disruptions for proxy voting advice businesses and their clients, than the more prescriptive approach set forth in the proposal.

While a more principles-based approach to regulation provides additional flexibility for affected parties, it also may impose certain costs if the parties are unsure of what measures are needed to satisfy the legal requirement. For example, such an approach can entail additional judgment on the part of management or result in parties doing more than what is required in order to ensure they satisfy the applicable standard. The non-exclusive safe harbors built into the final amendments will provide legal certainty to proxy voting advice businesses that they can rely on the solicitation exemptions in Rules 14a–2(b)(1) and (b)(3) and therefore could further mitigate the compliance burdens associated with the

[610] *See, e.g.,* letters from CalPERS; CFA Institute I; CII IV; IAA; ICI; ISS; New York Comptroller II; Olshan LLP; Ohio Public Retirement; Prof. Bebchuk; ProxyVote II.

[611] *See* letter from ISS.

[612] *See* letter from CII IV.

[613] *See* letters from CalPERS (indicating that proxy voting advice businesses would need to enter into hundreds or possibly thousands of different agreements which would be costly); ISS (stating that it would incur costs of drafting at least 6,000 confidentiality agreements); Glass Lewis I (estimating that it will incur a compliance burden of four hours per registrant to negotiate or secure confidentiality agreements with 4,912 issuers for a total of 19,648 hours); Olshan LLP (suggesting that negotiating such agreements would result in the allocation of significant time and cost by proxy voting advice businesses). Also, one commenter argued that confidentiality agreements would be ineffective at preventing leaks of proxy voting advice due to the large number of registrant employees that would have access to the information. *See* letter from Olshan LLP.

new conditions. They also may provide some guidance to proxy voting advice businesses about how they can design their own policies and procedures to satisfy the conditions.

As noted in Section V.C.1.a below, we believe that much of the burden of the final amendments would be for the proxy voting advice business to develop policies that satisfy the principles and accordingly modify or develop systems and practices to implement such policies. The principles-based approach we implement should help reduce such compliance costs significantly, which would likely result in a lower PRA burden than the commenter estimates based on the proposal. Also, our revised PRA estimates take into consideration our understanding that some proxy voting advice businesses have systems and practices in place that may complement or overlap with the new requirements, which could substantially reduce compliance costs. For PRA purposes, we estimate that each proxy voting advice business would incur 2,845 burden hours for the notice to registrants under Rule 14a–2(b)(9)(ii)(A) and 2,845 burden hours for the notice to clients under Rule 14a–2(b)(9)(ii)(B).[614]

In addition to these system-related costs, we expect that proxy voting advice businesses would, as a general matter, obtain acknowledgments or agreements with respect to the use of any information shared with a registrant, as we expect that the business would seek to limit disclosure of its report. Several of the changes to the final rule amendments should allow proxy voting advice businesses to take measures to reduce these compliance costs compared with the cost of the confidentiality agreements contemplated under the proposal. For example, under the principles-based approach that we are adopting, in instances where a proxy voting advice business judges the potential impact of the disclosure of information contained in the report to be high it could provide the advice to registrants at the time it is provided to their clients or it may choose to provide draft reports to registrants before making them available to clients while imposing more stringent confidentiality requirements or terms of use on registrants to prevent release of commercially sensitive information. This should reduce the risk that commercially sensitive information about proxy voting advice may be disseminated more broadly.

Moreover, as adopted, the principles-based approach does not dictate the manner in which proxy voting advice businesses provide the report to registrants, and instead gives the proxy voting advice business discretion to choose how best to implement the principle of the rule and incorporate it into the business's policies and procedures, including by leveraging existing practices. In this regard, we note that some proxy voting advice businesses currently provide reports to registrants without requiring formal confidentiality agreements, instead requiring only an electronic acknowledgement of terms of use.[615] Such an approach is likely to involve less negotiation between proxy voting advice business and registrants than formal confidentiality agreements, and thus lower compliance costs.[616] Further, an acknowledgment of terms of use could be designed to apply prospectively, including for future proxy seasons, making this a one-time cost when a proxy voting advice business initiates coverage of a registrant. Overall, for purposes of our PRA, we estimate that each proxy voting advice business will incur a burden of between 50 and 5,690 hours per year associated with securing an acknowledgment or other assurance that the proxy advice will not be disclosed.[617] Another potential cost for proxy voting advice businesses could result from new Rule 14a–2(b)(9)(vi). When additional matters are presented for shareholder approval at meetings with applicable M&A transaction or contested matters, then the portion of the proxy voting advice provided with respect to the applicable M&A transaction or contested matters will be excluded from the scope of Rule 14a–2(b)(9)(ii). This means that in those situations, proxy voting advice businesses may choose to redact the report that they have to deliver to registrants, which will generate costs for them. It is also possible, however, that proxy voting advice businesses would choose instead to deliver an un-redacted report, in which case they will not incur the costs of redaction.[618]

A number of commenters raised concerns about the costs associated with the provisions in the proposed rules that would have established a formal process by which the registrant would be given the opportunity to review and provide feedback on draft voting advice.[619] The principles-based approach in the final rules obviates the need for a prescribed process for engagement with the registrant and instead allows proxy voting advice businesses to decide when and how to provide notice of the proxy voting advice businesses' voting advice to registrants. Under this approach, proxy voting advice businesses are not required to, although they may, share pre-publication drafts with registrants for their feedback. Rather, they must provide the registrant with a copy of their advice, which could be at the same time as the advice is shared with clients. Moreover, as with the proposal, nothing in the final amendments will require proxy voting advice businesses to alter their advice in response to registrant feedback. Thus, we believe the final amendments will substantially address, if not eliminate altogether, the concerns raised by commenters related to

[614] *See* discussion in *infra* Section V.B.1 for the assumptions we make when estimating hours and costs associated with maintaining, disclosing, or providing the information required by the amendments that constitute paperwork burdens imposed by a collection of information.

[615] For example, Glass Lewis requires a registrant to click and agree to certain ''terms of use'' before being able to access the notice and recommendations.

[616] We recognize that some proxy voting advice businesses, irrespective of their current practices or what the final amendments envision, may nevertheless choose to enter into formal confidentiality agreements with some registrants. For such proxy voting advice businesses, the compliance costs may be closer to those estimated by the commenters.

[617] *See* discussion in *infra* Section V.B.1 for the assumptions we make when estimating hours and costs associated with maintaining, disclosing, or providing the information required by the amendments that constitute paperwork burdens imposed by a collection of information.

[618] In choosing not to redact, proxy voting advice businesses potentially increase their exposure to the risk that their recommendations will be revealed to market participants. As a result, we anticipate that proxy voting advice businesses will be less likely to offer pre-publication review to registrants of reports that contain recommendations related to contested matters or M&A transactions.

[619] *See, e.g.,* letters from Prof. Bebchuk; ISS; Kerrie Waring, Chief Executive Officer, International Corporate Governance Network (Nov. 21, 2019) (''ICGN''); Segal Marco II; TIAA; Daniel P. Hanson, Chief Investment Officer, Ivy Investment Management Company (Feb. 3, 2020) (''Ivy Investment''); Olshan LLP; First Affirmative. *See also* IAC Recommendation. Some commenters expressed a concern that allowing a registrant or other soliciting person to review and provide feedback on the voting advice before the proxy voting advice business provides it to its clients could reduce the diversity of thought in the marketplace for proxy voting advice. *See, e.g.,* letters from Prof. Bebchuk; CalPERS; CFA Institute I. *See also, e.g.,* letter in response to the SEC Staff Roundtable on the Proxy Process from Glass Lewis (''We believe that allowing an issuer to engage with us during the solicitation period may lead to discussions about the registrant's proxy, thereby providing registrants with an opportunity to lobby Glass Lewis for a change in policy or a specific recommendation against management. To ensure our research is always objective, Glass Lewis takes this added precaution and postpones any engagements until after the solicitation period has ended . . . .''). Some commenters noted conflicts between SRO rules that seek to limit issuers' pre-publication review of security analyst research reports and the proposed approach to pre-publication review of proxy voting advice. *See, e.g.,* letter from CII IV.

objectivity and timing pressure associated with the proposed engagement process.

(b) Indirect Costs

The final rule may also impose indirect costs on other parties. Proxy voting advice businesses may pass through a portion of the costs of modifying or developing systems to meet the requirements to their clients through higher fees for proxy advice. Moreover, the policies and procedures proxy voting advice businesses develop under the final rule could cause registrants to incur costs. For example, a proxy voting advice business that chooses to rely on the safe harbor in Rule 14a–2(b)(9)(iii) would adopt policies and procedures that provide a registrant with a copy of the proxy voting advice business's proxy voting advice, at no charge, no later than the time it is disseminated to the business's clients if the registrant has filed its definitive proxy statement at least 40 calendar days before the meeting date. A registrant that wishes to review proxy advice prior to the meeting date may incur costs to accelerate the filing of its definitive proxy statement to meet the 40-day threshold. However, we expect a registrant would incur these costs only if it expected the benefits of review to be sufficiently large.[620]

Proxy voting advice business may also bear indirect costs in the form of lost revenues. While all three major proxy voting advice business currently offer registrants access to proxy voting reports, in some circumstances they may charge a fee to registrants for such access,[621] or make such access available only in connection with the purchase of consulting services from an affiliate of the proxy voting advice businesses. The requirement to share full reports with registrants under Rule 14a–2(b)(9)(ii) may result in a proxy voting advice business providing access to proxy voting reports at no charge to registrants.[622] This would cause such proxy voting advice business to lose fees they otherwise would have earned from selling proxy voting reports to registrants. Without more detailed information about proxy voting advice businesses' fee schedules and information about the revenues they currently generate from selling proxy voting reports to registrants, we are unable to quantify the magnitude of these revenue losses.

Several commenters expressed concern that the economic analysis in the Proposing Release understated or failed to consider the costs of the proposals on consumers of proxy voting advice.[623] One commenter asserted that costs for customers of proxy voting advice will increase due to both the costs of reduced time to review proxy research reports and a potential increase in fees, as proxy voting advice businesses pass their increased costs on to institutional investor clients, who, in turn, would pass these costs on to their individual investor participants and beneficiaries.[624] Another commenter argued that such costs may lead some institutional investors to forgo the benefits of using a proxy voting advice business, which could ultimately be detrimental to the effectiveness of shareholder voting and oversight.[625] Similarly, one commenter suggested that the proposed rules, by increasing the costs of the proxy advice that opposes management, would impede investors' ability to monitor company management.[626] Another commenter, a proxy voting advice business, stated that the proposed changes could diminish proxy voting advice businesses' willingness to recommend votes against management and that this ''would substantially diminish the independent information available to investors and their ability to hold management accountable for their actions.'' [627] Additionally, several commenters supplied empirical evidence suggesting that the quality of proxy voting advice depends on the time available for proxy voting advice businesses to conduct research.[628] One commenter concluded from this research that the proposed requirements would reduce the quality of voting advice.[629]

The principles-based approach we are adopting should mitigate many of these concerns because it will impose compliance costs on proxy voting advice businesses that are lower than the compliance costs associated with the approach in the Proposing Release, and hence will limit the potential increase in the price of proxy advice services for proxy voting advice businesses' clients. Further, because the principles-based approach does not include a registrant review and feedback process that requires pre-publication review, it should reduce concerns that registrants will lobby proxy voting advice business for changes to recommendations, and thus should not discourage proxy voting advice business from making recommendations that oppose management or impose additional timing constraints on proxy voting advice businesses.

Registrants also could incur costs associated with coordinating with proxy voting advice businesses to receive the proxy voting advice, reviewing the proxy voting advice, and determining whether to prepare and file additional soliciting materials in response to the proxy voting advice. We expect a registrant would bear these costs only if it anticipated the benefits of such steps would exceed the costs of such a program. Similarly, because more registrants who are the subjects of proxy voting advice will have access to such proxy voting advice in advance of the shareholder vote, more registrants may file additional soliciting materials in response to proxy voting advice as a result of the rule amendments than currently do. Investment advisers, who can reasonably be expected to become aware of additional soliciting materials could incur additional costs in connection with the review of that information. Because these costs will vary depending upon the particular facts and circumstances of the proxy voting advice, any issues identified therein, the resources of the registrant or investment adviser, and in the case of an investment adviser, its policies and procedures with respect to proxy voting, it is difficult to provide a quantifiable estimate of these costs.

4. Amendments to Rule 14a–(9)

a. Benefits

Finally, we are amending Rule 14a–9 to add as an example of what could be misleading, the failure to disclose certain material information about proxy voting advice, specifically information about the proxy voting advice business's methodology, sources of information, and conflicts of interest. We do not expect the amendment to the list of examples in Rule 14a–9 to significantly alter existing disclosure practices, as it will largely codify existing Commission guidance on the applicability of Rule 14a–9 to proxy voting advice.[630] To the extent the

[620] *See supra* note 608.

[621] *See* Section IV.B.1.a.ii.

[622] To rely on the safe harbor in Rule 14a–2(b)(9)(iii), a proxy voting advice business must provide registrants with a copy of the proxy voting advice at no charge.

[623] *See, e.g.,* letters from CII IV; ICI; ISS; New York Comptroller II; PRI II; ProxyVote II; Segal Marco II; Ohio Public Retirement; Prof. Bebchuk.

[624] *See* letter from CII IV.

[625] *See* letter from Prof. Bebchuk.

[626] *See* letter from PRI II.

[627] *See* letter from ISS.

[628] *See* letter from Ana Albuquerque, Boston University, et al. (Feb 3. 2020) (''Prof. Albuquerque et al.'').

[629] *See* letter from CII IV.

[630] *See* Commission Interpretation on Proxy Voting Advice at 47419.

amendment prompts some proxy voting advice businesses to provide additional disclosure about the bases for their voting advice, the clients of these businesses—and the investors they serve—may benefit from receiving additional information that could aid in making voting determinations.

b. Costs

The final amendments to Rule 14a–9 will impose direct costs on proxy voting advice businesses to the extent the amended rule prompts some proxy voting advice businesses to provide additional disclosure about the bases for their voting advice. We expect any such costs to be minimal, especially given that the examples being codified were included in prior Commission guidance.[631]

Some commenters asserted that the main cost of the Rule 14a–9 amendments will be an increase in litigation risk for proxy voting advice businesses.[632] Several commenters stated that this increased litigation risk would make it more expensive and burdensome for proxy voting advice businesses to provide their advisory services.[633] One commenter asserted that the proposed changes amount to a new cause of action under Rule 14a–9.[634] Two other commenters argued that the proxy voting advice businesses' response to the threat of litigation under Rule 14a–9 would be to err on the side of caution in complex or contentious matters, thus increasing the likelihood of the proxy voting advice business issuing pro-registrant proxy voting recommendations.[635] We believe several factors will serve to limit this risk. As discussed above, Rule 14a–9 liability is grounded in the concept of materiality and thus would be based on the particular facts and circumstances and assessed from the perspective of the reasonable shareholder.[636] Moreover, neither our proposed amendment to Rule 14a–9 nor the other amendments we are adopting will broaden the concept of materiality or create a new cause of action, as some commenters suggested. Thus, the amendment does not change the scope or application of existing law. Therefore, we do not expect the new amendment to Rule 14a–9 to generate significant new litigation risk for proxy voting advice businesses or to result in a shift to more pro-registrant proxy voting recommendations.

5. Effect on Smaller Entities

Several commenters specifically stated that the economic analysis failed to consider the effect and cost of the proposal on smaller proxy voting advice businesses.[637] One of these commenters asserted that small entities (defined by the commenter as those with up to $5 million in assets) would face significant resource and capacity burdens when complying with the proposed amendments, without improvements in the quality of voting for clients.[638] Another commenter similarly stated the proposals would be particularly burdensome for small proxy voting advice businesses.[639] One commenter stated that the economic analysis failed to consider the proposal's effect on small and medium-sized investment advisers and stated these entities would be disproportionately affected.[640]

As mentioned in Section IV.B.1 above, the Commission is not aware of smaller firms that currently supply research, analysis, and recommendations to support the voting decisions of their clients that would fall within the definition of ''solicitation.'' We therefore cannot estimate how many small proxy voting advice businesses will be affected. However, we are cognizant that any smaller proxy voting advice businesses that operate now or in the future may incur proportionally higher compliance costs even under the final amendments, especially if some of the potential costs of the amendments are fixed. For example, small proxy voting advice businesses may not have conflicts of interest disclosure policies in place, or may not have mechanisms to inform clients of registrant feedback. We believe that the new principles-based approach we are adopting should help address some of the concerns about the final rule's disparate effect on smaller firms by providing small proxy voting advice businesses with the flexibility to design policies and procedures that are scaled to the scope of their business operations.

Further, we believe that the principles-based approach should afford existing proxy voting advice businesses flexibility to leverage their existing practices and mechanisms to efficiently comply with the new requirements, reducing the compliance burdens that they might pass through to smaller clients. Finally, we believe that because the final rules promote the availability of more complete and accurate information to proxy voting advice clients, they are responsive to calls for proxy process reform by smaller issuers to ''inspire confidence in the voting process, drive shareholder engagement, and bolster long-term value creation.''[641] Smaller issuers may also benefit from the final amendments insofar as they will have greater opportunity to receive proxy voting advice and inform their shareholders of their views on such advice, relative to the opportunities proxy voting advice business currently offer registrants under voluntary review programs.[642]

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

As discussed in Section IV.B above, proxy voting advice businesses perform a variety of functions for their clients, including analyzing and making voting recommendations on matters presented for shareholder vote and included in registrants' proxy statements. As an alternative to utilizing these services, clients of proxy voting advice businesses could instead conduct their own analysis and execute votes using internal resources.[643]

We believe that, for purposes of general analysis, it is reasonable to assume that the cost of analyzing matters presented for shareholder vote will not vary significantly with the size of the position being voted. Given the costs of analyzing and voting proxies, the services offered by proxy voting advice businesses may offer economies of scale relative to their clients performing those functions themselves. For example, a GAO study found that among 31 institutions, including mutual funds, pension funds, and asset managers, large institutions rely less than small institutions on the research and recommendations offered by proxy voting advice businesses.[644] Small

[631] *See supra* notes 46 and 67 and accompanying text.

[632] *See* letters from IAA; ISS; Glass Lewis II; Minerva I.

[633] *See* letters from IAA; Glass Lewis II; Minerva I.

[634] *See* letter from C. Icahn.

[635] *See* letters from ISS; Elliott I.

[636] *See* discussion in *supra* Section II.D.3.

[637] *See* letters from Felician Sisters II; Good Shepherd; IASJ; Interfaith Center II; St. Dominic of Caldwell.

[638] *See* letter from IASJ.

[639] *See* letter from Interfaith Center II.

[640] *See* letter from IAA.

[641] *See* 2019 Small Business Forum.

[642] *See supra* Section IV.B.1.a.ii.

[643] Clients of proxy voting advice businesses may also rely on some combination of internal and external analysis.

[644] *See* 2007 GAO Report, *supra* note 474, at 2; *see also* letter from BRT (stating since many institutional investors face voting on a large number of corporate matters every year but lack personnel and resources, they outsource tasks to proxy advisors); *see also* letters in response to the SEC Staff Roundtable on the Proxy Process from BlackRock (Nov. 16, 2018) (''BlackRock's Investment Stewardship team has more than 40 professionals responsible for developing independent views on how we should vote proxies on behalf of our clients.''); NYC Comptroller (Jan.

institutional investors surveyed in the study indicated they had limited resources to conduct their own research.[645]

By establishing requirements that promote transparency in proxy voting advice, the final amendments could lead to an increased demand for proxy voting advice businesses' voting advice. To the extent proxy voting advice businesses offer economies of scale relative to their clients performing certain functions themselves, increased demand for, and reliance upon, proxy voting advice business services could lead to greater efficiencies in the proxy voting process. At the same time, the final amendments will impose certain additional costs on proxy voting advice businesses, and these costs may be passed on to their clients. To the extent the costs passed on to a client are greater than the related benefits (or vice versa) to the client it could lead to decreased (or increased) demand for proxy voting advice business services by the client. As each client individually decides whether to use proxy voting advice business services, if aggregate demand for proxy voting advice business services increases (decreases), there will be more (or fewer) efficiencies in the proxy voting process.

Some commenters asserted that the ability of registrants to review the advice and the threat of litigation from registrants would result in voting advice from proxy voting advice businesses that is less accurate, useful, and valuable to their clients.[646] If clients perceive the amendments as affecting proxy voting advice businesses' objectivity and independence, this could lead to a decrease in demand for proxy voting advice and potentially fewer efficiencies in the proxy voting process.[647] However, as discussed above, we have made a number of changes to the proposed amendments that we believe address these concerns and will lead to more accurate, transparent and complete information for proxy voting advice business clients.[648] In addition, as discussed above, we do not expect the new amendment to Rule 14a–9 to generate significant new litigation risk for proxy voting advice businesses.[649]

Several commenters also stated that the proposed amendments could adversely affect the efficiency of how capital is allocated in two ways stemming from the potential threat of litigation by registrants and their ability to influence proxy voting advice under the proposed rule.[650] First, some of these commenters expressed concern that the amendments could reduce the independence of proxy voting advice businesses and the diversity of thought in the market for proxy advice, which in turn could reduce the information investors and investment advisers have, resulting in less efficient investment decisions.[651] Second, some of these commenters stated that the amendments would have a silencing effect on proxy voting advice businesses, resulting in value-destroying decisions by managers of registrants who are held less accountable for their actions.[652]

We believe that the principles-based approach we are adopting helps address commenter concerns about reductions in the reliability and independence of proxy voting advice. The final amendments neither require proxy voting advice businesses to share draft proxy voting advice with registrants in advance of providing advice to their clients, nor require proxy voting advice businesses to consider feedback from registrants on the proxy voting advice. In this way, the final amendments seek to limit the presence and ameliorate the possible effects of the independence-related concerns raised by commenters while preserving many of the intended benefits of the proposed engagement process, such as enhancing the accuracy, transparency and completeness of information available to clients of proxy voting advice businesses.

Other commenters disputed that the proposed amendments would bring about more accurate or transparent proxy voting advice, asserting that proxy voting advice businesses already provide adequate disclosure regarding conflicts of interest and a means for engagement with registrants because the price and quality of service for proxy advice is determined in a competitive market.[653] In that case, the amendments may not result in an increase in demand for proxy advisory services. As discussed above, while we acknowledge that proxy voting advice businesses currently disclose conflicts of interest to clients and permit certain registrants to review proxy voting advice, the final rules could nevertheless increase demand for proxy voting advice to the extent that: (i) Clients prefer a more standardized time and means of receiving conflict disclosures, and (ii) proxy voting advice businesses expand their existing review procedures as a means of satisfying the new conditions. Overall, given the changes in the final amendments relative to the proposed amendments, we do not expect the final amendments to have a significant effect on the demand for proxy advisory services, and hence efficiency.

2. Competition

The amendments' requirements that promote transparency and more effective evaluation of proxy voting advice could stimulate competition among proxy voting advice businesses with respect to the quality of advice. In particular, clients of proxy voting advice businesses may be better able to assess conflicts of interest (and, more broadly, alignment of interest) and the reliability of proxy voting advice, which could, in turn, cause proxy voting advice businesses to compete more on those dimensions.

2, 2019) (''We have five full-time staff dedicated to proxy voting during peak season, and our least-tenured investment analyst has 12 years' experience applying the NYC Funds' domestic proxy voting guidelines.'').

[645] *See* 2007 GAO Report, *supra* note 474, at 2; *see also* letters in response to the SEC Staff Roundtable on the Proxy Process from Ohio Public Retirement (Dec. 13, 2018) (''OPERS also depends heavily on the research reports we receive from our proxy advisory firm. These reports are critical to the internal analyses we perform before any vote is submitted. Without access to the timely and independent research provided by our proxy advisory firm, it would be virtually impossible to meet our obligations to our members.''); Transcript of Roundtable on the Proxy Process at 194 (comments of Mr. Scot Draeger) (''If you've ever actually reviewed the benchmarks, whether it's ISS or anybody else, they're very extensive and much more detailed than small firm[s] like ours could ever develop with our own independent research.'').

[646] *See, e.g.,* letters from Prof. Bebchuk; ISS; ICGN; PRI II; Torsten Jochem, Associate Professor of Finance, University of Amsterdam, and Anjana Rajamani, Erasmus University Rotterdam (Dec. 16, 2019) (''Profs. Jochem and Rajamani''); Segal Marco II; TIAA; Ivy Investment; Olshan LLP; First Affirmative; Lisa A. Smith, Vice President, Advocacy and Public Policy, Catholic Health Association of the United States (Feb. 3, 2020) (''Catholic Health''); NorthStar; Rowan Finnegan (Feb. 3, 2020); NASAA; ProxyVote II; Diane Wade, Head of ESG, CBRE Clarion Securities (Feb. 3, 2020) (''CBRE''); Michael Rowland (Feb. 3, 2020); Dustyn Lanz, CEO, Responsible Investment Association (Feb. 3, 2020) (''RIA''); Graeme Black, Chair, Black Group Australia (Feb. 3, 2020) (''Black Group''); Ario; CII IV; ACSI; BMO; John Starcher, President and CEO, Bon Secours Mercy Health (Feb. 3, 2020) ''Bon Secours''); CFA Institute I; Baillie Gifford; CIRCA; Joanie B. (Feb. 3, 2020); Canadian Governance Coalition; AllianceBernstein; LA Retirement; Glass Lewis II; CII V; C. Icahn; CII VI; LACERS; James Elbaor (Feb. 26, 2020); Terrence M. Burgess, Senior Managing Director, Wellington Management Company (Mar. 3, 2020) (''Wellington''). *See also* IAC Recommendation.

[647] As noted above, we do not have financial data about proxy advice voting businesses, including financial data by service provided or by client type, so making these assessments on a quantitative basis is difficult.

[648] *See* discussion in *supra* Section IV.C.3.b.ii.

[649] *See* discussion in *supra* Section IV.C.4.b.

[650] *See, e.g.,* letters from Shareholder Rights II; ISS.

[651] *See* letters from Prof. Bebchuk; CalPERS; CFA Institute I.

[652] *See* letters from ISS; PRI II; Better Markets.

[653] *See, e.g.,* letter from ISS.

As discussed above, several commenters disagreed that the proposed amendments would increase the quality or transparency of proxy advice, which they thought was sufficient under the baseline, and stated that the proposed amendments could reduce the quality of proxy advice if the rule reduces the independence and diversity of thought amongst proxy voting advice businesses.[654] In that case, the rules may not increase competition in the proxy advice market. However, as noted above, we believe the final amendments' principles-based approach should address many of these concerns because proxy voting advice businesses may, but will no longer be required to, preview their proxy voting advice with registrants.

The final amendments could also have certain adverse effects on competition. The final amendments will cause proxy voting advice businesses to incur certain additional compliance costs as discussed in Section II.C.2 above. How those costs will be shared between proxy voting advice businesses and their clients depends on the ability of proxy voting advice business to exercise market power in the pricing of their services. One commenter noted that, although complaints about pricing feature regularly in oligopolistic markets, proxy voting advice business generally are not criticized for their pricing.[655] The commenter further explained that this might reflect clients' perception that, due to the scale economies involved in proxy research, it is less costly to purchase proxy voting advice than to engage in proxy research themselves.[656] The presence of these scale economies may provide proxy voting advice businesses with substantial market power, including the power to pass compliance costs associated with the final rules on to their clients. If, however, as other commenters argued,[657] clients do not place a large value on proxy voting advice, then proxy voting advice businesses may face limits in their ability to pass compliance costs through to clients. In the Proposing Release, we acknowledged that if costs borne by proxy voting advice businesses are large enough to cause some businesses to exit the market or potential entrants to stay out of the market, the proposed amendments could decrease competition.[658] For the reasons described below, we do not believe this will be the case with the final amendments.

Many commenters stated that the economic analysis in the Proposing Release did not adequately consider the effects of the rule on competition in the market for proxy advice.[659] Some commenters asserted that the cost burdens of the amendments, particularly those associated with litigation exposure from registrants, would decrease competition in the proxy advice market, raising barriers to entry in the proxy advice market, and potentially forcing the exit of some proxy voting advice businesses from the market.[660] Several other commenters argued that the proposed amendments would reduce competition by creating new barriers to entry in what historically has been an industry with few competitors.[661] One commenter, a proxy voting advice business in the U.K., stated that the Proposed Rule made it highly unlikely it would enter the U.S. proxy voting advice business market.[662] Another commenter, however, stated that increased barriers to entry would not reduce competition because, notwithstanding the rule, entry would not occur because investors place little value on proxy voting advice and financial incentives for entry are correspondingly low.[663] The final amendments reflect a principles-based approach that is intended to limit the increased compliance costs for proxy voting advice businesses and thus should reduce the potential for significant adverse effects on competition.

Additionally, given certain industry practices, the costs associated with the final amendments could affect proxy voting advice businesses differently. For example, we understand that the three existing proxy voting advice businesses that will be affected by the final amendments already have processes in place for sharing certain aspects of their analysis with certain registrants prior to making a recommendation to clients, which they may be able to leverage to comply with the new conditions. In contrast, firms considering entering the market for proxy voting advice would need to develop such processes and thus may initially experience somewhat higher costs in connection with compliance with the final rules. A differential effect on costs across proxy voting advice businesses could, in turn, affect competition within the proxy voting advice business industry. Similarly, one commenter stated that, if it were subject to the proposed amendments, it likely would have to either significantly increase its fees or sell their firm to one of the two dominant competitors.[664] While that commenter may not be subject to the final amendments,[665] to the extent that the costs associated with the final amendments disproportionately affect proxy voting advice businesses without existing processes that can be adapted to satisfy the new conditions, particularly smaller proxy voting advice businesses that would otherwise consider entering the market for proxy advice, the final amendments could reduce competition in the market for proxy advisory services. We expect the principles-based approach reflected in the final amendments may help to ameliorate concerns about any differential effect of the final amendments by affording proxy voting advice businesses the flexibility to design policies and procedures that are scaled to the scope of their operations and client base.

Overall, we believe the benefits of improving the transparency, accuracy, and completeness of information available to shareholders when making voting decisions and enhancing the overall functioning of the proxy voting process, in furtherance of Section 14 of the Exchange Act would support adoption of the amendments notwithstanding any adverse effect on competition arising therefrom.

3. Capital Formation

By facilitating the ability of clients of proxy voting advice businesses to make informed voting determinations, the final amendments could ultimately lead to improved investment outcomes for investors. This in turn could lead to a greater allocation of resources to investment. To the extent that the final amendments lead to more investment, we could expect greater demand for securities, which could, in turn, promote capital formation. Additionally, to the extent the final amendments ameliorate frictions in the market for proxy voting advice that may currently deter private companies from

[654] *See supra* notes 646 and 651.

[655] *See* letter from C. Spatt.

[656] *Id.*

[657] *See* letters from B. Sharfman I and Manhattan Institute.

[658] *See* Proposing Release at 66550.

[659] *See* letters from CII IV; Richard B. Zabel, General Counsel & Chief Legal Officer, Elliott Management Corporation (Mar. 30, 2020) (''Elliott II''); Felician Sisters II; Glass Lewis II; Good Shepherd; IASJ; ISS; Interfaith Center II; Minerva I; New York Comptroller II; Prof. Bebchuk; St. Dominic of Caldwell; ProxyVote II. *See also* IAC Recommendation.

[660] *See* letters from Prof. Bebchuk; TIAA; 62 Professors; CII IV. *See also* IAC Recommendation.

[661] *See, e.g.,* letters from ISS; CII IV; Segal Marco II; Prof. Sergakis; 62 Professors.

[662] *See* letters from Minerva I.

[663] *See* letter from Manhattan Institute.

[664] *See* letter from ProxyVote II.

[665] *See supra* notes 170–173 and accompanying text.

becoming public reporting companies, the amendments could serve to encourage more companies to become public.[666]

Several commenters stated that the proposal to allow registrants to review draft proxy advice could lead to the misuse of material non-public information.[667] This possibility is predicated on an expectation that a proxy voting advice business's recommendation could have an influence on the outcome of a voting matter before shareholders. For example, if a proxy voting advice business's recommendation is likely to influence the outcome of a vote that is expected to generate stock price reactions, then advance knowledge of such a recommendation would be potentially valuable to facilitate insider trading. Any such misuse of material non-public information could reduce investor confidence in the integrity of markets and lead to a reduction in capital formation. However, the final amendments do not mandate that registrants be given prior access to draft proxy voting advice. In addition, as discussed above, some form of registrant pre-review already exists at each of the three major proxy voting advice businesses, and we are not aware of any misuse of such information.

Overall, given the many factors that can influence the rate of capital formation, any effect of the final amendments on capital formation is expected to be small.

E. Reasonable Alternatives

1. Use a More Prescriptive Approach in the Final Amendments

Instead of a principles-based approach that allows proxy voting advice businesses the flexibility to design their own measures to ensure that clients have more complete and transparent information on which to base their voting decisions, we could have used a more prescriptive approach, such as the approach we proposed. For example, we could have required proxy voting advice businesses to notify registrants of their advice or provide their clients with registrants' responses to that advice in certain specific ways and time frames. Such a prescriptive approach could have reduced legal uncertainty for proxy voting advice businesses, but it would have generated greater compliance costs for proxy voting advice businesses, some or all of which could have been passed on to their clients. The principles-based approach we are adopting provides a significant degree of flexibility to proxy voting advice businesses in deciding the best way to ensure that more complete and transparent information is available to their clients, and we expect that it will significantly reduce their compliance costs.

2. Require Proxy Voting Advice Businesses To Include Full Registrant Response in the Businesses' Voting Advice

Rather than requiring proxy voting advice businesses to adopt and publicly disclose written policies and procedures reasonably designed to ensure that such businesses provide clients with a mechanism by which the clients can reasonably be expected to become aware of registrant responses to proxy voting advice, we could require proxy voting advice businesses to include the registrant's full response in the proxy voting advice itself. Including the registrant's full response in the proxy voting advice would benefit clients of proxy voting advice businesses by allowing them to avoid the additional step of accessing the response. Including a full response in the voting advice provided by proxy voting advice businesses also could benefit registrants by having their responses more prominently displayed, depending on where in the advice the response is included. Two commenters suggested this as an appropriate alternative to the proposed amendments.[668]

However, requiring inclusion of the registrant's full response in the proxy voting advice provided by proxy voting advice businesses could disrupt the ability of such businesses to effectively design and prepare their reports in the manner that they and their clients prefer. Also, registrants would lose the flexibility to present their views in the manner they deem most appropriate or effective.

3. Public Disclosure of Conflicts of Interest

The final amendments require that proxy voting advice businesses include in their advice (and in any electronic medium used to deliver the advice) certain conflicts of interest disclosures. We could require that those conflicts of interest disclosures be made publicly rather than just to clients. Public disclosure of proxy voting advice businesses' conflicts of interest could allow beneficial owners to assess the conflicts for themselves. While there may be some benefit to beneficial owners from having access to this information, this benefit may be limited given that many beneficial owners have delegated investment management functions to others in the first place and thus would not be receiving the advice. In addition, one commenter noted that publicly disclosing conflicts could undermine the information barriers put in place between the consulting and proxy advice side of a proxy voting advice business's operations.[669]

4. Require Additional or Alternative Mandatory Disclosures in Proxy Voting Advice

In addition to requiring the adopted conflicts of interest disclosures, we could amend Rule 14a–2(b)(9) to require that proxy voting advice businesses include in their proxy voting advice additional disclosures, such as disclosure regarding the proxy voting advice business's methodology, sources of information, or disclosures regarding the use of standards that materially differ from relevant standards or requirements that the Commission sets or approves. Proxy voting advice businesses' clients may benefit from having consistent disclosure on such matters as they assess the voting advice and make decisions regarding their utilization of the voting advice. However, such disclosures may not be material or necessary to assess proxy voting advice in all instances, and would result in increased costs to proxy voting advice businesses. Certain information may also comprise proprietary information, disclosure of which, depending on the specificity required, may result in competitive consequences to proxy voting advice businesses. In light of these considerations, the adopted rules will not require such disclosures in all instances.

One commenter noted a suggestion from the 2010 Concept Release that ''proxy advisory firms could provide increased disclosure regarding the extent of research involved with a particular recommendation and the extent and/or effectiveness of its controls and procedures in ensuring the accuracy of registrant data.'' [670] The commenter also highlighted another suggestion from the Concept Release noting that the Commission's rules that govern NRSROs ''may be useful

[666] *See* letters from Prof. Tingle (asserting that public capital markets have become less attractive to companies that would otherwise consider going public and that proxy voting advice businesses have been singled out as possibly complicit in this trend); TechNet (supporting the Proposed Rule as part of a commitment to ''. . . make the U.S. the most attractive place in the world for anyone to start a company, grow it here, and take it public.'').

[667] *See* letters from CII IV; Glass Lewis II; ISS.

[668] *See* letters from NAM; BIO.

[669] *See* letter from ISS.

[670] *See* letter from Glass Lewis II.

templates for developing a regulatory program addressing conflicts of interest and other issues with respect to the accuracy and transparency of voting recommendations provided by proxy advisory firms.'' The commenter stated that these two approaches should have been considered as alternatives to the rule. We have considered the alternative of requiring additional disclosure regarding the methods and procedures used to develop proxy voting advice, but believe it is preferable to avoid being overly prescriptive about the content of the report for a particular registrant/recommendation. Instead, for the reasons discussed throughout this release, we believe it is more appropriate to focus on principles that will allow the clients of proxy voting advice businesses to have access to more complete and transparent information upon which to make a voting decision, while providing flexibility to proxy voting advice businesses to determine the best means to satisfy those principles. Moreover, while we recognize that other regulatory regimes may take different approaches to similar issues, we note that the role of NRSROs and proxy voting advice businesses differ from one another and that following a similar regulatory approach might not be appropriate. We also recognize that the costs and benefits of NRSRO regulation differ from the costs and benefits of potential additional regulation of proxy voting advice businesses. The principles-based approach reflected in the final amendments is tailored to the unique role played by proxy voting advice businesses in the proxy process and is intended to be adaptable to existing market practices.

5. Require Disabling or Suspension of Pre-Populated and Automatic Submission of Votes

The final amendments do not condition the availability of the Rules 14a–2(b)(1) and 14a–2(b)(3) exemptions on a proxy voting advice business structuring its electronic voting platform to disable or suspend the automatic submission of votes in instances where a registrant indicates that it intends to file (or has filed) a response to the voting advice as additional soliciting materials. Alternatively, we could require such a condition. Another alternative would be to require that the proxy voting advice business refrain from pre-populating a client's voting choices once a registrant indicates it intends to file a response, indefinitely or for a period of time, and subject to conditions. Several commenters supported an alternative that would generally limit or disable the automatic submission of votes, claiming it would lead to more informed proxy voting, though these commenters did not necessarily condition such limitations on the filing of a registrant response.[671]

We recognize that these pre-population and automatic submission functions may enable proxy voting advice business clients to vote their proxies prior to registrants being able to provide a response to the proxy voting advice. We also recognize that disabling or suspending these functions when registrants have indicated they intend to file responses to voting advice could benefit the clients of proxy voting advice businesses to the extent that it increases the likelihood that the clients of the proxy voting advice businesses would review the registrants' responses, and take them into consideration, before voting their proxies. At the same time, depending on how such a measure is implemented and conditioned, such an alternative could give rise to timing pressures and other logistical challenges. For example, disabling these functions permanently under certain circumstances could increase costs for clients if they need to devote greater resources to managing the voting process as a result, which may in turn also reduce the value of the services of the proxy voting advice businesses.

We have declined to adopt such a prescriptive approach at this time, but rather have focused on an incremental principles-based approach in order to see how practice develops in light of the changes being adopted. The amendments we are adopting are intended to make clients of proxy voting advice businesses aware of a registrant's views about proxy voting advice in a timely manner, which could assist these clients in making voting determinations. Further, the Commission has provided investment advisers, who often engage proxy voting advice businesses to provide voting related services, with additional guidance regarding how they could consider their policies and procedures regarding these types of automated voting functions.[672]

6. Exempt Smaller Proxy Voting Advice Businesses From the Additional Conditions to the Exemptions

As discussed in Section III.C.2 above, given certain industry practices, the costs associated with the final amendments may be different for certain proxy voting advice businesses. For example, the three major proxy voting advice businesses have processes in place for sharing certain aspects of their analysis with certain registrants prior to making a recommendation to clients, which they may be able to leverage to comply with the new conditions. However, it is possible that entrants to this market (which could be smaller than the existing three major proxy voting advice businesses) would have to develop new processes to meet the conditions for exemption under the final amendments if they choose to engage in the types of activities that fall within the scope of Rule 14a–1(l)(1)(iii). Some of the costs of developing these new processes are likely fixed, and do not vary with the number of issuers a proxy voting advice business covers or the number of clients it serves. Thus, the costs associated with the final amendments could affect potential entrants into the market for proxy advice that are smaller businesses more than the existing three major proxy voting advice businesses. To the extent the costs associated with the final amendments disproportionately affect smaller proxy voting advice businesses that might consider entering the market in the future, the final amendments could reduce competition among proxy voting advice businesses.

As a means of addressing the potential adverse effect on competition among proxy voting advice businesses, we could exempt smaller proxy voting advice businesses from the additional conditions to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3). Several commenters supported such an alternative.[673] Exempting smaller proxy voting advice businesses from the additional conditions would reduce the cost of the final amendments for such businesses, and could thus facilitate the entry of new proxy voting advice businesses. However, we expect the costs associated with the final amendments to be much smaller compared to the initial costs of setting up the business, including building a reputation for providing quality services, which any newcomer will have to incur. Also, such an exemption would mean that clients of these proxy voting advice businesses would not realize the same benefits as clients of incumbent firms in terms of potential improvements in the accuracy, completeness, and transparency of the information available to them when

[671] *See* letters from BRT; NAM; BIO. *But see, e.g.,* letters from CII IV; Dan Jamieson (Jan. 16, 2020); IAA; ISS; New York Comptroller II.

[672] *See* Supplemental Proxy Voting Guidance.

[673] *See* letters from SHARE II; CII IV; Manhattan Institute. One commenter more generally argued that the Commission should ''adopt policies that would ease entry and participation in the market.'' *See* letters from Elliott I, Prof. Li.

they make voting decisions.[674] Moreover, as we have discussed in prior sections, we anticipate that the principles-based approach we are adopting is likely to result in more modest costs increases for proxy voting advice businesses than the more prescriptive approach we proposed, which should moderate the impact of the final amendments on smaller potential entrants.

7. Require a Narrower Scope of Registrant Notice

A number of commenters suggested that registrants should only be allowed to review the facts that a proxy voting advice business uses in determining its voting recommendation, particularly if we proceeded with a requirement that registrants review draft proxy voting reports before they are sent to clients.[675] For example, rather than providing a full copy of its voting advice, a proxy voting advice business could provide a summary thereof, setting forth the facts it uses without specifying further details.

We note that while the principles-based approach we are adopting does not dictate precisely how a proxy voting advice business provides notice of proxy voting advice to registrants, the final amendments require that proxy voting advice businesses share the full proxy voting report with registrants. Although we acknowledge that commenters' suggested alternative may be less costly for proxy voting advice businesses to implement, we believe that providing registrants with the full contents of proxy voting reports is necessary to achieve the Commission's objective of facilitating informed proxy voting decisions. Providing registrants with the full contents of the report gives registrants the opportunity to file additional soliciting materials that discuss not only the facts underlying the proxy voting advice business's recommendations, but also the methodology and analysis the proxy voting advice business used to arrive its recommendations. In deciding how to vote on a proxy matter, clients of proxy voting advice businesses may benefit from that additional discussion. As a result, we anticipate the final amendments will more effectively facilitate clients' assessment of proxy voting advice than this alternative. Moreover, because the final amendments do not require an opportunity for pre-publication review, we believe that the cost of sharing full reports will be more modest under the final amendments than under the proposed amendments.

VI. Paperwork Reduction Act

A. Background

Certain provisions of our rules, schedules, and forms that will be affected by the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[676] We published a notice requesting comment on changes to these collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[677] The hours and costs associated with maintaining, disclosing, or providing the information required by the amendments constitute paperwork burdens imposed by such collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The title for the affected collection of information is: ''Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A)'' (OMB Control No. 3235–0059).

The Commission adopted existing Regulation 14A[678] pursuant to the Exchange Act. Regulation 14A and its related schedules set forth the disclosure and other requirements for proxy statements, as well as the exemptions therefrom, filed by registrants and other soliciting persons to help investors make informed voting decisions.[679]

A detailed description of the amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the expected economic effects of the amendments can be found in Section IV above.

B. Summary of Comment Letters to PRA Estimates

The Commission received three comment letters in response to its request for comment on the PRA estimates and analysis included in the Proposing Release.[680] These commenters expressed concern that the estimates were not representative of actual impacts and that the analysis failed to properly account for the paperwork burden that would be incurred, in particular, by proxy voting advice businesses.[681] Two of the commenters asserted that the Commission's analysis understated the magnitude of the hourly and cost burdens that the proposed amendments would impose.[682] One of those commenters provided detailed estimates of its expected annual compliance burden for each of the components of the proposed amendments.[683]

C. Burden and Cost Estimates for the Amendments

Below we estimate the incremental and aggregate effect on paperwork burden as a result of the amendments. As discussed in Section II above, we have made a number of changes from the proposed amendments, most notably to shift to a principles-based approach in Rule 14a–2(b)(9)(ii), and we have adjusted our estimates accordingly.

The burden estimates were calculated by (i) estimating the number of parties expected to expend time, effort, and/or financial resources to generate, maintain, retain, disclose or provide information required by the amendments, and then (ii) multiplying this number by the estimated amount of time, on average, each of these parties would devote in order to comply with these new requirements over and above their existing compliance burden associated with Regulation 14A. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents based on a number of factors, including the nature and conduct of their business.

1. Impact on Affected Parties

As discussed above in Section IV.B.1., there are a variety of parties that may be affected, directly or indirectly, by the amendments. These include proxy voting advice businesses; the clients to

[674] *See* letter from SES.

[675] *See* letters from ISS at 57; MFA & AIMA at 2; State Street at 3; CFA Institute at 2, 8; CIRCA at 22; Glass Lewis II at 22–23; IAC at 8–9.

[676] 44 U.S.C. 3501 *et seq.*

[677] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[678] 17 CFR 240.14a–1 *et seq.*

[679] To the extent that a person or entity incurs a burden imposed by Regulation 14A, it is encompassed within the collection of information estimates for Regulation 14A. This includes registrants and other soliciting persons preparing, filing, processing and circulating their definitive proxy and information statements and additional soliciting materials, as well as the efforts of third parties such as proxy voting advice businesses whose voting advice falls within the ambit of the federal rules and regulations that govern proxy solicitations.

[680] *See* letters from IASJ; Glass Lewis I; ProxyVote I.

[681] *See id.*

[682] *See* letters from Glass Lewis I; ProxyVote I.

[683] *See* letter from Glass Lewis I.

whom these businesses provide voting advice; investors and other groups on whose behalf the clients of proxy voting advice business make voting determinations; registrants who are conducting solicitations and are the subject of proxy voting advice; and the registrants' shareholders, who ultimately bear the costs and benefits to the registrant associated with the outcome of voting matters covered by proxy voting advice.

Of these parties, we expect that proxy voting advice businesses and, to a lesser extent, registrants that are the subject of the proxy voting advice, would incur some additional paperwork burden resulting from the amendments.[684] As discussed further below, we believe that any incremental burden would be attributable primarily to new Rule 14a–2(b)(9). With respect to the amendments to Rule 14a–1(l) and Rule 14a–9, we do not expect the economic impact of these amendments will be significant because they do not change existing law and therefore do not change respondents' legal obligations.[685] Moreover, any impact arising from these amendments is not expected to materially change the average PRA burden hour estimates associated with Regulation 14A. We therefore have not made any adjustments to our PRA burden estimates in respect of these amendments.

a. Proxy Voting Advice Businesses

In the Proposing Release, the Commission estimated that each proxy voting advice business would incur an aggregate yearly increase in burden of 500 hours due to the proposed amendments.[686] In recognition of the changes from the proposal as well as in consideration of the comments received regarding the paperwork burdens of the proposed amendments,[687] we have adjusted our estimates of the burdens on proxy voting advice businesses.

Proxy voting advice businesses are expected to incur an increased burden as a result of new Rule 14a–2(b)(9), which will apply to anyone relying on the exemptions in Rules 14a–2(b)(1) or (b)(3) who furnishes proxy voting advice covered by Rule 14a–1(l)(1)(iii)(A). The amount of the burden will depend on a number of factors that are firm-specific and highly variable, which makes it difficult to provide reliable quantitative estimates.[688]

There are three components of new Rule 14a–2(b)(9) that we expect to result in an increased burden. First, in accordance with Rule 14a–2(b)(9)(i), proxy voting advice businesses will be required to include in their proxy voting advice (or in an electronic medium used to deliver the advice) disclosure of conflicts of interest specifically tailored to proxy voting advice businesses and the nature of their services.[689] Second, under Rule 14a–2(b)(9)(ii)(A), proxy voting advice businesses will be required to adopt and publicly disclose written policies and procedures reasonably designed to ensure that registrants that are the subject of the proxy voting advice have such advice made available to them at or prior to the time such advice is disseminated to the proxy voting advice business's clients. Third, under Rule 14a–2(b)(9)(ii)(B), the proxy voting advice business will be required to adopt and publicly disclose written policies and procedures reasonably designed to ensure that the proxy voting advice business provides clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written statements about the proxy voting advice in a timely manner before the shareholder meeting. The amendments also provide non-exclusive safe harbors that the proxy voting advice businesses may use to satisfy the principle-based requirements in Rule 14a–2(b)(9)(ii). We address each of these three components in turn.

With respect to the conflicts of interest disclosure in new Rule 14a–2(b)(9)(i), the facts and circumstances unique to each proxy voting advice business, including the conflicts of interest disclosures it currently provides to its clients as well as the nature of its material interests, transactions, and relationships, will dictate the additional disclosure, if any, it must provide under the final rule. For example, to the extent that proxy voting advice businesses are already providing the kind of conflicts of interest disclosure required by the rule, it would reduce their new compliance burden. Another factor that complicates the calculation of burden is the principles-based nature of the conflicts disclosure requirement, which eschews prescriptive disclosure standards in favor of providing proxy voting advice businesses the flexibility to determine which situations merit disclosure and the specific details to provide to their clients about any conflicts of interest identified. While this flexibility in the rule's application is beneficial for both proxy voting advice business and their clients, it limits our ability to predict the associated paperwork burden. Under the rule, a proxy voting advice business's disclosure could differ for each registrant and be subject to change in the future as both the business's and its clients' circumstances change.

One proxy voting advice business estimated that its burden associated with the identification and disclosure of conflicts of information under the proposed rules would add 5,969 burden hours each year.[690] While we believe

[684] The PRA requires that we estimate ''the total annual reporting and recordkeeping burden that will result from the collection of information.'' [5 CFR 1320.5(a)(1)(iv)(B)(5)] A ''collection of information'' includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information [5 CFR 1320.3(c)]. OMB's current inventory for Regulation 14A, therefore, is an assessment of the paperwork burden associated with such requirements and requests under the regulation, and this PRA is an assessment of changes to such inventory expected to result from adoption of the amendments. While other parties, such as the clients of proxy voting advice businesses, may have costs associated with the amendments (*see supra* Section IV.C.), only proxy voting advice businesses and registrants will incur any additional paperwork burden in order to comply with or respond to the informational requirements of the amendments.

[685] The amendments to Rule 14a–1(l) codify existing Commission interpretations and views about the applicability of the Federal proxy rules to proxy voting advice and are not expected to have a significant economic impact. *See supra* Section IV.C.2.b. The amendments to Rule 14a–9 may impose direct costs on proxy voting advice businesses to the extent the amended rule prompts some proxy voting advice businesses to provide additional disclosure about the bases for their voting advice. However, we expect any such costs to be minimal, especially given that the examples in new paragraph (e) of the Note to Rule 14a–9 were included in prior Commission guidance. *See supra* Section IV.C.4.b. One commenter argued that proxy voting advice businesses and their legal counsel would devote significant time and effort to review and respond to feedback received from registrants so as to protect the business from private litigation claims stemming from Rule 14a–9, as amended. *See* letter from Glass Lewis I. While the commenter mentioned the proposed amendment to Rule 14a–9, we read this comment as primarily relating to the proposed review and feedback proposal, which we are not adopting. We do not believe that the amendment to Rule 14a–9 represents a change to existing law, nor does it broaden the concept of materiality or create a new cause of action, as some commenters have suggested. *See* discussion *supra* Section II.D.3.

[686] *See* Proposing Release, PRA Table 1 ''*Calculation of Increase in Burden Hours Resulting from the Proposed Amendments*,'' at 66553. The Commission estimated that, for each proxy voting advice business, the burden would be 1,000 hours in the first year following adoption and 250 hours in each of the following years, for a three-year average of 500 burden hours. *Id.* at note d. to Table 1. Given the Commission's assumption at the proposing stage that there were five proxy voting advice businesses, the average of 500 hours was multiplied by five to arrive at a total of 2,500 hours.

[687] *See supra* note 682.

[688] *See generally* the discussion *supra* in Sections IV.C.3.a.ii. and b.ii. concerning the difficulty in providing quantitative estimates of the costs to proxy voting advice businesses imposed by the amendments.

[689] Rule 14a–2(b)(9)(i).

[690] *See* letter from Glass Lewis I. Glass Lewis calculated that it issued 5,565 total proxy research reports on U.S. companies in 2018. Assuming one hour spent for each report to identify any potential conflicts and another .5 hours to prepare conflicts disclosure regarding 807 of the 5,565 registrants for

that the principles-based focus of the adopted requirement, in tandem with a proxy voting advice business's existing conflicts disclosure systems and practices (particularly as to registrants that have been the focus of the business's proxy coverage in prior years), could significantly mitigate any increased paperwork burden corresponding to the new rules, we think it is appropriate to increase our estimates to align more closely with this commenter's input. Accordingly, we estimate the conflicts of interest disclosure in new Rule 14a–2(b)(9)(i) to result in 6,000 additional burden hours per proxy voting advice business.

The remainder of the additional paperwork burden associated with the amendments will derive from the requirements of Rules 14a–2(b)(9)(ii)(A) and (B). Because these rules have been designed to permit proxy voting advice businesses substantial flexibility over the manner in which they comply, we expect those businesses will implement mechanisms differently depending on, among other things, the facts and circumstances of their particular business operations and the nature of their client bases.[691] Furthermore, some proxy voting advice businesses may already have systems sufficient to address some or all of the mechanics required to comply with Rules 14a–2(b)(9)(ii)(A) and (B),[692] which would be expected to limit their overall burden but cannot be precisely estimated.

It appears that the more prescriptive nature of the proposed amendment regarding registrants' and certain other soliciting persons' advance review and response to proxy voting advice was a large driver of the hourly and cost burdens discussed by commenters. We believe the flexibility afforded by the principles-based approach reflected in the final rules should therefore result in significantly lower costs for proxy voting advice businesses and their clients than under the proposal.[693]

We believe that much of the burden of the final amendments would be for the proxy voting advice business to develop policies that satisfy the principles and accordingly modify or develop systems and practices to implement such policies. To derive an estimate for these costs, we start with our estimated number of registrants filing proxy materials annually, which is 5,690.[694] We estimate that the burden on a proxy voting advice business in setting up, modifying, and implementing such policies and systems would involve approximately one half-hour per registrant (2,845 hours) for the notice to registrants under Rule 14a–2(b)(9)(ii)(A) and one half-hour per registrant (2,845 hours) for the notice to clients of any response by the registrants under Rule 14a–2(b)(9)(ii)(B).[695] Our revised estimates take into consideration our understanding that some proxy voting advice businesses have systems and practices in place that may complement or overlap with the new requirements, which could substantially mitigate any increases to their overall burden. Also, these estimates represent the average annual burden increase over three years, as we assume that the burden would be greatest in the first year after adoption as proxy voting advice businesses incorporate the new requirements into their existing practices and procedures, but would be less in subsequent years.

In addition to these system-related costs, we expect that the proxy voting advice businesses would, as a general matter, obtain acknowledgments or agreements with respect to the use of any information shared with a registrant, as we expect that the business would seek to limit disclosure of its report. Given that the rules do not require proxy voting advice businesses to give pre-release copies of proxy voting advice to registrants, in contrast to the proposal, we believe the need for proxy voting advice businesses to individually negotiate and secure detailed confidentiality agreements from registrants will be substantially lessened. This is particularly true to the extent that a proxy voting advice business already maintains a practice of providing copies of its proxy voting advice to registrants and can therefore utilize its existing practices with respect to confidentiality provisions. This would include, for example, the practice of requiring registrants to agree to or acknowledge certain terms of use before accessing the proxy voting advice. In this regard, we note that some proxy voting advice businesses currently provide reports to registrants without requiring formal confidentiality agreements, instead requiring only an electronic acknowledgement of terms of use.[696]

We recognize that there nevertheless may be some hourly and cost burden associated with a proxy voting advice business's efforts to obtain acknowledgements[697] or other kinds of agreements with registrants before sharing proxy voting advice materials and that there could be a range of approaches. One approach may be to develop a standardized form of acknowledgement regarding the report's terms of use and implementing systems to track the acknowledgments. Under such an approach, we estimate that each proxy voting advice business would incur 100 hours in the first year of compliance to draft such standardized terms of use and update systems to implement and track it, and 25 hours each year thereafter to implement the terms of use and systems on a going-forward basis, for a three-year average of 50 hours per year per proxy voting advice business associated with securing an acknowledgment or other assurance that the proxy advice will not

whom Glass Lewis determined it had disclosable conflict information, Glass Lewis estimated an increased burden of 5,969 hours annually to comply with the new conflicts of disclosure requirements in proposed Rule 14a–2(b)(9)(i).

[691] As one example, to be eligible for the safe harbor in Rule 14a–2(b)(9)(iv), a proxy voting advice business has the option to provide notice on its electronic client platform that the registrant has filed additional soliciting materials, or it could choose to provide notice through email or other electronic means. Both mechanisms for informing clients could involve initial set-up costs as well as ongoing costs that are hard to predict. Since they are not required to rely on the safe harbor, proxy voting advice businesses may also put in place other mechanisms to inform their clients of a registrant's views about the proxy voting advice, which could be more or less costly than satisfying the conditions of the safe harbor.

[692] *See supra* note 609 in Section IV.C.3.b.2.

[693] For example, one commenter enumerated a number of elements of the proposal that it believed would have an impact on a proxy voting advice business's paperwork burden and provided estimates of the hourly burden expected to be incurred that totaled 59,999 burden hours. Of this amount, we have already addressed and incorporated the 5,969 hours estimate regarding identifying and disclosing conflicts. *See supra* note 690. We address the 19,648 hour estimate regarding confidentiality agreements below. We believe the remaining 34,382 burden hours pertained to elements of the proposed rules that are not directly relevant in light of our revisions in favor of a more principle-based framework that no longer requires mandatory review and feedback periods. *See* letter from Glass Lewis I.

[694] *See supra* note 549.

[695] In deriving our estimates of one half-hour per registrant for each of Rule 14a–2(b)(9)(ii)(A) and Rule 14a–2(b)(9)(ii)(B), we considered estimates provided by one commenter who estimated that the ''Implementation of final notice period'' component of the proposal would impose a burden of 0.5 hours per registrant, as would the ''Process, review and implement requests for a hyperlinked response'' component. *See* letter from Glass Lewis I. While these two proposed components are not part of the final rules, they are in some ways analogous to the two principles for which proxy voting advice businesses may need to implement systems under the final rules. Accordingly, we believe one half-hour burden per registrant for each of these components is an appropriate estimate as to the burden on each proxy voting advice business.

[696] *See supra* note 615. For example, Glass Lewis requires a registrant to click and acknowledge/accept/agree to certain ''terms of use'' before being able to access the notice and recommendations.

[697] See paragraph (B) of the Rule 14a–2(b)(9)(iii) safe harbor.

be disclosed. However, we recognize that proxy voting advice businesses could choose instead to negotiate individual terms of use with each registrant. As a result of modifications we have made from the proposal in response to commenters, we anticipate that the burden in those cases would nonetheless be significantly less than the four hours per issuer burden estimate provided by a commenter regarding the proposal.[698] We estimate an average burden of one hour per registrant[699] under those circumstances, for a total estimate of 5,690 hours per year associated with securing an acknowledgment or other assurance that the proxy advice will not be disclosed. Accordingly, depending on which approach a proxy voting advice business chooses, we expect that the burden could range from 50 hours to 5,690 hours per year per proxy voting advice business. Given current practices, we expect that proxy voting advice business would generally seek to rely on standardized terms of use. Nevertheless, for purposes of this PRA analysis, and so as to not underestimate the burden, we use an estimate of 5,690 hours per proxy voting advice business to obtain acknowledgments.

Overall, we believe that proxy voting advice businesses will incur an annual incremental paperwork burden to comply with Rule 14a–2(b)(9) as follows.

New requirement	Proxy voting advice business estimated incremental annual compliance burden
Rule 14a–2(b)(9)(i)—Conflicts Disclosure ..... Proxy voting advice business must include conflicts of interest disclosure in its proxy voting advice (or electronic medium used to deliver the advice), as well as a discussion of any policies and procedures used to identify and address conflicts, and any actual steps taken to address any conflicts.	Increase in paperwork burden corresponding to: To the extent that the proxy voting advice business's current practices and procedures do not already satisfy the requirement: • Identification and disclosure to clients of qualifying conflicts of interest. Includes burden associated with internal processes and procedures for: ○ Reviewing and preparing disclosures describing conflicts of interest, relevant conflicts policies and procedures, and actual steps taken to address conflicts identified; ○ Developing and maintaining methods for tracking conflicts of interest; ○ Seeking legal or other advice; and ○ Updating electronic client platforms, as applicable. We estimate the increase in paperwork burden to be 6,000 hours per proxy voting advice business.
Rule 14a–2(b)(9)(ii)(A)—Notice to Registrants and Rule 14a–2(b)(9)(iii) Safe Harbor. The proxy voting advice business has adopted and publicly disclosed written policies and procedures reasonably designed to ensure that registrants who are the subject of proxy voting advice have such advice made available to them at or prior to the time the advice is disseminated to clients of the proxy voting advice business. • Safe Harbor—The proxy voting advice business has written policies and procedures that are reasonably designed to provide a registrant with a copy of the proxy voting advice business's proxy voting advice, at no charge, no later than the time it is disseminated to the business's clients. Such policies and procedures may include conditions requiring that: (A) The registrant has filed its definitive proxy statement at least 40 calendar days before the security holder meeting date (or if no meeting is held, at least 40 calendar days before the date the votes, consents, or authorizations may be used to effect the proposed action); and (B) The registrant has acknowledged that it will only use the copy of the proxy voting advice for its internal purposes and/or in connection with the solicitation and it will not be published or otherwise shared except with the registrant's employees or advisers.	Increase in paperwork burden corresponding to: To the extent that the proxy voting advice business's current practices and procedures are not already sufficient: • Developing new or modifying existing systems, policies and methods, or developing and maintaining new systems, policies and methods to ensure that it has the capability to timely provide each registrant with information about its proxy advice necessary to satisfy the requirement in Rule 14a–2(b)(9)(ii)(A) and/or the safe harbor in Rule 14a–2(b)(9)(iii). • If applicable, obtaining acknowledgments or agreements with respect to use of any information shared with the registrant; and • Delivering copies of proxy voting advice to registrants. We estimate the increase in paperwork burden to be 8,535 hours per proxy voting advice business, consisting of 2,845 hours for system updates and 5,690 hours for acknowledgments regarding sharing information.

[698] *See* letter from Glass Lewis I.

[699] Out of the estimated 18,534 registrants that may be affected to a greater or lesser extent by the final amendments, 5,690 filed proxy materials with the Commission during calendar year 2018. *See* Section IV.B.1. and *supra* note 549.

New requirement	Proxy voting advice business estimated incremental annual compliance burden
Rule 14a–2(b)(9)(ii)(B)—Notice to Clients of Proxy Voting Advice Businesses and Rule 14a–2(b)(9)(iv) Safe Harbor. The proxy voting advice business has adopted and publicly disclosed written policies and procedures reasonably designed to ensure that the proxy voting advice business provides clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding proxy voting advice by registrants who are the subject of such advice, in a timely manner before the shareholder meeting. • Safe harbor—The proxy voting advice business has written policies and procedures that are reasonably designed to inform clients who receive the proxy voting advice when a registrant that is the subject of such voting advice notifies the proxy voting advice business that it intends to file or has filed additional soliciting materials with the Commission setting forth the registrant's statement regarding the voting advice, by: (A) Providing notice to its clients on its electronic client platform that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available; or (B) The proxy voting advice business providing notice to its clients through email or other electronic means that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available.	Increase in paperwork burden corresponding to: To the extent that the proxy voting advice business's current practices and procedures are not already sufficient: • Developing new or modifying existing systems, policies and methods, or developing and maintaining new systems, policies and methods capable of: ○ Tracking whether the registrant has filed additional soliciting materials; ○ Ensuring that proxy voting advice businesses provide clients with a means to learn of a registrant's written statements about proxy voting advice in a timely manner that satisfies the requirement in Rule 14a–2(b)(9)(ii)(B) and/or the safe harbor in Rule 14a–2(b)(9)(iv). • If relying on the safe harbor in Rule 14a–2(b)(9)(iv)(A) or (B), the associated paperwork burden would include the time and effort required of the proxy voting advice businesses firm to: ○ Provide notice to its clients through the business's electronic client platform or email or other electronic medium, as appropriate, that the registrant intends to file or has filed additional soliciting materials setting forth its views about the proxy voting advice; and ○ include a hyperlink to the registrant's statement on EDGAR We estimate the increase in paperwork burden to be 2,845 hours per proxy voting advice business.
Total	17,380 hours per proxy voting advice business.

Altogether, we estimate an annual total increase of 52,640 hours [700] in compliance burden to be incurred by proxy voting advice businesses that would be subject to the amendments to Rule 14a–2(b)(9). We assume that the burden would be greatest in the first year after adoption, as proxy voting advice businesses incorporate the new requirements into their existing practices and procedures.

b. Registrants

In addition to proxy voting advice businesses, we anticipate that registrants would incur some additional paperwork burden as a result of the amendments. Registrants could experience increased burdens associated with coordinating with proxy voting advice businesses to receive the proxy voting advice, reviewing the proxy voting advice, and preparing and filing supplementary proxy materials in response to the proxy voting advice, if they choose to do so.

As the rules do not require registrants to engage with proxy voting advice businesses or take any action in response to proxy voting advice, we expect a registrant would bear additional paperwork burden only if it anticipated the benefits of engaging with the proxy voting advice business would exceed the costs of participation. These costs will vary depending upon the particular facts and circumstances of the proxy voting advice and any issues identified therein, as well as the resources of the registrant, which makes it difficult to provide a reliable quantifiable estimate of these costs. Nevertheless, in the Proposing Release, the Commission stated its belief that the corresponding burden on registrants would be not significant in most cases, particularly when averaged among all affected registrants.[701] As such, the Commission estimated that registrants would each incur, on average, an increase of ten additional burden hours each year, for a total increase among all registrants of 18,970 hours annually.[702]

In consideration of commenters' views that the Commission's estimates were too low,[703] we have adjusted our prior burden estimates upward. Nevertheless, we do not believe the annual burden to be incurred by an individual registrant would be considerably greater than was reflected in the Proposing Release, particularly in light of the modifications we are making to the registrant review process that was originally proposed. For example, the rules as adopted do not mandate that registrants be afforded fixed periods of review of proxy voting advice, as was the case with the proposal.[704] Furthermore, our estimates consider the extent to which some registrants' current practices and procedures may already involve reviewing proxy voting advice businesses' voting advice, filing additional soliciting materials, and some amount of investor outreach in response to adverse voting recommendations. Assuming that a

[700] This represents the annual total burden increase expected to be incurred by proxy voting advice businesses (as an average of the yearly burden predicted over the three-year period following adoption) and is intended to be inclusive of all burdens reasonably anticipated to be associated with compliance with the conditions of Rule 14a–2(b)(9). The Commission is aware of three businesses in the U.S. (*i.e.,* Glass Lewis, ISS, and Egan-Jones) whose activities fall within the scope of proxy voting advice constituting a solicitation under amended Rule 14a–1(l)(1)(iii)(A). We estimate that each of these will have a burden of 17,380 hours per year. We recognize that there could be other proxy voting advice businesses, including both smaller firms and firms operating outside the U.S., which may also be subject to the final rules. However, we expect such a number to be small. Accordingly, rather than increasing our estimate of the number of affected proxy voting advice businesses beyond the three discussed above, we are increasing our annual total burden estimate by 500 hours to account for those businesses. As a result, the annual total burden that we estimate will result from this amendment will be: (17,380 × 3) + 500 = 52,640 hours.

[701] *See* Proposing Release, PRA Table 1 at 66553 and note e of the table.

[702] *Id.*

[703] *See* letters from Glass Lewis I (''. . . the ten hour estimate and resulting burden hour estimate is both unsupported and likely significantly understated'') and ProxyVote I (''We believe the Proposed Rulemaking significantly understates the actual burden imposed on ProxyVote and thus the actual costs we will incur.'')

[704] *See* proposed Rule 14a–2(b)(9)(ii)(2). One commenter criticized the Commission for not giving proper consideration to registrants' burden hours associated with the ''review and feedback'' periods. *See* Glass Lewis I.

registrant's annual meeting of shareholders is covered by at least two of the three major U.S. proxy voting advice businesses, and the registrant has opted to review both sets of proxy advice and file additional soliciting materials in response, we estimate an average increase of 50 hours per registrant in connection with the amendments for a total annual increase of 284,500 hours.[705] As discussed above, however, it is difficult to predict the effect of the amendments on a registrant's paperwork burden with a great degree of precision.

2. Aggregate Increase in Burden

Table 1 summarizes the calculations and assumptions used to derive our estimates of the aggregate increase in burden for all affected parties corresponding to the amendments.

PRA TABLE 1—CALCULATION OF AGGREGATE INCREASE IN BURDEN HOURS RESULTING FROM THE AMENDMENTS

	Affected parties	
	Proxy voting advice businesses (A)	Registrants (B)
Burden Hour Increase	52,640	284,500
Aggregate Increase in Burden Hours	[Column Total (A)] + [Column Total (B)] = [337,140]	

3. Increase in Annual Responses

We believe that the amendments would increase the number of annual responses [706] to the existing collection of information for Regulation 14A. Although we do not expect registrants to file any different number of proxy statements as a result of our amendments, we do anticipate that the number of additional soliciting materials filed under 17 CFR 240.14a–6 may increase in proportion to the number of times that registrants choose to provide a statement in response to a proxy voting advice business's proxy voting advice as contemplated by Rule 14a–2(b)(9)(ii)(B) and/or the safe harbor under Rule 14a–2(b)(9)(iv). For purposes of this PRA, we estimate that there would be an additional 783 annual responses to the collection of information as a result of the amendments.[707]

4. Incremental Change in Compliance Burden for Collection of Information

Table 2 below illustrates the incremental change to the total annual compliance burden for the Regulation 14A collection of information in hours and in costs [708] as a result of the amendments. The table sets forth the percentage estimates we typically use for the burden allocation for each response.

[705] In the Proposing Release, for purposes of its PRA analysis, the Commission assumed that, on average, one-third of the 5,690 registrants that filed proxy materials with the Commission during calendar year 2018 (1,897) would be the subject of proxy voting advice each year. *See* Proposing Release, note b. of PRA Table 1 at 66553. Some commenters who disagreed with this assumption stated that this figure was too low. *See* letter from Glass Lewis I. (suggesting that the correct number was ''likely much closer to 100% of those that filed proxy materials with the Commission'') and ProxyVote I (''The appropriate number of registrants that should be subject to the Proposed Rulemaking's estimates should be 5,690 registrants, not 1,897 registrants''). We also note certain statements from some proxy voting advice businesses indicating that they cover tens of thousands of shareholder meetings annually across global markets. *See* letters from Glass Lewis I and II; ISS; Egan-Jones. Accordingly, we have reconsidered our original estimate of one-third, and agree that our calculations should be based on the larger number of 5,690 registrants, given the significant volume of registrants and shareholder meetings that are the subject of proxy voting advice each year. This results in a total annual burden increase of 50 × 5,690 = 284,500 hours. We note that such burden increase would be offset against any corresponding reduction in burden resulting from the registrant forgoing other methods of responding to the proxy voting advice (such as investor outreach) the registrant determines are no longer necessary or are less preferable in light of the new rules.

[706] For purposes of the Regulation 14A collection of information, the number of annual responses corresponds to the estimated number of new filings that will be made each year under Regulation 14A, which includes filings such as DEF 14A; DEFA14A; DEFM14A; and DEFC14A. When calculating PRA burden for any particular collection of information, the total number of annual burden hours estimated is divided by the total number of annual responses estimated, which provides the average estimated annual burden per response. The current inventory of approved collections of information is maintained by the Office of Information and Regulatory Affairs (OIRA), a division of OMB. The total annual burden hours and number of responses associated with Regulation 14A, as updated from time to time, can be found at *https://www.reginfo.gov/public/do/PRAMain*.

[707] Because a registrant's decision to review and file additional soliciting materials in response to proxy voting advice will be entirely voluntary, it is difficult to predict how frequently such parties will choose to do so. For purposes of the PRA estimate in the Proposing Release, the Commission used as its baseline the average number of times firms filed additional definitive proxy materials in response to proxy voting advice over the three calendar years 2016 (99), 2017 (77) and 2018 (84), or 87. *See* Proposing Release at n. 269. For purposes of its PRA analysis, the Commission estimated that at least three times as many registrants would choose to prepare responses to proxy voting advice and request that their hyperlink be provided to the recipients of the advice pursuant to proposed Rule 14a–2(b)(9)(iii) than otherwise had historically chosen to file additional soliciting materials. As a result, the Commission estimated that three times as many supplemental proxy filings would be made each year, which would increase the annual responses to the Regulation 14A collection of information by the same amount. For purposes of this PRA analysis, we apply a similar methodology. To the extent that registrants believe that the efficacy of providing a response to proxy voting advice via additional soliciting materials will be enhanced by the amendments, and make registrants more likely to use this mechanism than they have in the past, we expect that the number of annual responses to the Regulation 14 collection of information will increase correspondingly. However, it is difficult to reliably predict what this overall increase would be. In light of comments we received that, as a general matter, our PRA estimates were too low, we think it is appropriate to increase our estimate of additional soliciting materials filed each year from three times the current number to ten times the current number. Taking the average of the Rule 14a–6 filings made in years 2016, 2017, 2018 (87), we multiply by ten for an estimate of 870 Rule 14a–6 filings, or an increase of 783 annual responses to the Regulation 14A collection of information.

[708] Our estimates assume that 75% of the burden is borne by the company and 25% is borne by outside counsel at $400 per hour. We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms, and other persons who regularly assist registrants in preparing and filing reports with the Commission.

PRA TABLE 2—CALCULATION OF INCREASE IN BURDEN HOURS RESULTING FROM THE AMENDMENTS

Number of estimated responses (A) †	Total increase in burden hours (B) ††	Increase in burden hours per response (C) = (B)/(A)	Increase in internal hours (D) = (B) x 0.75	Increase in professional hours (E) = (B) x 0.25	Increase in professional costs (F) = (E) x $400
6,369	337,140	††† 50	252,855	84,285	$33,714,000

† This number reflects an estimated increase of 783 annual responses to the existing Regulation 14A collection of information. *See supra* note 707. The current OMB PRA inventory estimates that 5,586 responses are filed annually.

†† Calculated as the sum of annual burden increases estimated for proxy voting advice businesses (52,640 hours) and registrants (284,500 hours). *See supra* PRA Table 1.

††† The estimated increases in Columns (C), (D), and (E) are rounded to the nearest whole number.

5. Program Change and Revised Burden Estimates

Table 3 summarizes the estimated change to the total annual compliance burden of the Regulation 14A collection of information, in hours and in costs, as a result of the amendments.

PRA TABLE 3—REQUESTED PAPERWORK BURDEN UNDER THE AMENDMENTS

	Current burden			Program change			Revised burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Increase in responses (D) ±	Increase in internal hours (E) ±±	Increase in professional costs (F) ±±±	Annual responses	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
Reg. 14A	5,586	551,101	$73,480,012	783	252,855	$33,714,000	6,369	803,956	$107,194,012

± *See* Column (A) in PRA Table 2 noting an estimated increase of 783 annual responses to the existing Regulation 14A collection of information.

±± *See* Column (D) in PRA Table 2.

±±± From Column (F) in PRA Table 2.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act (''RFA'').[709] It relates to the amendments to: The definition of ''solicitation'' in Rule 14a–1(l); the proxy solicitation exemptions in Rule 14a–2(b); and the prohibition on false or misleading statements in solicitations in Rule 14a–9 of Regulation 14A under the Exchange Act. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release.

A. Need for, and Objectives of, the Final Amendments

Given the importance of a properly functioning proxy system to investors and the capital markets, the purpose of the amendments is to help ensure that investors, or those acting on their behalf, who use proxy voting advice have access to more transparent and complete information with which to make their voting decisions, while not imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice, with the ultimate aim of facilitating informed voting decisions. The need for, and objectives of, these amendments are discussed in more detail in Sections I, II, and IV above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on any aspect of the IRFA, including how the proposed amendments could achieve their objective while lowering the burden on small entities, the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential effects of the proposed amendments on small entities discussed in the analysis, and how to quantify the effects of the proposed amendments. We also requested comment on the number of proxy voting advice businesses that would be small entities subject to the proposed amendments.

We did not receive estimates from commenters on the number of small entities that would be affected by the proposed amendments or the number of proxy voting advice businesses that would be small entities subject to the proposed amendments. However, several commenters asserted that the Commission's economic analysis failed to consider the cost and effect of the proposed amendments on smaller proxy voting advice businesses.[710] One such commenter stated that the proposals would be particularly burdensome for small proxy voting advice businesses.[711] Another commenter, who identified itself as a small entity (with under $5 million in assets) providing proxy voting services to institutional investor clients, asserted that small entities like itself would face significant resource and capacity burdens when complying with the proposed amendments, with no gain in the quality of voting or results for their clients.[712] In addition, one commenter believed that small and medium-sized investment advisers would be disproportionately affected by increased costs that may result from the proposed amendments because they are less likely to be able to have staff solely dedicated to the proxy voting process,[713] while another predicted that delays and increased costs resulting from the proposed amendments would most heavily impact smaller institutional investors, such as churches, endowments, unions, pension funds, etc.[714] Several commenters stated that small entities may not have sufficient staffing and resources to

[709] 5 U.S.C. 601 *et seq.*

[710] *See, e.g.,* letters from Felician Sisters II; Good Shepherd; IASJ; Interfaith Center II; St. Dominic of Caldwell.

[711] *See* letter from Interfaith Center II.

[712] *See supra* note 518.

[713] *See* letter from IAA.

[714] *See* letter from J. McRitchie I.

comply with the review and feedback process, and therefore should either be exempted from the proposals or, at a minimum, be given an extended timeframe for compliance.[715] In developing the FRFA, we considered these comments as well as comments on the proposed amendments generally.[716] As discussed throughout this release, including in Section VI.D below, we note that the shift to a principles-based approach for the final amendment should help alleviate a number of the concerns raised by commenters about the potential impact on small entities.

C. Small Entities Subject to the Final Amendments

The amendments could affect some small entities; specifically, those small entities that are: (i) Proxy voting advice businesses (*i.e.,* persons who provide proxy voting advice that falls within the definition of a ''solicitation'' under Rule 14a–1(l)(1)(iii), as amended); and (ii) registrants conducting solicitations covered by proxy voting advice. Although not directly subject to the amendments, clients of proxy voting advice businesses and the investors on whose behalf such clients vote proxies may be indirectly affected by the amendments to the extent that the costs borne by the proxy voting advice businesses result in increased fees for such services.

The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [717] The definition of ''small entity'' does not include individuals. For purposes of the RFA, under our rules, an issuer of securities or a person, other than an investment company or an investment adviser, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.[718] An investment company, including a business development company,[719] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[720] An investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[721]

As discussed in Section IV.B.1, we are not aware of smaller entities that currently supply research, analysis, and recommendations to support the voting decisions of their clients that would fall within the definition of ''solicitation'' and would therefore be directly affected by the amendments.[722] As far as registrants that may be directly affected, we estimate that there are 1,011 issuers that file with the Commission, other than investment companies and investment advisers, that may be considered small entities.[723] In addition, we estimate that, as of December 31, 2019, there were 92 registered investment companies that may be considered small entities.[724] Finally, we estimate that, as of December 31, 2019, there were 452 investment advisers that may be considered small entities and may be indirectly affected by the amendments.[725]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

We anticipate that any costs resulting from the amendments will primarily relate to Rule 14a–2(b)(9) and, as such, predominantly affect the proxy advice voting businesses that will be required to comply with Rule 14a–2(b)(9) in order to rely on the exemptions in Rule 14a–2(b)(1) or (b)(3).[726] These businesses, including any affected small entities, will likely incur costs to ensure that their internal practices, procedures, and systems are sufficient to meet the conflicts of interest disclosure and notice requirements under Rule 14a–2(b)(9). As noted above, we are not aware of smaller entities that currently provide services that would cause them to be subject to the proposed amendments; nevertheless, in the interest of completeness, we have considered the potential effects of the amendments on smaller proxy voting advice businesses throughout this FRFA. Registrants of all sizes also could incur costs associated with coordinating with proxy voting advice businesses to receive the proxy voting advice, reviewing the proxy voting advice, and determining whether to prepare and file additional soliciting materials in response to the proxy voting advice.[727] Compliance with the amendments may require the use of professional skills, including legal skills.

The amendments apply to small entities to the same extent as other entities, irrespective of size. Therefore, we expect that the nature of any benefits and costs associated with the amendments will be similar for large and small entities. Accordingly, we refer to the discussion of the amendments' economic effects on all affected parties, including small entities, in Section IV above.[728] Consistent with that discussion, to the extent that any small entities currently or in the future may provide proxy voting advice, we anticipate that the economic benefits and costs likely will vary widely among such entities based on a number of factors, including the nature and conduct of their businesses, as well as the extent to which they are already meeting or exceeding the requirements established by the amendments, which makes it difficult to project the

[715] *See* letters from Felician Sisters II; Good Shepherd; IASJ; Interfaith Center II; St. Dominic of Caldwell.

[716] *See* supra Sections II; IV.

[717] 5 U.S.C. 601(6).

[718] *See* Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[719] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48); 80a–53–64].

[720] *See* Investment Company Act Rule 0–10(a) [17 CFR 270.0–10(a)].

[721] *See* Advisers Act Rule 0–7(a) [17 CFR 275.0–7(a)].

[722] In this regard, commenters did not provide data that would allow us to ascertain the extent to which there are smaller entities that would be considered proxy voting advice businesses within the scope of the amendments.

[723] This estimate is based on staff analysis of issuers, excluding co-registrants, with EDGAR filings of either Form 10–K or amendments, filed during the calendar year of January 1, 2019 to December 31, 2019. The data used for this analysis were derived from XBRL filings, Compustat, and Ives Group Audit Analytics.

[724] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data filed with the Commission (Forms N–Q and N–CSR) for the period ending December 2019.

[725] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV. As discussed above, ISS, one of the three major firms that comprise the proxy advisory industry in the U.S., is also registered investment advisor. *See supra* Section IV.B.1.a.

[726] The amendments are discussed in detail in Section II, above. We discuss the economic impact, including the estimated costs and benefits, of the amendments to all affected entities, including small entities, in Section IV above.

[727] *See supra* Section V.C.1.b. We do not expect that the amendments to Rule 14a–1(l) and Rule 14a–9 will have a significant economic impact on affected parties, including any small entities, because they codify already-existing Commission positions on the applicability of these rules to proxy voting advice. *See supra* note 685.

[728] In particular, we discuss the estimated benefits and costs of the amendments on all affected parties, including larger and smaller entities, in Section IV.C. above. We also discuss the estimated compliance burden associated with the amendments for purposes of the PRA in Section V above.

economic impact on small entities with precision.[729]

As a general matter, however, we recognize that any costs of the amendments borne by the affected entities, such as those related to compliance with the amendments, or the implementation or restructuring of internal systems needed to adjust to the amendments, could have a proportionally greater effect on small entities, as they may be less able than larger entities to bear such costs. Further, as discussed in Section IV.B.1.a., the three major proxy voting advice businesses currently operating in the U.S. have existing processes in place for identifying and disclosing conflicts of interest to their clients, as well as providing some registrants access to versions of the businesses' proxy voting advice prior to making a voting recommendation to clients. If competing proxy voting advice businesses do not have such processes in place, they could be disproportionately affected by the amendments. Finally, the amendments may impact competition, in particular for any small entities that provide proxy voting advice services. To the extent that a proxy voting advice business's existing practices and procedures do not satisfy the conditions of Rule 14a–2(b)(9), such entities, including any affected small entities, will incur additional compliance costs and, consequently, may be more likely to exit the market for such services or less able to enter the market in the first place.

We believe that the principles-based approach we are adopting should address many of the concerns commenters raised about the proposed amendments' potential disparate effect on smaller firms. By providing proxy voting advice businesses, including those that are small entities, with the flexibility to design policies and procedures that are scaled to the scope of their business operations, we believe these entities will be able to find the most cost-effective means to comply with the requirements.

With respect to costs that may be incurred by registrants as a result of the amendments, these costs will vary depending upon the particular facts and circumstances of the proxy voting advice as well as the resources of the registrant. Consequently, as with proxy voting advice businesses, it is difficult to quantify these costs with precision, particularly since the degree to which a registrant elects to review and respond to proxy voting advice is entirely voluntary.[730] As a function of their smaller size, registrants that are small entities may incur proportionally greater costs associated with amendments than larger entities, but the extent of such costs is uncertain. Importantly, while registrants of all sizes may take advantage of the ability to review proxy voting advice provided pursuant to the amendments and potentially file additional soliciting material in response, they are not required to do so; as a result, we expect that registrants would engage in the process only to the extent that they anticipate the benefits of such review to be greater than the costs.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Exempting small entities from all or part of the requirements;
- Using performance rather than design standards; and
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities

We do not believe that establishing different compliance or reporting requirements for small entities in connection with the amendments would accomplish the objectives of this rulemaking. The amendments are intended to improve the completeness and transparency of information available to shareholders and those acting on their behalf when making voting decisions and enhance the overall functioning of the proxy voting process, in furtherance of Section 14 of the Exchange Act. These objectives would not be as effectively served if we were to establish different conditions for smaller proxy voting advice businesses that wish to rely on the solicitation exemptions in Rules 14a–2(b)(1) or (b)(3).[731] For similar reasons, we do not believe that exempting smaller proxy voting advice businesses from all or part of the amendments would accomplish our objectives.[732]

In a change from the proposal, the amendments generally use performance standards rather than design standards. Based on commenter feedback, including that related to the potential impact on smaller entities, we believe that moving from an approach that emphasizes design standards to one that emphasizes performance standards will provide all entities, and in particular smaller entities, with sufficient flexibility to find the most cost-effective means of compliance while still achieving our objectives. We recognize that using performance standards rather than design standards may increase the degree of uncertainty that proxy voting advice businesses and their clients have regarding whether such businesses are in full compliance with the rules. However, we also are adopting certain safe harbors that we believe will help mitigate such uncertainty to the extent proxy voting advice businesses choose to rely on them.

In adopting these amendments, we have undertaken to provide rules that are clear and simple for all affected parties. We do not believe that further clarification, consolidation, or simplification for small entities is necessary.

VII. Statutory Authority

We are adopting the rule amendments contained in this release under the authority set forth in Sections 3(b), 14, 16, 23(a), and 36 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we are amending title 17, chapter II, of the Code of Federal Regulations as follows:

[729] *See supra* Section IV.C.5.

[730] For purposes of the PRA analysis in Section V, we estimate an annual increase of 50 burden hours per registrant in connection with the amendments.

[731] Moreover, because the amendments reflect a principles-based, rather than a more prescriptive, framework, there is no practicable way to establish different compliance requirements for smaller proxy voting advice businesses without also compromising the principles-based nature of the requirements. Under the rules that we are adopting, proxy voting advice businesses may comply in whatever manner they choose so long as they satisfy the principles set forth.

[732] *See supra* Section IV.E.6. Exempting smaller proxy voting advice businesses from the additional conditions of Rules 14a–2(b)(1) and (3) would reduce the resulting costs of the amendments for such businesses, but it also would mean that their clients would not realize the same benefits in terms of potential improvements in the reliability and transparency of the voting advice they receive. This, in turn, could put smaller proxy voting advice businesses at a competitive disadvantage if they chose to avail themselves of such an exemption.

PART 240—GENERAL RULES AND REGULATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5521(e)(3); 18 U.S.C. 1350, Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Sections 240.14a–1, 240.14a–3, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1, and 240.14c–7 also issued under secs. 12, 15 U.S.C. 781, and 14, Pub. L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n;

* * * * *

■ 2. Amend § 240.14a–1 by:

■ a. Revising paragraph (l)(1)(iii);

■ b. In paragraph (l)(2)(iii), removing the word ''or'' from the end of the paragraph;

■ c. In paragraph (l)(2)(iv)(C), removing at the end of the paragraph ''.'' and adding in its place ''; or'';

■ d. Adding paragraph (l)(2)(v).

The revisions and additions read as follows:

§ 240.14a–1 Definitions.

* * * * *

(l) *Solicitation.* (1) * * *

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, including:

(A) Any proxy voting advice that makes a recommendation to a security holder as to its vote, consent, or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets its expertise as a provider of such proxy voting advice, separately from other forms of investment advice, and sells such proxy voting advice for a fee.

(B) [Reserved]

(2) * * *

(v) The furnishing of any proxy voting advice by a person who furnishes such advice only in response to an unprompted request.

■ 3. Amend § 240.14a–2 by adding paragraph (b)(9) to read as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(9) Paragraphs (b)(1) and (b)(3) of this section shall not be available to a person furnishing proxy voting advice covered by § 240.14a–1(l)(1)(iii)(A) (''proxy voting advice business'') unless both of the conditions in (b)(9)(i) and (ii) of this section are satisfied:

(i) The proxy voting advice business includes in its proxy voting advice or in an electronic medium used to deliver the proxy voting advice prominent disclosure of:

(A) Any information regarding an interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and

(B) Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship; and

(ii) The proxy voting advice business has adopted and publicly disclosed written policies and procedures reasonably designed to ensure that:

(A) Registrants that are the subject of the proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the proxy voting advice business's clients; and

(B) The proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants who are the subject of such advice, in a timely manner before the security holder meeting (or, if no meeting, before the votes, consents, or authorizations may be used to effect the proposed action).

Note 1 to paragraph (b)(9)(ii): For purposes of satisfying the requirement in paragraph (b)(9)(ii)(A) of this section, the proxy voting advice business's written policies and procedures need not require it to make available to the registrant additional versions of its proxy voting advice with respect to the same meeting, vote, consent or authorization, as applicable, if the advice is subsequently revised.

(iii) A proxy voting advice business will be deemed to satisfy the requirement in paragraph (b)(9)(ii)(A) of this section if it has written policies and procedures that are reasonably designed to provide a registrant with a copy of its proxy voting advice, at no charge, no later than the time such advice is disseminated to the proxy voting advice business's clients. Such policies and procedures may include conditions requiring that:

(A) The registrant has filed its definitive proxy statement at least 40 calendar days before the security holder meeting date (or if no meeting is held, at least 40 calendar days before the date the votes, consents, or authorizations may be used to effect the proposed action); and

(B) The registrant has acknowledged that it will only use the copy of the proxy voting advice for its internal purposes and/or in connection with the solicitation and such copy will not be published or otherwise shared except with the registrant's employees or advisers.

(iv) A proxy voting advice business will be deemed to satisfy the requirement in paragraph (b)(9)(ii)(B) of this section if it has written policies and procedures that are reasonably designed to inform clients who receive proxy voting advice when a registrant that is the subject of such advice notifies the proxy voting advice business that it intends to file or has filed additional soliciting materials with the Commission pursuant to § 240.14a–6 setting forth the registrant's statement regarding the advice, by:

(A) The proxy voting advice business providing notice to its clients on its electronic platform that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available; or

(B) The proxy voting advice business providing notice to its clients through email or other electronic means that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available.

(v) Paragraph (b)(9)(ii) of this section does not apply to proxy voting advice to the extent such advice is based on custom voting policies that are proprietary to a proxy voting advice business's client.

(vi) Paragraph (b)(9)(ii) of this section does not apply to any portion of the proxy voting advice that makes a recommendation to a security holder as to its vote, consent, or authorization in a solicitation subject to § 240.14a–3(a):

(A) To approve any transaction specified in § 230.145(a); or

(B) By any person or group of persons for the purpose of opposing a solicitation subject to this regulation by any other person or group of persons.

* * * * *

■ 4. Amend § 240.14a–9 by adding paragraph e. to the Note to read as follows:

§ 240.14a–9 False or misleading statements.

* * * * *

Note: * * *

e. Failure to disclose material information regarding proxy voting advice covered by § 240.14a–1(l)(1)(iii)(A), such as the proxy voting advice business's methodology, sources of information, or conflicts of interest.

* * * * *

By the Commission.

Dated: July 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–16337 Filed 9–1–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA–5547]

Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Guidance.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing supplementary guidance regarding the proxy voting responsibilities of investment advisers under its regulations issued under the Investment Advisers Act of 1940 (the ''Advisers Act'') in light of the Commission's amendments to the rules governing proxy solicitations under the Securities Exchange Act of 1934 (the ''Exchange Act'').

DATES: *Effective:* September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Thankam A. Varghese, Senior Counsel; or Holly Hunter-Ceci, Assistant Chief Counsel, at (202) 551–6825 or *IMOCC@sec.gov,* Chief Counsel's Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is publishing supplementary guidance regarding the proxy voting responsibilities of investment advisers under 17 CFR 275.206(4)–6 [Rule 206(4)–6 under the Advisers Act [15 U.S.C. 80b]].[1]

I. Introduction

The Commission previously issued guidance discussing how the fiduciary duty and rule 206(4)–6 under the Advisers Act relate to an investment adviser's exercise of voting authority on behalf of clients and also provided examples to help facilitate investment advisers' compliance with their obligations in connection with proxy voting.[2] We are supplementing this guidance in light of information gained in connection with our ongoing review of the proxy voting process and our related regulations, including the amendments to the proxy solicitation rules under the Exchange Act that we are issuing at this time.[3]

We expect that the Exchange Act amendments adopted in Release No. 34–89372 will result in improvements in the mix of information that is available to investors and material to a voting decision. In particular, we expect issuers will have access to proxy advisory firm recommendations in a timeframe that will permit those issuers to make available to shareholders additional information that may be material to a voting decision in a more systematic and timely manner than they could previously.[4] We also expect that the amendments will result in the availability of that additional information being made known to proxy advisory firms and their clients in a timely manner, including because proxy advisory firms, as a condition to the availability of the exemptions in 17 CFR 240.14a–2(b)(1) and (b)(3), must adopt policies and procedures that are reasonably designed to provide investment advisers and other clients with a mechanism by which they can reasonably be expected to become aware of that additional information prior to making voting decisions. Accordingly, we are providing supplementary guidance to assist investment advisers in assessing how to consider the additional information that may become more readily available to them as a result of these amendments, including in circumstances where the investment adviser utilizes a proxy advisory firm's electronic vote management system that ''pre-populates'' the adviser's proxies with suggested voting recommendations and/or for voting execution services. The supplementary guidance also addresses disclosure obligations and considerations that may arise when investment advisers use such services for voting.

II. Supplemental Guidance Regarding Investment Advisers' Proxy Voting Responsibilities

Question 2.1: In some cases, proxy advisory firms assist clients, including investment advisers, with voting execution, including through an electronic vote management system that allows the proxy advisory firm to: (1) Populate each client's votes shown on the proxy advisory firm's electronic voting platform with the proxy advisory firm's recommendations based on that client's voting instructions to the firm (''pre-population''); and/or (2) automatically submit the client's votes to be counted (''automated voting''). Pre-population and automated voting generally occur prior to the submission deadline for proxies to be voted at the shareholder meeting. In various circumstances, an investment adviser, in the course of conducting a reasonable investigation into matters on which it votes,[5] may become aware that an issuer that is the subject of a voting recommendation intends to file or has filed additional soliciting materials with the Commission setting forth the issuer's views regarding the voting recommendation. These materials may or may not reasonably be expected to affect the investment adviser's voting

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[1] Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and when we refer to rules under the Advisers Act, or any paragraph of these rules, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR part 275], in which these rules are published.

[2] Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA–5325 (Aug. 21, 2019), 84 FR 47420 (Sept. 10, 2019) (''Commission Guidance on Proxy Voting Responsibilities'').

[3] *See* Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34–89372 (July 22, 2020) (''Amendments to Proxy Solicitation Rules''); *see also* 17 CFR 240.14a–2(b)(9)(iv); *see also* Commission Guidance on Proxy Voting Responsibilities, *supra* at n. 2. Proxy advisory firms will not be required to comply with certain of the amendments we are making to the proxy solicitation rules until December 1, 2021. This guidance addresses the application of the fiduciary duty, Form ADV, and rule 206(4)–6 under the Advisers Act to an investment adviser's proxy voting responsibilities in connection with current practices, as well as any policies or procedures that may be implemented by proxy advisory firms under the final amendments.

[4] *See infra* at n. 6. While 17 CFR 240.14a–2(b) uses the term ''proxy voting advice business,'' we use the term ''proxy advisory firm'' in this release. This is consistent with the Commission Guidance on Proxy Voting Responsibilities, which this release supplements.

[5] *See* Commission Guidance on Proxy Voting Responsibilities, text at notes 15 and 37 and in response to Question 4.

determination.[6] In addition, these materials may become available after or around the same time that the investment adviser's votes have been pre-populated but before the submission deadline for proxies to be voted at the shareholder meeting.[7] In these circumstances, what steps should an investment adviser take to demonstrate that it is making voting determinations in a client's best interest?

Response: The Commission in its prior guidance discussed a number of steps that an investment adviser could take to demonstrate that it is making voting determinations in a client's best interest.[8] These include additional steps when an investment adviser utilizes a proxy advisory firm, such as assessing pre-populated votes shown on the proxy advisory firm's electronic voting platform and considering additional information that may become available before the relevant votes are cast. Together with those steps, an investment adviser should consider whether its policies and procedures, including any policies and procedures with respect to automated voting of proxies, are reasonably designed to ensure that it exercises voting authority in its client's best interest. An investment adviser should consider, for example, whether its policies and procedures address circumstances where the investment adviser has become aware that an issuer intends to file or has filed additional soliciting materials with the Commission after the investment adviser has received the proxy advisory firm's voting recommendation but before the submission deadline. In such cases, if an issuer files such additional information sufficiently in advance of the submission deadline and such information would reasonably be expected to affect the investment adviser's voting determination, the investment adviser would likely need to consider such information prior to exercising voting authority in order to demonstrate that it is voting in its client's best interest.[9] In addition, because the timing of pre-population and automated voting may result in proxy advisory firms possessing non-public information regarding how an investment adviser intends to vote a client's securities, the investment adviser should also consider reviewing its agreements with any proxy advisory firms to determine whether the agreements would permit the proxy advisory firms to utilize this information in a manner that would not be in the best interest of the investment adviser's client.[10]

In its prior guidance, the Commission also discussed how an investment adviser and its client may agree on the scope of the investment adviser's authority and responsibilities to vote proxies on behalf of that client.[11] The Commission explained that an investment adviser may agree with its client to the scope of voting arrangements but that scoping the relationship requires the investment adviser to make full and fair disclosure and the client to provide informed consent. Differences in agreements between investment advisers and their clients as to the scope of the advisory relationship may result in a variety of arrangements for voting client securities, which may address, for example, parameters around the method of voting execution.

An investment adviser also has an obligation, as a result of its duty of loyalty to clients, to make full and fair disclosure to its clients of all material facts relating to the advisory relationship.[12] These include material facts related to the exercise of voting authority with respect to client securities. The Commission recently explained that, ''[i]n order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.'' [13] Further, rule 206(4)–6 and Form ADV require an investment adviser to describe to clients its voting policies and procedures.[14]

In light of the above, we believe that an investment adviser that uses automated voting should consider disclosing: (1) The extent of that use and under what circumstances it uses automated voting; and (2) how its policies and procedures address the use of automated voting in cases where it becomes aware before the submission deadline for proxies to be voted at the shareholder meeting that an issuer intends to file or has filed additional soliciting materials with the Commission regarding a matter to be voted upon. In addition, an investment adviser should also consider whether its policies and procedures are reasonably designed to address these disclosures. Depending on the facts and circumstances, these disclosures may be necessary for the investment adviser to provide sufficiently specific information so that a client is able to understand the role of automated voting in the investment adviser's exercise of voting authority. In those cases, the client may not, without this disclosure, have sufficiently specific information to provide informed consent with respect to the use of automated voting as a means of exercising voting authority either (a) for purposes of agreeing to the scope of the relationship or (b) as it relates to the investment adviser's obligation, under its duty of loyalty, to provide full and fair disclosure relating to the advisory relationship. In this regard, an investment adviser should also consider its obligations under rule

[6] For example, we expect that 17 CFR 240.14a–2(b)(9)(ii)(A) will result in issuers being made aware of recommendations by proxy voting advice businesses (the term used in the rule for what we refer to here as proxy advisory firms) in a timeframe that will permit those issuers to make any views regarding those recommendations available in a more systematic and timely manner than was previously the case. 17 CFR 240.14a–2(b)(9)(ii)(B) also requires that proxy voting advice businesses adopt policies and procedures reasonably designed to provide their clients, including investment advisers, with a mechanism by which they can reasonably be expected to become aware of those views. *See* Amendments to Proxy Solicitation Rules, *supra* at n. 3; *see also* 17 CFR 240.14a–2(b)(9)(iv) (providing a non-exclusive safe harbor pursuant to which proxy voting advice businesses will be deemed to satisfy the principle-based requirement of Rule 14a–2(b)(9)(ii)(B)).

[7] Unless otherwise indicated, our reference to the term ''meeting'' throughout Question 2.1 is intended to include an issuer's solicitation of written consents or authorizations in lieu of a shareholder meeting. For example, if the issuer is seeking the necessary shareholder approval for a matter through a solicitation of written consents or authorizations in lieu of a vote at a shareholder meeting, our guidance addresses the additional information that may become available after the proxy advisory firm's recommendations have been pre-populated but before the written consents or authorizations have been submitted.

[8] *See* Commission Guidance on Proxy Voting Responsibilities, 84 FR 47420, at 47423 (Question No. 2).

[9] Whether such information would reasonably be expected to affect an investment adviser's voting determination for a client may depend, in part, on the agreed upon scope of the investment adviser's authority and responsibilities to vote proxies on behalf of that client, as discussed in response to Question 1 of the Commission Guidance on Proxy Voting Responsibilities. *See* Commission Guidance on Proxy Voting Responsibilities, 84 FR 47420, at 47422 (Question No. 1).

[10] For example, the investment adviser may want to consider the extent to which the proxy advisory firm would be permitted to share this information (including information on aggregated voting intentions of the firm's clients) with third parties.

[11] *See* Commission Guidance on Proxy Voting Responsibilities, 84 FR 47420, at 47422 (Question No. 1).

[12] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA–5248 (June 5, 2019), 84 FR 33669, at 33675 (July 12, 2019) (''[t]o meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship.'') (internal citations omitted).

[13] *See id.,* text at note 59.

[14] Rule 206(4)–6(c) requires investment advisers to describe their voting policies and procedures to clients. S*ee also* Form ADV, Part 2A, Item 17 (requiring an adviser to briefly describe voting policies and procedures where it has, or will accept, authority to vote client securities).

206(4)–6 and Form ADV as they relate to the investment adviser's voting policies and procedures. Accordingly, an investment adviser should carefully review its disclosures with respect to these matters in order to ascertain whether it has provided its clients with the disclosure necessary for the clients to provide informed consent with respect to the use of automated voting as a means of exercising voting authority and for the adviser to satisfy its obligations under rule 206(4)–6 and Form ADV.

III. Other Matters

Pursuant to the Congressional Review Act,[15] the Office of Information and Regulatory Affairs has designated this guidance as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 17 CFR Part 276

Securities.

Amendments to the Code of Federal Regulations

For the reasons set out above, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as set forth below:

[15] 5 U.S.C. 801 *et seq.*

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 1. The authority citation for part 276 continues to read as follows:

Authority: 15 U.S.C. 80b *et seq.*

■ 2. Amend the table by adding an entry for Release No. IA–5547 at the end of the table to read as follows:

Subject	Release No.	Date	**Federal Register** volume and page
* * *	*	* *	*
Supplement to Commission Guidance Regarding the Proxy Voting Responsibilities of Investment Advisers.	IA–5547	September 3, 2020	[Insert FR citation of publication]

By the Commission.

Dated: July 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–16338 Filed 9–2–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Thursday,

No. 172 September 3, 2020

Part III

The President

Proclamation 10065—National Alcohol and Drug Addiction Recovery Month, 2020

Proclamation 10066—National Childhood Cancer Awareness Month, 2020

Proclamation 10067—National Preparedness Month, 2020

Proclamation 10068—National Sickle Cell Disease Awareness Month, 2020

Federal Register
Vol. 85, No. 172
Thursday, September 3, 2020

Presidential Documents

Title 3—

The President

Proclamation 10065 of August 31, 2020

National Alcohol and Drug Addiction Recovery Month, 2020

By the President of the United States of America

A Proclamation

National Alcohol and Drug Addiction Recovery Month is a time to honor and celebrate the millions of Americans who have found a pathway from addiction to a life of renewed purpose.

The theme of this year's Recovery Month is ''Join the Voices for Recovery: Celebrating Connections.'' For those in or seeking recovery, developing and nurturing connections and relationships is essential. Despite challenges to developing and fostering meaningful connections caused by the coronavirus, Americans in recovery have demonstrated resilience and resolve by creating new and innovative means of connecting to fill the void of in person interactions. From establishing virtual peer support groups that embrace technology like videoconferencing to holding health and wellness classes remotely or in person following social distancing guidelines, Americans in recovery are finding strength in their communities.

Throughout these unprecedented and challenging times, my Administration has taken historic action to ensure the road to recovery remains open. Among other measures, we have expanded access to telehealth services and ensured addiction treatment medications have remained available, including in rural and other underserved areas. In March, I signed the Coronavirus Aid, Relief, and Economic Security Act to provide millions of dollars in emergency funding for a wide range of prevention, treatment, and recovery services during the pandemic. My Administration is also working tirelessly to increase access to effective treatments and to build up the Nation's peer recovery support services infrastructure.

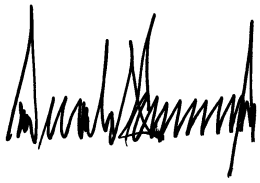
To help end the scourge of addiction, my Administration released our National Treatment Plan for Substance Use Disorder, which outlines steps for improving the quality of treatment across a full continuum of care. This includes early identification and intervention services, and increased access to addiction treatment and recovery support services. Additionally, in June, I signed an Executive Order that requires the Secretary of Health and Human Services to survey community support models addressing addiction and to make recommendations to ensure successful models are widely adopted and implemented.

It is within a communal framework of love, compassion, and understanding, nurtured by the shared experiences of strength, hope, and healing, that we can find understanding and inspiration in one another. As our Nation continues to recognize those who are successfully breaking the chains of addiction and drug and alcohol misuse, we applaud the healthcare and treatment professionals, counselors, peer recovery coaches, faith leaders, first responders, family members, friends, and advocates who are vital in helping them achieve and sustain recovery, whether in person, over the phone, or virtually. Together, we can help more Americans live healthy and meaningful lives while building a stronger Nation.

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 September 2020 as National Alcohol and Drug Addiction Recovery Month. I call upon the

people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, 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.



[FR Doc. 2020–19742
Filed 9–2–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10066 of August 31, 2020

National Childhood Cancer Awareness Month, 2020

By the President of the United States of America

A Proclamation

Childhood should be a time of joy, laughter, innocence, and wonder. Sadly, more than 15,000 American children and adolescents endure the pain, heartache, and uncertainty of a cancer diagnosis each year. Today, cancer is the leading cause of death from disease beyond infancy for our Nation's youth, and in 2020 alone, it is expected to take the lives of approximately 1,200 children under 15 years of age. During National Childhood Cancer Awareness Month, we recognize the courage and strength of the brave children battling a cancer diagnosis, and we reaffirm our commitment to combating pediatric cancers and supporting these children and their families and friends in their fight.

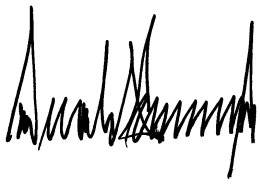
Over the last half century, substantial progress has been made in the diagnosis and treatment of several types of childhood cancer. Yet our resolve to ensure that every child can grow up cancer-free has never been stronger. We remain dedicated to the goal of ending childhood cancer and continuing to improve the care that all of these children receive.

To achieve these goals, my Administration is working with the Congress to invest $500 million over the next decade to provide our Nation's best researchers and clinicians with unparalleled opportunities to better understand, treat, and ultimately cure childhood cancer. The National Cancer Institute is implementing the Childhood Cancer Data Initiative, which will collect, analyze, and share data to advance pediatric cancer breakthroughs. Additionally, the Food and Drug Administration's Pediatric Oncology program is working to accelerate the development of safe and effective new drugs to treat childhood cancers. These efforts will spur critical innovation in diagnoses, treatment, and prevention that will save lives.

During National Childhood Cancer Awareness Month, we honor the memory of the precious children and adolescents lost to cancer, and we pray for their families and friends as they remember their loved ones. We recommit to providing help, compassion, and encouragement to those children who are in the midst of a difficult battle. And we reaffirm our admiration and respect for the healthcare professionals who have continued to work tirelessly for these children during the coronavirus pandemic so that every child can enjoy a future filled with promise, good health, and hope.

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 September 2020 as National Childhood Cancer Awareness Month. I ask every American to reach out and help a family battling childhood cancer. I encourage citizens, government agencies, private businesses, nonprofit organizations, the media, and other interested groups to increase awareness of what Americans can do to support the fight against childhood cancer. I also invite the Governors of the States and Territories and officials of other areas subject to the jurisdiction of the United States to join me in recognizing National Childhood Cancer Awareness Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, 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.



[FR Doc. 2020–19750
Filed 9–2–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10067 of August 31, 2020

National Preparedness Month, 2020

By the President of the United States of America

A Proclamation

During National Preparedness Month, we pause to reflect on the importance of mitigating the effects of disasters and tragedies on our lives by devoting time and resources to being prepared. As we observe National Preparedness Month this September, I encourage all Americans to take intentional, precautionary measures to ensure the resilience of their families, homes, communities, and businesses.

Over the last year, our Nation has endured and persevered through many threats. Last week, hurricane Laura struck the Gulf Coast and affected the lives of millions in Louisiana, Texas, Arkansas, and Mississippi. My Administration is monitoring Federal response efforts and coordinating with State and local authorities to provide aid to the affected areas. In recent months, we have also responded to the coronavirus pandemic with unparalleled vigor and resolve, leveraging historic partnerships between the public and private sectors to produce and provide needed medical equipment and to develop therapeutics and a vaccine. We remain committed to safely reopening our country while protecting the most vulnerable among us. We have also faced wildfires, earthquakes, and storms, including a devastating weather system on Easter Sunday of this year that spawned more than 120 tornadoes in the southeastern United States. Despite the unprecedented nature and scope of the challenges we have faced, the American people have remained resolute in their determination to overcome any adversity. My Administration will continue to work with State, local, tribal, and territorial partners to ensure the country is prepared to meet any challenges that may arise.

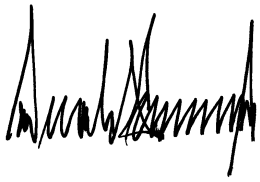
National Preparedness Month is also an opportunity to reiterate our gratitude for the selfless service of the brave men and women who help prepare our Nation for disasters and take action when they strike. Our first responders, critical infrastructure and other frontline workers, and disaster response volunteers often take great personal risks to perform their duties. These patriots are essential to the security of our Nation, and we remain committed to supporting them in their mission.

Promoting a culture of resilience through preparedness helps enable communities and individuals to take the preparatory actions necessary to overcome the threats and hazards that present themselves. The Federal Emergency Management Agency's *Ready Campaign,* which can be found by accessing *Ready.gov,* can help all Americans prepare for crisis situations. This easy-to-use response can help individuals and families create an emergency fund for unexpected expenses, set up a designated shelter area within a home, subscribe to local emergency alerts on mobile devices, and determine a reliable out-of-town contact during times of crisis. By taking these steps, people can mitigate damage and speed up recovery efforts across the country when disaster strikes.

During National Preparedness Month, I encourage all Americans to adopt a proactive mindset and take the necessary steps to prepare their families and communities to withstand and recover from unexpected events. We cannot always know when the next crisis will occur, but we can know that we will be prepared by committing ourselves to a culture of resilience.

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 September 2020 as National Preparedness Month. I encourage all Americans, including Federal, State, tribal, and local officials, to take action to be prepared for a disaster or an emergency by making and practicing their emergency response plans. Each step we take to become better prepared makes a real difference in how our families and communities will respond and persevere when faced with the unexpected.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, 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.



[FR Doc. 2020–19751
Filed 9–2–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10068 of August 31, 2020

National Sickle Cell Disease Awareness Month, 2020

By the President of the United States of America

A Proclamation

As our Nation recognizes National Sickle Cell Disease Awareness Month, we do so with an unwavering commitment to a future in which people with the condition live fully, without pain and impediments, and ultimately experience a cure. My Administration, through the Department of Health and Human Services (HHS), is leading unprecedented activity in research, medical education, and models of care in support of people with Sickle Cell Disease (SCD). A cure is within reach, the Food and Drug Administration (FDA) has approved new treatments and more are on the horizon, and several initiatives are underway to make better use of all available tools in the battle against this disease.

SCD is a chronic, debilitating, inherited condition that afflicts 100,000 Americans—primarily African-Americans and Hispanic-Americans. One in 13 African-Americans and approximately one in 100 Hispanic-Americans carry the gene for this disease. Those individuals with two copies of the gene have blood cells that are sickle-shaped, instead of cylindrical, which causes a disruption in blood flow that can damage many organs, including the brain and kidneys. A person with SCD can begin experiencing the negative effects in early childhood, including pain, organ damage, and risk of stroke. Unfortunately, it is estimated that only one in four patients with SCD in America receive the care that they need.

My Administration puts action behind our words, which is why I signed into law the ''Sickle Cell Disease and Other Heritable Blood Disorders Research, Surveillance, Prevention, and Treatment Act of 2018'' (Public Law 115–327). The bill reauthorizes an SCD prevention and treatment program and authorizes initiatives for research, surveillance, prevention, and treatment of heritable blood disorders. HHS is leading the way to identify and address barriers to care for patients, and several organizations have joined in developing education and training programs to better equip healthcare providers to identify and treat this disease. HHS has also begun collaborating with States on new payment models that will enable children living with SCD to receive the care they need.

We have made exciting progress towards our goal of extending the lives of Americans with SCD by 10 years and finding a cure by 2029. In January 2020, HHS launched a new, one-of-a-kind Sickle Cell Disease Training and Mentoring Program (STAMP), to train primary care providers on the basics of SCD evaluation and management. This innovative program is the result of critical collaboration between the Office of Minority Health and the Health Resources and Services Administration. The FDA has approved two new drugs to help prevent the complications of SCD, is providing leadership to reduce barriers and hasten the development of new treatments, and has developed multi-media educational resources for patients and their families. The National Institutes of Health (NIH) has initiated an aggressive portfolio of research, education, and capacity building, including the ''Cure Sickle Cell Initiative'' to accelerate gene therapies to cure the disease. NIH reports that the most promising genetic-based curative therapies for SCD could be available in clinical trials in the very near future.

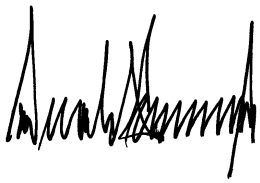
My Administration is leading on SCD advancements both in the United States and throughout the world. In May 2019, HHS leaders convened a roundtable with African health ministers, international health leaders, and SCD experts to chart a course to save hundreds of thousands of children around the world. Through NIH, we will continue to support the Sickle Pan African Research Consortium, and other Public Private Partnerships to develop gene-based cures.

The United States is helping raise the profile of SCD as a public health priority, by drawing attention to the work underway to create meaningful programs that immediately improve patients' lives. My Administration is committed to advancing treatment, research, and quality-of-care to improve the lives of people with SCD—and ultimately to deliver a cure to the world.

This month, we take a moment to recognize all Americans with SCD and celebrate our progress toward future treatments. Together, we will secure a healthier future for all Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States do hereby proclaim September 2020 as National Sickle Cell Disease Awareness Month. I call upon all Americans to observe this month with appropriate programs and activities to eliminate a disease we have known about for more than a century and to work to improve the quality of life of those living with SCD.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, 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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